AB-3362 State Bar: open meetings: discipline: attorneys: foreign legal consultants: annual license fees.

(2019-2020)

Date Published: 10/02/2020 02:00 PM

Assembly Bill No. 3362

CHAPTER 360

An act to amend Sections 6026.7, 6060, 6086.10, 6090.5, 6140, 6140.5, and 6141 of, to amend, repeal, and add Section 6140.03 of, and to add Section 6140.8 to, the Business and Professions Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to the State Bar of California.

[Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3362, Committee on Judiciary. State Bar: open meetings: discipline: attorneys: foreign legal consultants: annual license fees.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. The State Bar is governed by a board of trustees.

The State Bar Act, with specified exceptions, subjects the State Bar to the Bagley-Keene Open Meeting Act. The Bagley-Keene Open Meeting Act requires, with specified exceptions for authorized closed sessions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The Bagley-Keene Open Meeting Act requires a state body to provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item, unless a specific exemption applies. The State Bar Act, in addition to the grounds authorized in the Bagley-Keene Open Meeting Act, authorizes closed sessions for meetings, or portions thereof, relating to, among other things, the preparation, approval, grading, or administration of the California Bar Examination, the First-Year Law Students' Examination, or examinations for certification of a specialist.

This bill would restrict the State Bar Act closed-session exemptions relating to examinations to the preparation of examination materials, the approval, the grading, or the security of test administration of those examinations. The bill would require the State Bar to accept public comment in open session on all matters that are agendized for discussion or decision by the board of trustees, whether in an open or a closed session.

The State Bar Act provides for the creation of an examining committee within the State Bar with specified powers, which include the power to examine applicants for admission to practice law. The act imposes specified requirements for a person to be certified to the Supreme Court for admission and a license to practice law, including a requirement that, with specified exceptions, the person have passed a law students' examination administered by the examining committee after completion of their first year of law study. Under the State Bar Act, those who pass the examination within its first 3 administrations upon becoming eligible to take the examination receive credit for all law studies completed to the time the examination is passed. The State Bar Act requires those who do not pass the examination within its first 3 administrations upon becoming eligible to take the examination, but who subsequently pass the examination, to receive credit for one year of legal study.

This bill would require, if any of those first 3 administrations includes the June 2020 administration, that an applicant be permitted an additional 4th administration of the examination to pass to receive credit for all law studies completed to the time the examination is passed. The bill would require those who do not pass the examination within the allowed number of administrations upon becoming eligible to take the examination, but who subsequently pass the examination, to receive the credit for one year of legal study.

The State Bar Act provides for the investigation and discipline of licensees, as prescribed.

The State Bar Act requires that any order imposing a public reproval on a licensee include a direction that the licensee pay costs and, in any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court include a direction that the licensee pay costs. Such an order is enforceable both as payment as part of the license fee or as a condition of an application for reinstatement and as a money judgment.

This bill would authorize the State Bar to collect these costs through any means provided by law.

Under the State Bar Act, it is cause for suspension, disbarment, or other discipline for any licensee, whether as a party or as an attorney for a party, to make or seek certain agreements relating to discipline.

This bill would revise those agreements and make it a cause for discipline for a licensee, whether acting on their own behalf or on behalf of someone else, whether or not in the context of litigation, to solicit, agree, or seek those agreements.

The State Bar Act, until January 1, 2021, requires the board to charge an annual license fee for active licensees of up to $438 for 2020. Existing law also requires the board to charge an annual license fee for inactive licensees of up to $108 on and after January 1, 2020. The State Bar Act requires the board to increase each of the annual license fees by an additional $40, to be allocated only to support nonprofit organizations that provide free legal services to persons of limited means, except to the extent that a licensee elects not to support those activities. The State Bar Act requires that the invoice provided to licensees for payment of the annual license fee provide each licensee the option of deducting $40 from the annual license fee if the licensee elects not to have this amount allocated for these purposes (opt out).

This bill, until January 1, 2022, would require the board to charge an annual license fee of up to $395 for active licensees for 2021. The bill would also require the board to charge an annual license fee for inactive licensees of up to $97.40 for inactive licensees on and after January 1, 2021. The bill would, until January 1, 2023, increase the additional voluntary $40 amount to $45 and require $5 of the $45 to be allocated, pursuant to a competitive grant process, to qualified legal services projects or qualified support centers to hire law school graduates with a temporary provisional license issued by the State Bar. The bill would prohibit the State Bar from making any deductions from the $5. The bill would require any allocated funds remaining after the termination of the temporary provisional license program to be reallocated only to support nonprofit organizations that provide free legal services to persons of limited means. The bill would make a conforming change to the invoice provision to increase the amount of the opt out for licensees.

The State Bar Act requires the board to establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of active licensees, registered foreign legal consultants, and certain other attorneys, arising from or connected with the practice of law. Payments from the fund are discretionary and subject to regulation and conditions prescribed by the board. The act requires reimbursement of the fund by an attorney whose actions have caused payment from the fund and provides for collection as specified. The act also authorizes any order of the Supreme Court imposing suspension or disbarment of a licensee of the State Bar, or accepting a resignation with a disciplinary matter pending to include an order that the licensee pay a monetary sanction not to exceed $5,000 for each violation, up to $50,000, to be deposited into the Client Security Fund.

Existing law authorizes, among other amounts, reimbursements to the Client Security Fund by an attorney who has caused payment from the fund and specified costs ordered by the Supreme Court on a licensee of the State Bar, no sooner than 90 days after payment of that amount becomes delinquent, to be referred to the Franchise Tax Board for collection, as specified, 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 the Wage Garnishment Law in the manner provided for earnings withholding orders for taxes.

This bill would expand the purpose of the fund to include the relief or mitigation of pecuniary losses caused by the dishonest conduct of licensees, without regard to their active or inactive status. The bill would revise those reimbursement provisions. The bill would amend the act to revise existing board collections powers and to establish specific provisions for obtaining and enforcing a money judgment. The bill would require that a publicly reproved or suspended licensee pay the reimbursed amount as a condition of continued practice. The bill would prohibit the defense of laches from being raised by the licensee whose actions have caused the payment of funds to an applicant from the fund with respect to any payment owed to the State Bar, or with respect to any collections efforts by the State Bar for those payments. The bill would provide that certain provisions have, and shall have, retroactive application, as well as prospective application. The bill would specifically include registered foreign legal consultants in the licensees subject to the fund reimbursement provisions.

The bill would authorize any payments from the State Bar of California's Client Security Fund that is a part of a final determination from the Client Security Fund and those penalties imposed in an order imposing suspension or disbarment of a licensee of the State Bar to be referred for collection by the Franchise Tax Board 90 days after payment of the amount becomes delinquent, as specified.
Vote: majority   Appropriation: no   Fiscal Committee: yes   Local Program: no

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) By reimbursing victims of attorney misconduct for financial losses, the Client Security Fund serves a critical role in the State Bar of California's public protection mission.

(b) There is a dramatic imbalance between payouts from the Client Security Fund to clients victimized by attorneys and reimbursement to the State Bar from dishonest attorneys on whose behalf payments were made.

(c) There is a significant state interest in enhancing the State Bar of California's collection of overdue Client Security Fund reimbursement in order to enhance revenue necessary to reimburse victims of attorney misconduct.

(d) Amendments to Section 6140.5 of the Business and Professions Code are necessary to advance this important state interest.

(e) These amendments will enhance the State Bar of California's ability to effectively collect overdue Client Security Fund reimbursement that is not part of a disciplinary order.

(f) The amendments to subdivisions (c), (f), and (h) of Section 6140.5 of the Business and Professions Code are intended to apply retroactively.

SEC. 2. Section 6026.7 of the Business and Professions Code is amended to read:

6026.7. (a) The State Bar is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act.

(b) Notwithstanding any other law, the Bagley-Keene Open Meeting Act shall not apply to the Judicial Nominees Evaluation Commission or the State Bar Court.

(c) In addition to the grounds authorized in the Bagley-Keene Open Meeting Act, a closed session may be held for those meetings, or portions thereof, relating to any of the following:

(1) Appeals from decisions of the Board of Legal Specialization refusing to certify or recertify an applicant or suspending or revoking a specialist's certificate.

(2) The preparation of examination materials, the approval, the grading, or the security of test administration of examinations for certification of a specialist.

(3) The preparation of examination materials, the approval, the grading, or the security of test administration of the California Bar Examination or the First-Year Law Students' Examination.

(4) Matters related to the Committee of Bar Examiners' consideration of moral character, including allegations of criminal or professional misconduct, competence, or physical or mental health of an individual, requests by applicants for testing accommodations in connection with an application for admission to practice law, or appeals of the Committee of Bar Examiners' determinations.

(5) Information about a law school's operations that constitutes a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code.

(d) Notwithstanding subdivision (e) of Section 11125.7 of the Government Code, the State Bar shall accept public comment in open session on all matters that are agendized for discussion or decision by the board of trustees, whether in an open or a closed session.

SEC. 3. Section 6060 of the Business and Professions Code is amended to read:

6060. To be certified to the Supreme Court for admission and a license to practice law, a person who has not been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency or in a foreign country shall:

(a) Be at least 18 years of age.

(b) (1) Be of good moral character.

(2) (A) In reviewing whether an applicant is of good moral character under this subdivision, the staff of the State Bar or the members of the examining committee shall not review or consider the person's medical records relating to mental health, except

if the applicant seeks to use the record for either of the following purposes:

(i) To demonstrate that the applicant is of good moral character.

(ii) As a mitigating factor to explain a specific act of misconduct.

(B) The staff of the State Bar and members of the examining committee shall not request or seek to review any medical records relating to mental health, including by obtaining the consent of the applicant to disclose such records, except as requested by an applicant and for a purpose specified in subparagraph (A).

(c) Before beginning the study of law, have done either of the following:

(1) Completed at least two years of college work, which college work shall be at least one-half of the collegiate work acceptable for a bachelor's degree granted on the basis of a four-year period of study by a college or university approved by the examining committee.

(2) Have attained in apparent intellectual ability the equivalent of at least two years of college work by taking examinations in subject matters and achieving the scores as are prescribed by the examining committee.

(d) Have registered with the examining committee as a law student within 90 days after beginning the study of law. The examining committee, upon a showing of good cause, may permit a later registration.

(e) Have done either of the following:

(1) Had conferred upon them a juris doctor (J.D.) degree or a bachelor of laws (LL.B.) degree by a law school accredited by the examining committee or approved by the American Bar Association.

(2) Studied law diligently and in good faith for at least four years in any of the following manners:

(A) (i) In a law school that is authorized or approved to confer professional degrees and requires classroom attendance of its students for a minimum of 270 hours a year.

(ii) A person who has received their legal education in a foreign state or country where the common law of England does not constitute the basis of jurisprudence shall demonstrate to the satisfaction of the examining committee that the person's education, experience, and qualifications qualify them to take the examination.

(B) In a law office in this state and under the personal supervision of a licensee of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law. It is the duty of the supervising attorney to render any periodic reports to the examining committee as the committee may require.

(C) In the chambers and under the personal supervision of a judge of a court of record of this state. It is the duty of the supervising judge to render any periodic reports to the examining committee as the committee may require.

(D) By instruction in law from a correspondence law school authorized or approved to confer professional degrees by this state, which requires 864 hours of preparation and study per year for four years.

(E) By any combination of the methods referred to in this paragraph.

(f) Have passed any examination in professional responsibility or legal ethics as the examining committee may prescribe.

(g) Have passed the general bar examination given by the examining committee.

(h) (1) Have passed a law students' examination administered by the examining committee after completion of their first year of law study. Those who pass the examination within its first three administrations, or within the first four administrations as provided in paragraph (3), upon becoming eligible to take the examination, shall receive credit for all law studies completed to the time the examination is passed. Those who do not pass the examination within the number of administrations allowed by this subdivision, upon becoming eligible to take the examination, but who subsequently pass the examination, shall receive credit for one year of legal study only.

(2) (A) This requirement does not apply to a student who has satisfactorily completed their first year of law study at a law school accredited by the examining committee and who has completed at least two years of college work prior to matriculating in the accredited law school, nor shall this requirement apply to an applicant who has passed the bar examination of a sister state or of a country in which the common law of England constitutes the basis of jurisprudence.

(B) The law students' examination shall be administered twice a year at reasonable intervals.

(3) If any of the first three administrations of the law students' examination described in paragraph (1) includes the June 2020 administration, the applicant shall be permitted to pass the examination within its first four administrations upon becoming eligible to take the examination and shall receive credit for all law studies completed to the time the examination is passed.

SEC. 4. Section 6086.10 of the Business and Professions Code is amended to read:

6086.10. (a) Any order imposing a public reproval on a licensee of the State Bar shall include a direction that the licensee shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the licensee shall pay costs. An order imposing costs pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment. The State Bar may collect these costs through any means provided by law.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State Bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.

(c) A licensee may be granted relief, in whole or in part, from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.

(d) If an attorney is exonerated of all charges following a formal hearing, the attorney is entitled to reimbursement from the State Bar in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparation for the hearing.

(e) In addition to other monetary sanctions as may be ordered by the Supreme Court pursuant to Section 6086.13, costs imposed pursuant to this section are penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public. This subdivision is declaratory of existing law.

SEC. 5. Section 6090.5 of the Business and Professions Code is amended to read:

6090.5. (a) It is cause for suspension, disbarment, or other discipline for any licensee, whether acting on their own behalf or on behalf of someone else, whether or not in the context of litigation to solicit, agree, or seek agreement, that:

(1) Misconduct or the terms of a settlement of a claim for misconduct shall not be reported to the State Bar.

(2) A complainant shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the State Bar.

(3) The record of any action or proceeding shall be sealed from review by the State Bar.

(b) This section applies to all agreements or attempts to seek agreements, irrespective of the commencement or settlement of a civil action.

SEC. 6. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual license fee for active licensees for 2021 at a sum not exceeding three hundred ninety-five dollars ($395).

(b) The annual license fee for active licensees is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge licensees choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

SEC. 7. Section 6140.03 of the Business and Professions Code is amended to read:

6140.03. (a) The board shall increase each of the annual license fees fixed by Sections 6140 and 6141 by an additional forty-five dollars ($45), to be allocated only for the purposes established pursuant to subdivision (b) and Section 6033, except to the extent that a licensee elects not to support those activities.

(b) (1) Five dollars ($5) of the forty-five-dollar ($45) fee shall be allocated to qualified legal services projects or qualified support centers as defined in Section 6213 to hire law school graduates with a temporary provisional license issued by the State Bar. The State Bar shall not make any deductions from the five dollars ($5) for any reason, including, but not limited to, administrative fees, costs, or expenses by the State Bar.

(2) Funds shall be allocated pursuant to a competitive grant process and not through the formula set forth in Section 6216.

(3) The Legal Services Trust Fund Commission in consultation with the board of trustees may create priorities for allocating the competitive grants.

(4) Any funds allocated under paragraph (1) remaining after the termination of the temporary provisional license program shall be reallocated only for the purposes established pursuant to Section 6033.

(c) The invoice provided to licensees for payment of the annual license fee shall provide each licensee the option of deducting forty-five dollars ($45) from the annual license fee if the licensee elects not to have this amount allocated for the purposes established pursuant to Section 6033.

(d) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 8. Section 6140.03 is added to the Business and Professions Code, to read:

6140.03. (a) The board shall increase each of the annual license fees fixed by Sections 6140 and 6141 by an additional forty dollars ($40), to be allocated only for the purposes established pursuant to Section 6033, except to the extent that a licensee elects not to support those activities.

(b) The invoice provided to licensees for payment of the annual license fee shall provide each licensee the option of deducting forty dollars ($40) from the annual license fee if the licensee elects not to have this amount allocated for the purposes established pursuant to Section 6033.

(c) This section shall become operative on January 1, 2023.

SEC. 9. Section 6140.5 of the Business and Professions Code is amended to read:

6140.5. (a) The board shall establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of licensees of the State Bar, foreign legal consultants registered with the State Bar, and attorneys registered with the State Bar under the Multijurisdictional Practice Program, arising from or connected with the practice of law. Any payments from the fund shall be discretionary and shall be subject to regulation, conditions, and rules as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of trustees.

(b) Upon making a payment to a person who has applied to the fund for payment to relieve or mitigate pecuniary losses caused by the dishonest conduct of a licensee, the State Bar is subrogated, to the extent of that payment, to the rights of the applicant against any person or persons who, or entity that, caused the pecuniary loss. The State Bar may bring an action to enforce those rights within three years from the date of payment to the applicant.

(c) Any licensee whose actions have caused the payment of funds to an applicant from the Client Security Fund shall owe those funds to the State Bar and reimburse the Client Security Fund for all moneys paid out as a result of the licensee’s conduct with interest, in addition to payment of the assessment for the procedural costs of processing the claim. The State Bar may collect any money paid out by the Client Security Fund pursuant to this subdivision through any means provided by law.

(d) For a publicly reproved or suspended licensee, the reimbursed amount by the Client Security Fund, plus applicable interest and costs, shall be paid as a condition of continued practice. This amount shall be added to and become a part of the license fee of a publicly reproved or suspended licensee.

(e) For a licensee who resigns with disciplinary charges pending or a licensee who is resigned or disbarred, the reimbursed amount by the Client Security Fund, plus applicable interest and costs, shall be paid as a condition of applying for reinstatement of the licensee's license to practice law or return to active license status.

(f) Any assessment against an attorney pursuant to subdivision (c) that is part of an order imposing a public reproval on a licensee or is part of an order imposing discipline or accepting a resignation with a disciplinary matter pending, or any reimbursed amount that is part of a final determination by the Client Security Fund, may also be enforced as a money judgment. This subdivision does not limit the power of the Supreme Court to alter the restitution amount owed pursuant to an order imposing public reproval on a licensee or an order imposing discipline or accepting a resignation with a disciplinary matter pending, or to authorize the State Bar Court to do the same.

(g) To obtain a money judgment pursuant to subdivision (f) that is not part of a court order imposing a public reproval on a licensee or is not part of a court order imposing discipline or accepting a resignation with a disciplinary matter pending, the State Bar shall file a certified copy of the Notice of Payment of the Client Security Fund with the clerk of the superior court of any county. The clerk shall immediately enter judgment in conformity with the Notice of Payment. The judgment shall have the same force and effect as a judgment in a civil action and may be enforced in the same manner as any other judgment.

(h) The defense of laches shall not be raised by the licensee whose actions have caused the payment of funds to an applicant from the Client Security Fund with respect to any payment owed to the State Bar, or with respect to any collections efforts by the State Bar for those payments.

(i) Subdivisions (c), (f), and (h) have, and shall have, retroactive application, as well as prospective application.

(j) As used in this section, "licensee" shall include a foreign legal consultant registered with the State Bar.

SEC. 10. Section 6140.8 is added to the Business and Professions Code, to read:

6140.8. (a) Any order imposing upon a licensee public reproval, discipline, or accepting a resignation with a disciplinary matter pending, in which the licensee is ordered to pay restitution is enforceable as a money judgment by the payee. In the entry or enforcement of any money judgment based on such order, the payee shall reduce the amount owed by the licensee to the payee by any reimbursement received by the payee from the Client Security Fund or by any amount received as criminal restitution ordered pursuant to subdivision (f) of Section 1202.4 of the Penal Code, or by the combined amount, if applicable.

(b) A money judgment entered pursuant to this section shall not affect the right of a payee to file an application with the Client Security Fund to recover any portion of the subject restitution as provided by Section 6140.5, or as otherwise provided by law.

(c) A payee or other applicant who files an application with the Client Security Fund has an ongoing obligation to inform the Client Security Fund as to any payment recovered directly or indirectly from the attorney or any other source.

(d) To the extent that a payee or other applicant has already collected on any portion of the loss, the Client Security Fund may reduce any qualifying reimbursable amount by the amount collected.

(e) To the extent that the Client Security Fund reimburses a payee or other applicant, as provided in Section 6140.5, the licensee or former licensee shall reimburse the Client Security Fund for that payment.

(f) As used in this section, "payee" means an individual or entity who is identified as the beneficiary of restitution in any order imposing upon a licensee public reproval, discipline, or accepting a resignation with a disciplinary matter pending, in which the licensee is ordered to pay restitution to such individual or entity.

SEC. 11. Section 6141 of the Business and Professions Code is amended to read:

6141. (a) On January 1, 2021, and thereafter, the board shall fix the annual license fee for inactive licensees at a sum not exceeding ninety-seven dollars and forty cents ($97.40). The annual license fee for inactive licensees is payable on or before the first day of February of each year.

(b) An inactive licensee shall not be required to pay the annual license fee for inactive licensees for any calendar year following the calendar year in which the licensee attains 70 years of age.

SEC. 12. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) (A) 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 one hundred dollars ($100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, any amounts due pursuant to Section 903.1 of the Welfare and Institutions Code, and any amounts due pursuant to Section 6086.10, 6086.13, or 6140.5 of the Business and Professions Code 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 the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. Except as specified in subparagraph (B), the Department of Corrections and Rehabilitation or county may refer a restitution order to the Franchise Tax Board, in accordance with subparagraph (B) of paragraph (2), for any person subject to the restitution order who is or has been under the jurisdiction of the Department of Corrections and Rehabilitation or the county.

(B) The Department of Corrections and Rehabilitation or the county shall not refer 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 (i) are serving a sentence in a county jail pursuant to subdivision (h) of Section 1170 of the Penal Code, (ii) are on mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170 of the Penal Code, or (iii) are on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3 of the Penal Code, the designated county agency has an existing collection system and objects to collection by the Franchise Tax Board, and the designated county agency informs the Department of Corrections and Rehabilitation or the county that it will collect the restitution order.

(C) If the crime victim entitled to restitution in the order notifies either the Department of Corrections and Rehabilitation or the designated county agency with regard to their preference of a collecting agency, that preference shall be honored and the collection shall be performed in accordance with the preference of the victim.

(2) For purposes of this subdivision:

(A) The amounts referred by the juvenile or superior court, the county, the state, or the State Bar under this section may include an administrative fee and 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 Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral that 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) A collection under this article is not a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).