

Assembly Bill No. 1307

CHAPTER 734

An act to amend Section 7145.5 of the Business and Professions 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.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1307, Skinner. State Board of Equalization: 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.

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. This bill would require the

board to consider offers in compromise when determining whether to issue a seller's permit.

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 people of the State of California do enact as follows:

SECTION 1. Section 7145.5 of the Business and Professions Code is amended to read:

7145.5. (a) The registrar may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license for the failure of a 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, the Franchise Tax Board, or the State Board of Equalization.

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

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

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

(c) In the case of outstanding final liabilities assessed by the Franchise Tax Board, this section shall be operative within 60 days after the Contractors' State License Board has provided the Franchise Tax Board

with the information required under Section 30, relating to licensing information that includes the federal employee identification number or social security number.

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

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

SEC. 2. Section 6070.5 is added to the Revenue and Taxation Code, to read:

6070.5. (a) The board may refuse to issue a permit to any person submitting an application for a permit as required in Section 6066 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 under this part.

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

(c) For purposes of this section, a liability will not be deemed to be outstanding if the person has entered into an installment payment agreement pursuant to Section 6832 for any liability and is in full compliance with the terms of the installment payment agreement.

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

(e) (1) Whenever any person desiring to engage in or conduct business as a seller within this state is denied a permit pursuant to this section, the board shall give to the person written notice of the denial. The notice of the denial may be served personally, by mail, or by other means deemed appropriate by the board. If served by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the person at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice at the United States Postal Service, or a mailbox, subpost office, substation or mail chute, or other

facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of the delivery. Delivery of notice by other means deemed appropriate by the board may include, but is not limited to, electronic transmission. Personal service or delivery by other means deemed appropriate by the board to a corporation may be made by delivery of a notice to any person listed on the application as an officer.

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

(f) The board shall consider offers in compromise when determining whether to issue a seller's permit.

SEC. 3. Section 1088.5 of the Unemployment Insurance Code is amended to read:

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

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

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

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

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

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days and not more than 16 days apart.

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

(4) The report shall contain the following:

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

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

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

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

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

(1) Administration of this code.

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

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

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

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

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

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