

AMENDED IN SENATE JUNE 26, 1997  
AMENDED IN ASSEMBLY MAY 21, 1997  
AMENDED IN ASSEMBLY APRIL 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1395**

**Introduced by Assembly Member Escutia**

February 28, 1997

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An act to amend Sections 19271 and 19272 of, to amend and renumber Section 19532 of, and to add Section 19274 to, the Revenue and Taxation Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

AB 1395, as amended, Escutia. Child support: enforcement of delinquencies: Franchise Tax Board.

Existing law authorizes a county district attorney, when a child support delinquency is reported to the State Department of Social Services, as specified, to refer the delinquency to the Franchise Tax Board for collection. Existing law specifies that if a debtor has more than one debt being collected by the Franchise Tax Board and the amount collected is insufficient to satisfy the total amount owing, the amount collected shall be applied in a specified priority, beginning with the payment of taxes, additions to tax, penalties, interest, fees or other amounts due and payable under the Personal Income Tax Law, the Bank and Corporation Tax Law or provisions relating to the administration of those laws.

~~This bill would instead provide that the first priority to satisfy a debt would be the payment of child support delinquencies, as specified.~~

*Existing law requires amounts collected by the Franchise Tax Board to be applied to debts in a specified order.*

*This bill would provide that a voluntary payment by an obligated parent for a child support delinquency would be applied solely to the child support delinquency. The bill would also prohibit the Franchise Tax Board from engaging in any involuntary collection action to collect delinquent personal income taxes until the child support obligation is paid or discharged from accountability, except as specified.*

Existing law requires that the county district attorney receive credit for no less than 50% of the amount of collections made pursuant to the referral and receive no less than 50% of the applicable child support enforcement incentives, and permits the State Department of Social Services and the board to prescribe guidelines regarding the distribution of the amount in excess of that 50% of the incentives.

This bill would delete those provisions and instead provide that the district attorney receive credit for the full amount of the collections and the applicable enforcement incentives, and that collection costs incurred by the Franchise Tax Board be paid by federal reimbursement, with any balance to be paid from the General Fund.

This bill would provide that it shall become operative only if AB 573 of the 1997-98 Regular Session is enacted and becomes effective on or before January 1, 1998.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 19271 of the Revenue and
- 2 Taxation Code is amended to read:
- 3 19271. (a) When a child support delinquency is
- 4 reported to the State Department of Social Services
- 5 pursuant to Chapter 4 (commencing with Section 4700)
- 6 of Part 5 of Division 9 of the Family Code, the county
- 7 district attorney reporting that delinquency may,



1 pursuant to the guidelines prescribed by the State  
2 Department of Social Services and the Franchise Tax  
3 Board for purposes of implementing this article, refer the  
4 delinquency, which may include or be limited to interest,  
5 fees, or penalties, to the Franchise Tax Board for  
6 collection. In order to manage the growth in the number  
7 of referrals that it may receive, the Franchise Tax Board  
8 may phase in the referrals as administratively necessary.  
9 By December 31, 1996, or sooner if administratively  
10 possible, all counties shall be allowed to refer  
11 delinquencies to the Franchise Tax Board in accordance  
12 with this subdivision.

13 (b) (1) (A) Except as otherwise provided in  
14 subparagraph (B), when a delinquency is referred to the  
15 Franchise Tax Board pursuant to subdivision (a), the  
16 amount of the child support delinquency shall be  
17 collected from obligated parents by the Franchise Tax  
18 Board in any manner authorized under the law for  
19 collection of a delinquent personal income tax liability,  
20 including, but not limited to, issuance of an order and levy  
21 under Article 4 (commencing with Section 706.070) of  
22 Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of  
23 Civil Procedure in the manner provided for earnings  
24 withholding orders for taxes. Any law providing for the  
25 collection of a delinquent personal income tax liability  
26 shall apply to delinquencies referred under this article in  
27 the same manner and with the same force and effect and  
28 to the full extent as if the language of these laws had been  
29 incorporated in full into this article, except to the extent  
30 that any provision is either inconsistent with a provision  
31 of this article or is not relevant to this article.

32 ~~(B) When a delinquency is referred to the Franchise~~  
33 ~~Tax Board pursuant to subdivision (a) or at any time~~  
34 ~~thereafter if the obligated parent owes a delinquent~~  
35 ~~personal income tax liability, the Franchise Tax Board~~  
36 ~~shall not engage in and shall cease any involuntary~~  
37 ~~collection action to collect the delinquent personal~~  
38 ~~income tax liability until the child support delinquency is~~  
39 ~~paid in full. However, the Franchise Tax Board may~~  
40 ~~engage in involuntary collection action to collect the~~



1 delinquent personal income tax liability under either of  
2 the following circumstances:

3 (i) The child support delinquency meets the  
4 conditions provided in paragraph (3) of subdivision (e)  
5 and is returned to the county district attorney.

6 (ii) The obligor has entered into an installment  
7 payment agreement for the child support delinquency  
8 and is in compliance with that agreement and the  
9 Franchise Tax Board determines that the initiation of  
10 involuntary collection action to collect the delinquent  
11 personal income tax liability would not jeopardize the  
12 payments under the terms of the agreement.

13 (C) In the event a child support delinquency is  
14 referred to the Franchise Tax Board for collection when  
15 a personal income tax liability is, or any time thereafter  
16 becomes, due and payable, the Franchise Tax Board may  
17 mail any notice to the taxpayer for voluntary payment of  
18 the personal income tax liability as the Franchise Tax  
19 Board deems necessary.

20 (D) For purposes of subparagraph (B):

21 (i) “Involuntary collection action” means those  
22 actions authorized by Section 18670, 18670.5, 18671, or  
23 19264, Article 3 (commencing with Section 19231) of  
24 Chapter 5 of this part, or Chapter 5 (commencing with  
25 Section 706.010) of Division 2 of Title 9 of Part 2 of the  
26 Code of Civil Procedure.

27 (ii) “Delinquent personal income tax liability” means  
28 any taxes, additions to tax, penalties, interest, fees, or  
29 other related amounts due and payable under Part 10  
30 (commencing with Section 17001) or this part.

31 (iii) “Voluntary payment” means any payment made  
32 by taxpayers in response to any notice for payment  
33 mailed by the Franchise Tax Board.

34 (B) When a delinquency is referred to the Franchise  
35 Tax Board pursuant to subdivision (a), or at any time  
36 thereafter if the obligated parent owes a delinquent  
37 personal income tax liability, the Franchise Tax Board  
38 shall not engage in or shall cease any involuntary  
39 collection action to collect the delinquency referred  
40 under this article, until the earlier of the period that the



1 *delinquent personal income tax liability is paid in full or*  
2 *is discharged from accountability pursuant to Section*  
3 *13940 of the Government Code. In the event the*  
4 *obligated parent owes a delinquent personal income tax*  
5 *liability when a delinquency is referred, the Franchise*  
6 *Tax Board shall mail the notice specified in paragraph (4)*  
7 *of subdivision (a). At any time thereafter, the Franchise*  
8 *Tax Board may mail any other notice to the obligated*  
9 *parent for voluntary payment as the Franchise Tax Board*  
10 *deems necessary.*

11 (C) For purposes of subparagraph (B), the following  
12 definitions apply:

13 (i) “Involuntary collection action” means those  
14 actions authorized by Section 18670, 18670.5, 18671, or  
15 19264, or by Article 3 (commencing with Section 19231),  
16 or by Chapter 5 (commencing with Section 706.010) of  
17 Division 2 of Title 9 of Part 2 of the Code of Civil  
18 Procedure.

19 (ii) “Delinquent personal income tax liability” means  
20 any taxes, additions to tax, penalties, interest, fees, or  
21 other related amounts due and payable under Part 10  
22 (commencing with Section 17001) or this part.

23 (iii) “Voluntary payment” means any payment made  
24 by obligated parents in response to the notice specified in  
25 paragraph (4) of subdivision (a) or any other notice for  
26 voluntary payment mailed by the Franchise Tax Board.

27 (2) Any compensation, fee, commission, expense, or  
28 any other fee for service incurred by the Franchise Tax  
29 Board in the collection of a child support delinquency  
30 authorized under this article shall not be an obligation of,  
31 or collected from, the obligated parent. A referred child  
32 support delinquency shall be final and due and payable  
33 to the State of California upon written notice to the  
34 obligated parent by the Franchise Tax Board.

35 (3) For purposes of administering this article:

36 (A) This chapter and Chapter 7 (commencing with  
37 Section 19501) shall apply, except as otherwise provided  
38 by this article.

39 (B) Any services, information, or enforcement  
40 remedies available to a district attorney or the Title IV-D



1 agency in collecting support delinquencies or locating  
2 absent or noncustodial parents shall be available to the  
3 Franchise Tax Board for purposes of collecting child  
4 support delinquencies under this article, including, but  
5 not limited to, any information that may be disclosed by  
6 the Franchise Tax Board to the California Parent Locator  
7 Service under Section 19548.

8 (C) A request by the Franchise Tax Board for  
9 information from a financial institution shall be treated in  
10 the same manner and to the same extent as a request for  
11 information from a district attorney referring to a support  
12 order pursuant to Section 11475.1 of the Welfare and  
13 Institutions Code for purposes of Chapter 20  
14 (commencing with Section 7460) of Division 7 of Title 1  
15 of the Government Code (relating to governmental  
16 access to financial records), notwithstanding any other  
17 provision of law which is inconsistent or contrary to this  
18 paragraph.

19 (D) "Earnings" may include the items described in  
20 Section 5206 of the Family Code.

21 (E) The amount to be withheld in an order and levy  
22 to collect child support delinquencies under Article 4  
23 (commencing with Section 706.070) of Chapter 5 of  
24 Division 2 of Title 9 of Part 2 of the Code of Civil  
25 Procedure is the amount required to be withheld  
26 pursuant to an earnings withholding order for support  
27 under Section 706.052 of the Code of Civil Procedure.

28 (c) Interest on the delinquency shall be computed  
29 pursuant to Section 685.010 of the Code of Civil  
30 Procedure.

31 (d) In the event the collection action would cause  
32 undue financial hardship to the obligated parent, would  
33 threaten the health or welfare of the obligated parent or  
34 his or her family, or would cause undue irreparable loss  
35 to the obligated parent, the obligated parent may notify  
36 the Franchise Tax Board, which shall upon being notified  
37 refer the obligated parent to the referring county district  
38 attorney, unless the Franchise Tax Board is directed  
39 otherwise by the county district attorney for purposes of  
40 more effectively administering this article.



1 (e) (1) In no event shall a collection under this article  
2 be construed to be a payment of income taxes imposed  
3 under this part.

4 (2) In the event an obligated parent overpays a  
5 liability imposed under this part, the overpayment shall  
6 not be credited against any delinquency collected  
7 pursuant to this article. In the event an overpayment of  
8 a liability imposed under this part is offset and distributed  
9 to a referring county district attorney pursuant to  
10 Sections 12419.3 and 12419.5 of the Government Code or  
11 Section 708.740 of the Code of Civil Procedure, and  
12 thereby reduces the amount of the referred delinquency,  
13 the referring county district attorney shall immediately  
14 notify the Franchise Tax Board of that reduction, unless  
15 otherwise directed for purposes of more effectively  
16 administering this article.

17 (3) In no event shall the Franchise Tax Board collect  
18 under this article any delinquency referred under this  
19 article if all of the following circumstances exist:

20 (A) A court has ordered an obligor to make scheduled  
21 payments on a child support arrearages obligation.

22 (B) The obligor is in compliance with the order.

23 (C) The order does not provide the district attorney  
24 with authority to engage in continued or additional  
25 collection activities.

26 (f) Except as otherwise provided in this article, any  
27 child support delinquency referred to the Franchise Tax  
28 Board pursuant to this article shall be treated as a child  
29 support delinquency for all other purposes, and any  
30 collection action by the county district attorney or the  
31 Franchise Tax Board with respect to any delinquency  
32 referred pursuant to this article shall have the same  
33 priority against attachment, execution, assignment, or  
34 other collection action as is provided by any other  
35 provision of state law.

36 (g) For purposes of this article, “child support” means  
37 support of a child, spouse, or family as provided in Section  
38 150 of the Family Code.

39 (h) Nothing in this article shall be construed to modify  
40 the tax intercept provisions of Article 8 (commencing



1 with Section 708.710) of Chapter 6 of Division 2 of Part 2  
2 of the Code of Civil Procedure.

3 (i) Information disclosed to the Franchise Tax Board  
4 shall be considered information disclosed by the  
5 Franchise Tax Board under the authority of Section  
6 19285.1 and may be disseminated by the Franchise Tax  
7 Board accordingly for the purposes specified in Sections  
8 11478 and 11478.5 of the Welfare and Institutions Code (in  
9 accordance with, and to the extent permitted by, Section  
10 11478.1 of the Welfare and Institutions Code and any  
11 other state or federal law).

12 SEC. 2. Section 19272 of the Revenue and Taxation  
13 Code is amended to read:

14 19272. (a) Any child support delinquency collected  
15 by the Franchise Tax Board, including those amounts that  
16 result in overpayment of a child support delinquency,  
17 shall be deposited in the State Treasury, after clearance  
18 of the remittance, to the credit of the Special Deposit  
19 Fund and distributed as specified by interagency  
20 agreement executed by the Franchise Tax Board and the  
21 State Department of Social Services, with the  
22 concurrence of the Controller. Notwithstanding Section  
23 13340 of the Government Code, all moneys deposited in  
24 the Special Deposit Fund pursuant to this article are  
25 hereby continuously appropriated, without regard to  
26 fiscal years, for purposes of making distributions.

27 (b) When a child support delinquency, or any portion  
28 thereof, has been collected by the Franchise Tax Board  
29 pursuant to this article, the district attorney shall be  
30 notified that the delinquency or some portion thereof has  
31 been collected and shall be provided any other necessary  
32 relevant information requested.

33 (c) The referring county district attorney shall receive  
34 credit for the amount of collections made pursuant to the  
35 referral, and shall receive the applicable child support  
36 enforcement incentives pursuant to Section 15200.85 of  
37 the Welfare and Institutions Code. Collection costs  
38 incurred by the Franchise Tax Board shall be paid by  
39 federal reimbursement with any balance to be paid from  
40 the General Fund.



1 SEC. 3. Section 19274 is added to the Revenue and  
2 Taxation Code, to read:

3 19274. The county district attorney may refer to the  
4 Franchise Tax Board cases in which the social security  
5 number of the noncustodial parent is unknown. The  
6 Franchise Tax Board shall search its records to obtain the  
7 noncustodial parent's social security number and furnish  
8 this information to the county district attorney to assist in  
9 the establishment or enforcement of a child support  
10 order.

11 ~~SEC. 4. Section 19532 of the Revenue and Taxation~~  
12 ~~Code, as amended by Chapter 1001 of the Statutes of 1996,~~  
13 ~~is amended and renumbered to read:~~

14 ~~19533. (a) In the event the debtor has more than one~~  
15 ~~debt being collected by the Franchise Tax Board and the~~  
16 ~~amount collected by the Franchise Tax Board is~~  
17 ~~insufficient to satisfy the total amount owing, the amount~~  
18 ~~collected shall be applied in the following priority:~~

19 ~~(1) Payment of any debts referred for collection under~~  
20 ~~Article 5 (commencing with Section 19271) of Chapter 5.~~

21 ~~(2) Payment of any taxes, additions to tax, penalties,~~  
22 ~~interest, fees, or other amounts due and payable under~~  
23 ~~Part 7.5 (commencing with Section 13201), Part 10~~  
24 ~~(commencing with Section 17001), Part 11 (commencing~~  
25 ~~with Section 23001), or this part.~~

26 ~~(3) Payment of delinquent wages collected pursuant~~  
27 ~~to the Labor Code.~~

28 ~~(4) Payment of delinquencies collected under Section~~  
29 ~~10878.~~

30 ~~(5) Payment of any amounts due that are referred for~~  
31 ~~collection under Article 6 (commencing with Section~~  
32 ~~19280) of Chapter 5.~~

33 ~~(6) Payment of any amounts that are referred for~~  
34 ~~collection pursuant to Section 62.9 of the Labor Code.~~

35 ~~(7) Payment of delinquent penalties collected for the~~  
36 ~~Department of Industrial Relations pursuant to the Labor~~  
37 ~~Code.~~

38 ~~(8) Payment of delinquent fees collected for the~~  
39 ~~Department of Industrial Relations pursuant to the Labor~~  
40 ~~Code.~~



1 ~~(9) Payment of delinquencies referred by the Student~~  
2 ~~Aid Commission pursuant to Section 16583.5 of the~~  
3 ~~Government Code.~~

4 ~~(b) Notwithstanding the payment priority established~~  
5 ~~by this section, voluntary payments for items described in~~  
6 ~~paragraph (2) of subdivision (a) made by a taxpayer~~  
7 ~~pursuant to subparagraph (B) of paragraph (1) of~~  
8 ~~subdivision (a) of Section 19271 shall not be applied~~  
9 ~~pursuant to this priority but shall instead be applied solely~~  
10 ~~to the personal income tax liability for which the~~  
11 ~~voluntary payment was made.~~

12 *SEC. 4. Section 19532 of the Revenue and Taxation*  
13 *Code, as amended by Chapter 1001 of the Statutes of 1996,*  
14 *is amended and renumbered to read:*

15 ~~19532.~~

16 *19533.* In the event the debtor has more than one debt  
17 being collected by the Franchise Tax Board and the  
18 amount collected by the Franchise Tax Board is  
19 insufficient to satisfy the total amount owing, the amount  
20 collected shall be applied in the following priority:

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

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

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

29 (d) Payment of delinquencies collected under Section  
30 10878.

31 (e) Payment of any amounts due that are referred for  
32 collection under Article 6 (commencing with Section  
33 19280) of Chapter 5.

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

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



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

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

7 *(j) Notwithstanding the payment priority established*  
8 *by this section, voluntary payments made by an obligated*  
9 *parent for a child support delinquency pursuant to*  
10 *subparagraph (B) of paragraph (1) of subdivision (b) of*  
11 *Section 19271 shall not be applied pursuant to this priority*  
12 *but shall instead be applied solely to the child support*  
13 *delinquency for which the voluntary payment was made.*

14 SEC. 5. This act shall become operative only if  
15 Assembly Bill 573 of the 1997–98 Regular Session is  
16 enacted and becomes effective on or before January 1,  
17 1998.

