

AMENDED IN SENATE JUNE 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1307

Introduced by Assembly Member Skinner

February 18, 2011

~~An act to add Section 6070.5 to the Revenue and Taxation Code, relating to taxation.~~ *An act to amend Section 7145.5 of the Business and Professions Code, to add Section 15624 to the Government Code, to add Section 6070.5 to the Revenue and Taxation Code, and to amend Section 1088.5 of the Unemployment Insurance Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1307, as amended, Skinner. State Board of Equalization: ~~seller's permits; refusal to issue.~~ *administration; collections.*

The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State License Board in the Department of Consumer Affairs. Existing law provides that the registrar of the Contractors' State License Board may refuse to issue, reinstate, reactivate, or renew a license or may suspend the license of a contractor for the failure of the licensee to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest, and any fees that may be assessed by the board, the Department of Industrial Relations, the Employment Development Department, or the Franchise Tax Board.

This bill would authorize the Contractors' State License board, except in certain cases, to take the actions specified above for a licensee's failure to resolve outstanding final liabilities assessed by the State Board of Equalization.

Existing law requires the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors. Existing law requires the board, in coordination with financial institutions doing business in California, to operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible in order to allow the board to match its list of delinquent tax debtors with the lists provided by the financial institutions. Existing law authorizes the board to disclose specified taxpayer information for purposes of data matching, to institute civil proceedings for specified purposes, and to impose specified penalties on financial institutions for failure to provide records in connection with the match system.

This bill would require the State Board of Equalization to operate a similar Financial Institution Record Match System in cooperation with the Franchise Tax Board. This bill would also authorize the Franchise Tax Board to disclose delinquent tax debtor information provided to the Franchise Tax Board by the State Board of Equalization to designated financial institutions for the purpose of matching debtor records to accountholder records at those financial institutions, and would provide that the unauthorized use of this data is a misdemeanor.

The Sales and Use Tax Law provides that every person desiring to engage in or conduct business as a seller shall apply to the State Board of Equalization for a permit. That law requires a person selling tangible personal property for storage, use, or other consumption in this state to register with, and to obtain a seller's permit or certification of registration-use tax from, the State Board of Equalization. The Sales and Use Tax Law requires a seller whose permit has been previously suspended or revoked to pay the board a fee of \$100 for the renewal or issuance of a permit.

This bill would authorize the board to refuse to issue a seller's permit to any person submitting an application for a permit if the person desiring to engage in or conduct business as a seller within this state has an outstanding final liability with the board for any amount due, as specified. The bill would also authorize the board, if the person submitting an application for a seller's permit has entered into an installment payment agreement and fails to comply with its terms, to seek revocation of that seller's permit. The bill would additionally require the board to provide written notice to any person denied a permit and would allow such a person to request reconsideration of the denial, in accordance with specified procedures.

Existing law provides for the payment of unemployment compensation benefits to eligible unemployed individuals, and requires the Employment Development Department to implement and administer the unemployment insurance system in the state. Existing law requires each employer to file with the department a report of wages paid to his or her workers and to furnish to each employee a written statement showing, among other things, the total amount of wages, and total wages subject to personal income tax, as provided. Existing law also requires each employer to file with the department specified information on new employees, and authorizes the use of that information for specified purposes including, among other things, providing employer or employee information to the Franchise Tax Board for the purpose of tax enforcement.

This bill would also authorize the Employment Development Department to provide employer or employee information to the State Board of Equalization for the purpose of tax or fee enforcement.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 7145.5 of the Business and Professions
- 2 Code is amended to read:
- 3 7145.5. (a) The registrar may refuse to issue, reinstate,
- 4 reactivate, or renew a license or may suspend a license for the
- 5 failure of a licensee to resolve all outstanding final liabilities, which
- 6 include taxes, additions to tax, penalties, interest, and any fees that
- 7 may be assessed by the board, the Department of Industrial
- 8 Relations, the Employment Development Department, ~~or~~ the
- 9 Franchise Tax Board, *or the State Board of Equalization.*
- 10 (1) Until the debts covered by this section are satisfied, the
- 11 qualifying person and any other personnel of record named on a
- 12 license that has been suspended under this section shall be
- 13 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) In the case of outstanding final liabilities assessed by the
15 Franchise Tax Board, this section shall be operative within 60 days
16 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) All versions of the application for contractors' licenses shall
21 include, as part of the application, an authorization by the applicant,
22 in the form and manner mutually agreeable to the Franchise Tax
23 Board and the board, for the Franchise Tax Board to disclose the
24 tax information that is required for the registrar to administer this
25 section. The Franchise Tax Board may from time to time audit
26 these authorizations.

27 (e) *In the case of outstanding final liabilities assessed by the*
28 *State Board of Equalization, this section shall not apply to any*
29 *outstanding final liability if the licensee has entered into an*
30 *installment payment agreement for that liability with the State*
31 *Board of Equalization and is in compliance with the terms of that*
32 *agreement.*

33 *SEC. 2. Section 15624 is added to the Government Code, to*
34 *read:*

35 *15624. (a) The State Board of Equalization shall operate and*
36 *implement a Financial Institution Record Match System as*
37 *described in Section 19266 of the Revenue and Taxation Code,*
38 *utilizing automated data exchanges to the maximum extent feasible,*
39 *and in cooperation with the Franchise Tax Board.*

1 (b) Notwithstanding any law to the contrary, to effectuate the
2 Financial Institution Record Match System, the Franchise Tax
3 Board may, in addition to authorization provided in Section 19266
4 of the Revenue and Taxation Code, disclose delinquent tax debtor
5 information provided to the Franchise Tax Board by the State
6 Board of Equalization that includes the name and social security
7 number or taxpayer identification number to designated financial
8 institutions or their authorized processing agents for purposes of
9 matching debtor records to accountholder records at the financial
10 institution. Any use of the data provided by the Franchise Tax
11 Board for a purpose other than those identified by this section is
12 prohibited, and shall be considered a violation of Section 19542
13 of the Revenue and Taxation Code.

14 (c) “Delinquent tax debtor,” as used in this section, means any
15 person liable for any tax, fee, or surcharge amounts, and any
16 penalty, interest, or other amounts required to be paid to the State
17 Board of Equalization, where the liability remains unpaid after
18 30 days from demand for payment by the State Board of
19 Equalization, and the person is not making current timely
20 installment payments on the liability under an installment payment
21 agreement as provided by law.

22 ~~SECTION 4.~~

23 SEC. 3. Section 6070.5 is added to the Revenue and Taxation
24 Code, to read:

25 6070.5. (a) The board may refuse to issue a permit to any
26 person submitting an application for a permit as required in Section
27 6066 if the person desiring to engage in or conduct business as a
28 seller within this state has an outstanding final liability with the
29 board for any amount due under this part.

30 (b) In addition to the provisions of subdivision (a), the board
31 may also refuse to issue a permit if the person desiring to engage
32 in or conduct business as a seller within this state is not a natural
33 person or individual and any person controlling the person desiring
34 to engage in or conduct business as a seller within this state has
35 an outstanding final liability with the board as provided in
36 subdivision (a). For the purposes of this section, “controlling” has
37 the same meaning as defined in Section 22971 of the Business and
38 Professions Code.

39 (c) For purposes of this section, a liability will not be deemed
40 to be outstanding if the person has entered into an installment

1 payment agreement pursuant to Section 6832 for any liability and
2 is in full compliance with the terms of the installment payment
3 agreement.

4 (d) If the person submitting an application for a seller's permit
5 has entered into an installment payment agreement as provided in
6 subdivision (c) and fails to comply with the terms of the installment
7 payment agreement, the board may seek revocation of the seller's
8 permit obtained by the person pursuant to this section.

9 (e) (1) Whenever any person desiring to engage in or conduct
10 business as a seller within this state is denied a permit pursuant to
11 this section, the board shall give to the person written notice of
12 the denial. The notice of the denial may be served personally, by
13 mail, or by other means deemed appropriate by the board. If served
14 by mail, the notice shall be placed in a sealed envelope, with
15 postage paid, addressed to the person at the address as it appears
16 in the records of the board. The giving of notice shall be deemed
17 complete at the time of deposit of the notice at the United States
18 Postal Service, or a mailbox, subpost office, substation or mail
19 chute, or other facility regularly maintained or provided by the
20 United States Postal Service, without extension of time for any
21 reason. In lieu of mailing, a notice may be served personally by
22 delivering to the person to be served and service shall be deemed
23 complete at the time of the delivery. Delivery of notice by other
24 means deemed appropriate by the board may include, but is not
25 limited to, electronic transmission. Personal service or delivery by
26 other means deemed appropriate by the board to a corporation may
27 be made by delivery of a notice to any person listed on the
28 application as an officer.

29 (2) Any person who is denied a seller's permit pursuant to this
30 section may request reconsideration of the board's denial of the
31 permit. This request ~~must~~ shall be submitted in writing within 30
32 days of the date of the notice of denial. Timely submission of a
33 written request for reconsideration ~~will~~ shall afford the person a
34 hearing in a manner that is consistent with a hearing provided for
35 by Section 6070. If a request for reconsideration is not filed within
36 the 30-day period, the denial becomes final at the end of the 30-day
37 period.

38 *SEC. 4. Section 1088.5 of the Unemployment Insurance Code*
39 *is amended to read:*

1 1088.5. (a) In addition to information reported in accordance
2 with Section 1088, effective July 1, 1998, each employer shall file,
3 with the department, the information provided for in subdivision
4 (b) on new employees.

5 (b) Each employer shall report the hiring of any employee who
6 works in this state and to whom the employer anticipates paying
7 wages.

8 (c) (1) This section shall not apply to any department, agency,
9 or instrumentality of the United States.

10 (2) State agency employers shall not be required to report
11 employees performing intelligence or counterintelligence functions,
12 if the head of the agency has determined that reporting pursuant
13 to this section would endanger the safety of the employee or
14 compromise an ongoing investigation or intelligence mission.

15 (d) (1) Employers shall submit a report as described in
16 paragraph (4) within 20 days of hiring any employee whom the
17 employer is required to report pursuant to this section.

18 (2) Notwithstanding subdivision (a), employers transmitting
19 reports magnetically or electronically shall submit the report by
20 two monthly transmissions not less than 12 days no more than 16
21 days apart.

22 (3) For purposes of this section, an employer that has employees
23 in two or more states and that transmits reports magnetically or
24 electronically may designate one state in which the employer has
25 employees to which the employer will transmit the report described
26 in paragraph (4). Any employer that transmits reports pursuant to
27 this paragraph shall notify the Secretary of Health and Human
28 Services in writing as to which state the employer designates for
29 the purpose of sending reports.

30 (4) The report shall contain the following:

31 (A) The name, address, and social security number of the
32 employees.

33 (B) The employer's name, address, state employer identification
34 number (if one has been issued), and identifying number assigned
35 to the employer under Section 6109 of the Internal Revenue Code
36 of 1986.

37 (C) The first date the employee worked.

38 (5) Employers may report pursuant to this section by submitting
39 a copy of the employee's W-4 form, a form provided by the

1 department, or any other hiring document transmitted by first-class
2 mail, magnetically, or electronically.

3 (e) For each failure to report the hiring of an employee, as
4 required and within the time required by this section, unless the
5 failure is due to good cause, the department may assess a penalty
6 of twenty-four dollars (\$24), or four hundred ninety dollars (\$490)
7 if the failure is the result of conspiracy between the employer and
8 employee not to supply the required report or to supply a false or
9 incomplete report.

10 (f) Information collected pursuant to this section may be used
11 for the following purposes:

12 (1) Administration of this code.

13 (2) Locating individuals for purposes of establishing paternity
14 and establishing, modifying, and enforcing child support
15 obligations.

16 (3) Administration of employment security and workers'
17 compensation programs.

18 (4) Providing employer or employee information to the
19 Franchise Tax Board *and the State Board of Equalization* for the
20 purpose of tax *or fee* enforcement.

21 (5) Verification of eligibility of applicants for, or recipients of,
22 the public assistance programs listed in Section 1320b-7(b) of Title
23 42 of the United States Code.

24 (g) For purposes of this section, "employer" includes a labor
25 union hiring hall.

26 (h) This section shall become operative on July 1, 1998.

27 *SEC. 5. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*