

ASSEMBLY BILL

No. 1925

Introduced by Assembly Member Eng

February 12, 2008

An act to amend Sections 31 and 7145.5 of the Business and Professions Code, and to add Sections 19265 and 19571 to the Revenue and Taxation Code, relating to taxes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1925, as introduced, Eng. Franchise Tax Board: business and professional licenses.

The Personal Income Tax Law and the Bank and Corporation Tax Law imposes taxes on, or measured by, income. Existing law allows a tax return or return information filed under those laws to be disclosed in a judicial or administrative proceeding pertaining to tax administration under certain circumstances. Existing law requires every board, as defined under the Business and Professions Code, and the Department of Insurance to, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board certain information with respect to every licensee.

This bill would require a state governmental licensing entity, as defined, issuing professional licenses, certificates, registrations, or permits to provide to the Franchise Tax Board the name and social security number or federal identification number of each licensee of that entity. The bill would require the Franchise Tax Board, if a licensee fails to pay taxes for which a notice of state tax lien has been recorded, to send a notice of suspension to the applicable state governmental licensing entity and to the licensee. The bill would require the Franchise Tax Board to meet certain requirements with regard to such a

suspension, and would make related changes. The bill would make implementation of its provisions contingent upon appropriation of funds for that purpose in the annual Budget Act.

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 31 of the Business and Professions Code
2 is amended to read:

3 31. (a) As used in this section, “board” means any entity listed
4 in Section 101, the entities referred to in Sections 1000 and 3600,
5 the State Bar, the Department of Real Estate, and any other state
6 agency that issues a license, certificate, or registration authorizing
7 a person to engage in a business or profession.

8 (b) Each applicant for the issuance or renewal of a license,
9 certificate, registration, or other means to engage in a business or
10 profession regulated by a board who is not in compliance with a
11 judgment or order for support shall be subject to Section ~~11350.6~~
12 *17520* of the ~~Welfare and Institutions~~ *Family Code*.

13 (c) “Compliance with a judgment or order for support,” has the
14 meaning given in paragraph (4) of subdivision (a) of Section
15 ~~11350.6 17520~~ of the ~~Welfare and Institutions~~ *Family Code*.

16 (d) *Each licensee who has not paid any applicable state income*
17 *tax, including interest, penalties, and other fees, shall be subject*
18 *to Section 19265 of the Revenue and Taxation Code.*

19 SEC. 2. Section 7145.5 of the Business and Professions Code
20 is amended to read:

21 7145.5. (a) The registrar may refuse to issue, reinstate,
22 reactivate, or renew a license or may suspend a license for the
23 failure of a licensee to resolve all outstanding final liabilities, which
24 include taxes, additions to tax, penalties, interest, and any fees that
25 may be assessed by the board, the Department of Industrial
26 Relations, the Employment Development Department, or the
27 Franchise Tax Board.

28 (1) Until the debts covered by this section are satisfied, the
29 qualifying person and any other personnel of record named on a
30 license that has been suspended under this section shall be
31 prohibited from serving in any capacity that is subject to licensure

1 under this chapter, but shall be permitted to act in the capacity of
2 a nonsupervising bona fide employee.

3 (2) The license of any other renewable licensed entity with any
4 of the same personnel of record that have been assessed an
5 outstanding liability covered by this section shall be suspended
6 until the debt has been satisfied or until the same personnel of
7 record disassociate themselves from the renewable licensed entity.

8 (b) The refusal to issue a license or the suspension of a license
9 as provided by this section shall be applicable only if the registrar
10 has mailed a notice preliminary to the refusal or suspension that
11 indicates that the license will be refused or suspended by a date
12 certain. This preliminary notice shall be mailed to the licensee at
13 least 60 days before the date certain.

14 (c) (1) In the case of outstanding final liabilities assessed by
15 the Franchise Tax Board, this section shall be operative within 60
16 days after the Contractors' State License Board has provided the
17 Franchise Tax Board with the information required under Section
18 30, relating to licensing information that includes the federal
19 employee identification number or social security number.

20 ~~(d)~~

21 (2) All versions of the application for contractors' licenses shall
22 include, as part of the application, an authorization by the applicant,
23 in the form and manner mutually agreeable to the Franchise Tax
24 Board and the board, for the Franchise Tax Board to disclose the
25 tax information that is required for the registrar to administer this
26 section. The Franchise Tax Board may from time to time audit
27 these authorizations.

28 (3) *This subdivision shall become inoperative upon the*
29 *implementation of subdivision (a) of Section 19265 of the Revenue*
30 *and Taxation Code.*

31 SEC. 3. Section 19265 is added to the Revenue and Taxation
32 Code, to read:

33 19265. (a) (1) All state governmental licensing entities issuing
34 professional licenses, certificates, registrations, or permits shall
35 provide to the Franchise Tax Board the name and social security
36 number or federal identification number, as applicable, of each
37 taxpayer that is issued a license by, or is a licensee of, that state
38 governmental licensing entity. If any licensee has failed to pay
39 taxes, including any penalties, interest, and any applicable fees,
40 imposed under Part 10 (commencing with Section 17001), Part 11

1 (commencing with Section 23001), or this part, for which a notice
2 of state tax lien has been recorded in any county recorder's office
3 in this state, pursuant to Chapter 14 (commencing with Section
4 7150) of Division 7 of Title 1 of the Government Code, the
5 Franchise Tax Board shall send a notice of suspension to the
6 applicable state governmental licensing entity and to the licensee.
7 The rights, powers, and privileges of any licensee whose
8 professional license, certificate, registration, or permit has been
9 suspended pursuant to this section shall be subject to the same
10 prohibitions, limitations, and restrictions as if the professional
11 license, certificate, registration, or permit was suspended by the
12 state governmental licensing entity that issued the professional
13 license, certificate, registration, or permit. The suspension
14 authorized by this section shall be applicable only if the Franchise
15 Tax Board has mailed a preliminary notice of the suspension that
16 indicates that the license will be suspended by a date certain. This
17 preliminary notice shall be mailed to the licensee at least 60 days
18 before that date certain.

19 (2) The Franchise Tax Board shall, within 10 business days of
20 compliance by the licensee with the tax obligation, notify both the
21 state governmental licensing entity and the licensee that the unpaid
22 taxes have been paid or that an installment payment agreement,
23 as described in Section 19008, has been entered into to satisfy the
24 unpaid taxes.

25 (b) (1) The Franchise Tax Board may defer or cancel any
26 suspension authorized by this section if a licensee would experience
27 substantial financial hardship. The Franchise Tax Board shall, if
28 requested by the licensee in writing, provide for an administrative
29 hearing to determine if the licensee will experience substantial
30 financial hardship from the suspension of the license, certificate,
31 registration, or permit.

32 (2) The request for a hearing specified in paragraph (1) shall be
33 made in writing within 30 days from the mailing date of the
34 preliminary notice described in subdivision (a).

35 (3) The Franchise Tax Board shall conduct a hearing within 30
36 days after receipt of a request pursuant to paragraph (1).

37 (4) A licensee seeking relief under this subdivision shall only
38 be entitled to relief described in paragraph (1) if the licensee
39 provides the Franchise Tax Board with financial documents that

1 substantiate a substantial financial hardship, and agrees to an
2 acceptable payment arrangement.

3 (c) For purposes of this section and Section 19571, the following
4 definitions shall apply:

5 (1) “Hardship” means financial hardship, as determined by the
6 Franchise Tax Board, where the taxpayer is financially unable to
7 pay any part of the amount described in subdivision (a) and is
8 unable to qualify for an installment payment arrangement as
9 provided for by Section 19008. In order to establish the existence
10 of a financial hardship, the taxpayer shall submit any information
11 requested by the Franchise Tax Board for the purpose of making
12 that determination.

13 (2) “License” includes a certificate, registration, or any other
14 authorization to engage in a business or profession issued by a
15 state governmental licensing entity.

16 (3) “Licensee” means any entity authorized by a license,
17 certificate, registration, or other authorization to engage in a
18 business or profession issued by a state governmental licensing
19 entity.

20 (4) “State governmental licensing entity” means any entity listed
21 in Section 101, 1000, or 19420 of the Business and Professions
22 Code, the Office of the Attorney General, the Department of
23 Insurance, the State Bar of California, the Department of Real
24 Estate, and any other state agency, board, or commission that issues
25 a license, certificate, or registration authorizing a person to engage
26 in a business or profession. “State governmental licensing entity”
27 shall not include the Department of Motor Vehicles.

28 (d) Implementation of this section shall be contingent on the
29 appropriation of funds for the purposes of this section in the annual
30 Budget Act.

31 SEC. 4. Section 19571 is added to the Revenue and Taxation
32 Code, to read:

33 19571. (a) The Franchise Tax Board may disclose to state
34 governmental licensing entities information regarding suspension
35 of licensees pursuant to Section 19265.

36 (b) Neither the state governmental entity, nor any officer,
37 employee, or agent, or former officer, employee, or agent of a state
38 governmental licensing entity, may disclose or use any information
39 obtained from the Franchise Tax Board, pursuant to this section,

1 except to inform the public of the suspension of a license pursuant
2 to Section 19265.

3 (c) For purposes of this section, the definitions in Section 19265
4 shall apply.

5 SEC. 5. The Legislature hereby finds and declares the
6 following:

7 (a) It is the understanding and intent of the Legislature that,
8 consistent with the decision in *Crum v. Vincent*, Missouri Director
9 of Revenue (8th Cir. 2007) 493 F.3d 988, the suspension of a
10 professional or occupational license for failure to file returns or
11 pay delinquent taxes satisfies the due process requirements of the
12 California and federal constitutions if a taxpayer is provided an
13 opportunity for a hearing to challenge a proposed tax assessment
14 prior to it becoming final and collectable. Because California law
15 provides an opportunity for a hearing prior to a proposed
16 assessment becoming final, due process is satisfied without an
17 additional hearing prior to the suspension of a professional or
18 occupational license of a delinquent taxpayer.

19 (b) To prevent financial hardship, Section 19265 of the Revenue
20 and Taxation Code, as added by this act, grants a delinquent
21 taxpayer the opportunity for an additional hearing for financial
22 hardship prior to the suspension of a professional or occupational
23 license.