

AMENDED IN ASSEMBLY APRIL 23, 2008

AMENDED IN ASSEMBLY APRIL 7, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1925**

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**Introduced by Assembly Member Eng**

February 12, 2008

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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 amended, Eng. Franchise Tax Board: professional or occupational licenses.

The Personal Income Tax Law and the Bank and Corporation Tax Law impose 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 or occupational licenses, certificates, registrations, or permits to provide to the Franchise Tax Board the name and social security number or federal taxpayer identification number of each individual licensee of that entity. The bill would require the

Franchise Tax Board, if an individual licensee fails to pay taxes for which a notice of state tax lien has been recorded, *as specified*, 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 17520 of  
12 the 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 17520  
15 of the 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.

1 (1) Until the debts covered by this section are satisfied, the  
2 qualifying person and any other personnel of record named on a  
3 license that has been suspended under this section shall be  
4 prohibited from serving in any capacity that is subject to licensure  
5 under this chapter, but shall be permitted to act in the capacity of  
6 a nonsupervising bona fide employee.

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

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

18 (c) (1) In the case of outstanding final liabilities assessed by  
19 the Franchise Tax Board, this section shall be operative within 60  
20 days after the Contractors' State License Board has provided the  
21 Franchise Tax Board with the information required under Section  
22 30, relating to licensing information that includes the federal  
23 employee identification number or social security number.

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

31 (d) This section shall not be interpreted to conflict with the  
32 suspension of a license by the Franchise Tax Board pursuant to  
33 Section 19265 of the Revenue and Taxation Code.

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

36 19265. (a) (1) All state governmental licensing entities issuing  
37 professional or occupational licenses, certificates, registrations, or  
38 permits shall provide to the Franchise Tax Board the name and  
39 social security number or federal taxpayer identification number,  
40 as applicable, of each licensee of that state governmental licensing

1 entity. If any licensee has failed to pay taxes, including any  
 2 penalties, interest, and any applicable fees, imposed under Part 10  
 3 (commencing with Section 17001), Part 11 (commencing with  
 4 Section 23001), or this part, for which a notice of state tax lien has  
 5 been recorded in any county recorder’s office in this state, pursuant  
 6 to Chapter 14 (commencing with Section 7150) of Division 7 of  
 7 Title 1 of the Government Code, the Franchise Tax Board shall  
 8 mail a notice of suspension to the applicable state governmental  
 9 licensing entity and to the licensee. The rights, powers, and  
 10 privileges of any licensee whose professional or occupational  
 11 license, certificate, registration, or permit has been suspended  
 12 pursuant to this section shall be subject to the same prohibitions,  
 13 limitations, and restrictions as if the professional or occupational  
 14 license, certificate, registration, or permit were suspended by the  
 15 state governmental licensing entity that issued the professional or  
 16 occupational license, certificate, registration, or permit. The  
 17 suspension authorized by this section shall be applicable only if  
 18 the Franchise Tax Board has mailed a preliminary notice of the  
 19 suspension that indicates that the license will be suspended by a  
 20 date certain. This preliminary notice shall be mailed to the licensee  
 21 at least 60 days before that date certain.

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

28 (3) State governmental licensing entities shall provide to the  
 29 Franchise Tax Board the information required by this subdivision  
 30 at a time that the Franchise Tax Board may require.

31 (b) (1) The Franchise Tax Board may defer or cancel any  
 32 suspension authorized by this section if a licensee would experience  
 33 ~~substantial~~ financial hardship. The Franchise Tax Board shall, if  
 34 requested by the licensee in writing, provide for an administrative  
 35 hearing to determine if the licensee will experience ~~substantial~~  
 36 financial hardship from the suspension of the license, certificate,  
 37 registration, or permit.

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

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

3 (4) A licensee seeking relief under this subdivision shall only  
4 be entitled to relief described in paragraph (1) if the licensee  
5 provides the Franchise Tax Board with financial documents that  
6 substantiate a ~~substantial~~ financial hardship, and agrees to an  
7 acceptable payment arrangement.

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

10 (1) ~~“Hardship”~~ “*Financial hardship*” means financial hardship  
11 *within the meaning of Section 19008*, as determined by the  
12 Franchise Tax Board, where ~~the licensee is suspension of a license~~  
13 *will result in the licensee being financially unable to pay any part*  
14 *of the amount described in subdivision (a) and the license is unable*  
15 *to qualify for an installment payment arrangement as provided for*  
16 *by Section 19008. In order to establish the existence of a financial*  
17 *hardship, the licensee shall submit any information, including*  
18 *information related to reasonable business and personal expenses,*  
19 *requested by the Franchise Tax Board for the purpose of making*  
20 *that determination.*

21 (2) “License” includes a certificate, registration, or any other  
22 authorization to engage in a profession or occupation issued by a  
23 state governmental licensing entity.

24 (3) “Licensee” means an individual authorized by a license,  
25 certificate, registration, or other authorization to engage in a  
26 profession or occupation issued by a state governmental licensing  
27 entity.

28 (4) “State governmental licensing entity” means any entity listed  
29 in Section 101, 1000, or 19420 of the Business and Professions  
30 Code, the office of the Attorney General, the Department of  
31 Insurance, the State Bar of California, the Department of Real  
32 Estate, and any other state agency, board, or commission that issues  
33 a license, certificate, or registration authorizing an individual to  
34 engage in a profession or occupation. “State governmental licensing  
35 entity” shall not include the Department of Motor Vehicles.

36 (d) Implementation of this section shall be contingent on the  
37 appropriation of funds for the purposes of this section in the annual  
38 Budget Act.

39 ~~(e) (1) For an assessment for which a notice of state tax lien~~  
40 ~~has been recorded in a county recorder’s office in this state,~~

1 pursuant to Chapter 14 (commencing with Section 7150) of  
2 Division 7 of Title 1 of the Government Code, prior to January 1,  
3 2009, the Franchise Tax Board shall mail a notice to any licensee  
4 who would be affected by this section.

5 (2) The notice referred to in paragraph (1) shall advise a licensee  
6 that he or she may request in writing, within 30 days of the date  
7 of the notice, a hearing with respect to the possible suspension of  
8 the license. The grounds for this hearing shall be limited to whether  
9 the licensee has failed to pay the taxes, including penalties, interest,  
10 and applicable fees, reflected in the notice of state tax lien. The  
11 hearing may not review the validity of the underlying tax liability,  
12 which has previously been made under Section 19044, or financial  
13 hardship, which is provided for under subdivision (b).

14 (3) If a hearing is requested by a licensee in accordance with  
15 paragraph (2), the Franchise Tax Board shall provide for the  
16 hearing within 30 days of receipt of the request.

17 (4) The Franchise Tax Board shall not suspend any license as  
18 authorized by this subdivision if a licensee can substantiate that  
19 the taxes, including penalties, interest, and applicable fees, reflected  
20 in the notice of state tax lien, have been paid.

21 (5) If a licensee fails to request a hearing under this subdivision  
22 or fails to substantiate at that hearing that the taxes, including  
23 penalties, interest, and applicable fees, have been paid, then the  
24 licensee shall be subject to suspension in accordance with this  
25 section.

26 (6) Chapter 4.5 (commencing with Section 11400) of Part 1 of  
27 Division 3 of Title 2 of the Government Code does not apply to a  
28 hearing authorized by this subdivision.

29 (f) If this section or any portion of this section is held invalid,  
30 or the application of this section to any person or circumstance is  
31 held invalid, that invalidity shall not affect other provisions of law  
32 or applications that can be given effect without the invalid  
33 provision or application.

34 (e) *This section shall apply to state tax liens based on notices*  
35 *of proposed assessment that are mailed to taxpayers more than*  
36 *60 days after the enactment date of the act adding this section and*  
37 *state tax liens based on other amounts that become due and*  
38 *payable, within the meaning of Section 19221, more than 60 days*  
39 *after the date of enactment of the act adding this section.*

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

3 19571. (a) The Franchise Tax Board may disclose to state  
4 governmental licensing entities information regarding suspension  
5 of licensees pursuant to Section 19265.

6 (b) Neither the state governmental licensing entity, nor any  
7 officer, employee, or agent, or former officer, employee, or agent  
8 of a state governmental licensing entity, may disclose or use any  
9 information obtained from the Franchise Tax Board, pursuant to  
10 this section, except to inform the public of the suspension of a  
11 license pursuant to Section 19265.

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

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

16 (a) It is the understanding and intent of the Legislature that,  
17 consistent with the decision in *Crum v. Vincent* (8th Cir. 2007)  
18 493 F.3d 988, the suspension of a professional or occupational  
19 license for failure to file returns or pay delinquent taxes satisfies  
20 the due process requirements of the California and federal  
21 constitutions if a taxpayer is provided an opportunity for a hearing  
22 to challenge a proposed tax assessment prior to it becoming final  
23 and collectable. Because California law provides an opportunity  
24 for a hearing prior to a proposed assessment becoming final, due  
25 process is satisfied without an additional hearing prior to the  
26 suspension of a professional or occupational license of a delinquent  
27 taxpayer.

28 (b) To prevent financial hardship, Section 19265 of the Revenue  
29 and Taxation Code, as added by this act, grants a delinquent  
30 taxpayer the opportunity for an additional hearing for financial  
31 hardship prior to the suspension of a professional or occupational  
32 license. ~~An opportunity for a limited hearing is also provided to a  
33 delinquent taxpayer if a suspension would be based on an  
34 assessment for which a notice of a state tax lien was recorded prior  
35 to the effective date of this act.~~ *license.*