

AMENDED IN SENATE APRIL 7, 2014

SENATE BILL

No. 1159

Introduced by Senator Lara

February 20, 2014

An act to amend Section ~~494~~ 30 of the Business and Professions Code, and to amend Section 19528 of the Revenue and Taxation Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Lara. Professions and vocations: license ~~suspension or restriction~~; *applicants: federal tax identification number.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other ~~entities~~ *licensing bodies*. Existing law ~~authorizes a board or an administrative law judge to, upon petition, issue an interim order suspending a licensee or imposing license restrictions if the petition demonstrates that the licensee has engaged in specified violations of law or has been convicted of a crime related to the licensed activity and permitting the licensee to continue to practice would endanger the public~~ *requires those licensing bodies to require a licensee, at the time of issuance of the license, to provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all other licensees. Existing law requires those licensing bodies to report to the Franchise Tax Board any licensee who fails to provide the federal employer identification number or social security number, and subjects the licensee to a penalty for failing to provide the information after notification, as specified.*

This bill would ~~make technical, nonsubstantive changes to that provision~~ *require those licensing bodies to require an applicant other*

than a partnership to provide either a federal tax identification number or social security number, if one has been issued to the applicant, and would require the licensing bodies to report to the Franchise Tax Board, and subject a licensee to a penalty, for failure to provide that information, as described above. The bill would make other conforming changes.

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

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

1 SECTION 1. Section 30 of the Business and Professions Code
2 is amended to read:

3 30. (a) Notwithstanding any other law, any board, as defined
4 in Section 22, and the State Bar and the Bureau of Real Estate shall
5 at the time of issuance of ~~the~~ *an initial or renewal* license require
6 that the ~~licensee~~ *applicant* provide its federal employer
7 identification number, if the ~~licensee~~ *applicant* is a partnership, or
8 ~~his or her~~ *the applicant's* federal taxpayer identification number
9 or social security number, *if one has been issued*, for all ~~others~~
10 *other applicants*.

11 (b) Any ~~licensee~~ *applicant* failing to provide the federal
12 *employer identification number* number, or *the federal taxpayer*
13 *identification number* or social security number, *if one has been*
14 *issued to the individual*, shall be reported by the licensing board
15 to the Franchise Tax Board ~~and, if failing~~ *Board. If the applicant*
16 *fails to provide that information* after notification pursuant to
17 paragraph (1) of subdivision (b) of Section 19528 of the Revenue
18 and Taxation Code, *the applicant* shall be subject to the penalty
19 provided in paragraph (2) of subdivision (b) of Section 19528 of
20 the Revenue and Taxation Code.

21 (c) In addition to the penalty specified in subdivision (b), a
22 licensing board ~~may~~ *shall* not process ~~any~~ *an* application for an
23 ~~original~~ *initial* license unless the applicant ~~or licensee~~ provides its
24 federal employer identification number, or *federal taxpayer*
25 *identification number* or social security number, *if one has been*
26 *issued to the individual*, where requested on the application.

27 (d) A licensing board shall, upon request of the Franchise Tax
28 Board, furnish to the Franchise Tax Board the following
29 information with respect to every licensee:

- 1 (1) Name.
- 2 (2) Address or addresses of record.
- 3 (3) Federal employer identification number if the ~~entity licensee~~
4 is a partnership, or *the licensee's federal taxpayer identification*
5 *number or social security number, if one has been issued to the*
6 *individual, for all ~~others~~ other licensees.*
- 7 (4) Type of license.
- 8 (5) Effective date of license or a renewal.
- 9 (6) Expiration date of license.
- 10 (7) Whether license is active or inactive, if known.
- 11 (8) Whether license is new or a renewal.
- 12 (e) For the purposes of this section:
 - 13 (1) "Licensee" means ~~any~~ *a person or entity, other than a*
14 *corporation, authorized by a license, certificate, registration, or*
15 *other means to engage in a business or profession regulated by*
16 *this code or referred to in Section 1000 or 3600.*
 - 17 (2) "License" includes a certificate, registration, or any other
18 authorization needed to engage in a business or profession
19 regulated by this code or referred to in Section 1000 or 3600.
 - 20 (3) "Licensing board" means any board, as defined in Section
21 22, the State Bar, and the Bureau of Real Estate.
- 22 (f) The reports required under this section shall be filed on
23 magnetic media or in other machine-readable form, according to
24 standards furnished by the Franchise Tax Board.
- 25 (g) Licensing boards shall provide to the Franchise Tax Board
26 the information required by this section at a time that the Franchise
27 Tax Board may require.
- 28 (h) Notwithstanding Chapter 3.5 (commencing with Section
29 6250) of Division 7 of Title 1 of the Government Code, ~~the social~~
30 ~~security number and a federal employer identification number,~~
31 *federal taxpayer identification number, or social security number*
32 *furnished pursuant to this section shall not be deemed to be a public*
33 *record and shall not be open to the public for inspection.*
- 34 (i) Any deputy, agent, clerk, officer, or employee of any
35 licensing board described in subdivision (a), or any former officer
36 or employee or other individual who in the course of his or her
37 employment or duty has or has had access to the information
38 required to be furnished under this section, may not disclose or
39 make known in any manner that information, except as provided

1 in this section to the Franchise Tax Board or as provided in
2 subdivision (k).

3 (j) It is the intent of the Legislature in enacting this section to
4 utilize the ~~social security account number or federal employer~~
5 *identification number, federal taxpayer identification number, or*
6 *social security number* for the purpose of establishing the
7 identification of persons affected by state tax laws and for purposes
8 of compliance with Section 17520 of the Family Code and, to that
9 end, the information furnished pursuant to this section shall be
10 used exclusively for those purposes.

11 (k) If the board utilizes a national examination to issue a license,
12 and if a reciprocity agreement or comity exists between the State
13 of California and the state requesting release of the *federal taxpayer*
14 *identification number or social security number*, any deputy, agent,
15 clerk, officer, or employee of any licensing board described in
16 subdivision (a) may release a *federal taxpayer identification*
17 *number or social security number* to an examination or licensing
18 entity, only for the purpose of verification of licensure or
19 examination status.

20 (l) For the purposes of enforcement of Section 17520 of the
21 Family Code, and notwithstanding any other ~~provision of law~~, any
22 board, as defined in Section 22, and the State Bar and the Bureau
23 of Real Estate shall at the time of issuance of the license require
24 that each licensee provide the *federal taxpayer identification*
25 *number or social security number, if any has been issued to the*
26 *licensee*, of each individual listed on the license and any person
27 who qualifies the license. For the purposes of this subdivision,
28 “licensee” means any entity that is issued a license by any board,
29 as defined in Section 22, the State Bar, the Bureau of Real Estate,
30 and the Department of Motor Vehicles.

31 *SEC. 2. Section 19528 of the Revenue and Taxation Code is*
32 *amended to read:*

33 19528. (a) Notwithstanding any other ~~provision of law~~, the
34 Franchise Tax Board may require any board, as defined in Section
35 22 of the Business and Professions Code, and the State Bar, the
36 Bureau of Real Estate, and the Insurance Commissioner (hereinafter
37 referred to as licensing board) to provide to the Franchise Tax
38 Board the following information with respect to every licensee:

- 39 (1) Name.
40 (2) Address or addresses of record.

1 (3) Federal employer identification number ~~(if the entity is a~~
2 ~~partnership)~~ or social security number ~~(for all others)~~, *if the licensee*
3 *is a partnership, or the licensee's federal taxpayer identification*
4 *number or social security number, if any has been issued, of all*
5 *other licensees.*

6 (4) Type of license.

7 (5) Effective date of license or renewal.

8 (6) Expiration date of license.

9 (7) Whether license is active or inactive, if known.

10 (8) Whether license is new or renewal.

11 (b) The Franchise Tax Board may do the following:

12 (1) Send a notice to any licensee failing to provide the *federal*
13 *employer identification number, federal taxpayer identification*
14 *number, or social security number as required by subdivision (a)*
15 *of Section 30 of the Business and Professions Code and subdivision*
16 *(a) of Section 1666.5 of the Insurance Code, describing the*
17 *information that was missing, the penalty associated with not*
18 *providing it, and that failure to provide the information within 30*
19 *days will result in the assessment of the penalty.*

20 (2) After 30 days following the issuance of the notice described
21 in paragraph (1), assess a one hundred dollar (\$100) penalty, due
22 and payable upon notice and demand, for any licensee failing to
23 provide either its federal employer identification number (if the
24 licensee is a partnership) or his or her social security number (for
25 all others) as required in Section 30 of the Business and Professions
26 Code and Section 1666.5 of the Insurance Code.

27 (c) Notwithstanding Chapter 3.5 (commencing with Section
28 6250) of Division 7 of Title 1 of the Government Code, the
29 information furnished to the Franchise Tax Board pursuant to
30 Section 30 of the Business and Professions Code or Section 1666.5
31 of the Insurance Code shall not be deemed to be a public record
32 and shall not be open to the public for inspection.

33 ~~SECTION 1. Section 494 of the Business and Professions Code~~
34 ~~is amended to read:~~

35 ~~494. (a) A board or an administrative law judge sitting alone,~~
36 ~~as provided in subdivision (h), may, upon petition, issue an interim~~
37 ~~order suspending a licensee or imposing license restrictions,~~
38 ~~including, but not limited to, mandatory biological fluid testing,~~
39 ~~supervision, or remedial training. The petition shall include~~

1 affidavits that demonstrate, to the satisfaction of the board, both
2 of the following:

3 (1) ~~The licensee has engaged in acts or omissions constituting~~
4 ~~a violation of this code or has been convicted of a crime~~
5 ~~substantially related to the licensed activity.~~

6 (2) ~~Permitting the licensee to continue to engage in the licensed~~
7 ~~activity, or permitting the licensee to continue in the licensed~~
8 ~~activity without restrictions, would endanger the public health,~~
9 ~~safety, or welfare.~~

10 (b) ~~An interim order provided for in this section shall not be~~
11 ~~issued without notice to the licensee unless it appears from the~~
12 ~~petition and supporting documents that serious injury would result~~
13 ~~to the public before the matter could be heard on notice.~~

14 (c) ~~Except as provided in subdivision (b), the licensee shall be~~
15 ~~given at least 15 days' notice of the hearing on the petition for an~~
16 ~~interim order. The notice shall include documents submitted to the~~
17 ~~board in support of the petition. If the order was initially issued~~
18 ~~without notice as provided in subdivision (b), the licensee shall be~~
19 ~~entitled to a hearing on the petition within 20 days of the issuance~~
20 ~~of the interim order without notice. The licensee shall be given~~
21 ~~notice of the hearing within two days after issuance of the initial~~
22 ~~interim order, and shall receive all documents in support of the~~
23 ~~petition. The failure of the board to provide a hearing within 20~~
24 ~~days following the issuance of the interim order without notice,~~
25 ~~unless the licensee waives his or her right to the hearing, shall~~
26 ~~result in the dissolution of the interim order by operation of law.~~

27 (d) ~~At the hearing on the petition for an interim order, the~~
28 ~~licensee may do all of the following:~~

29 (1) ~~Be represented by counsel.~~

30 (2) ~~Have a record made of the proceedings, copies of which~~
31 ~~shall be available to the licensee upon payment of costs computed~~
32 ~~in accordance with the provisions for transcript costs for judicial~~
33 ~~review contained in Section 11523 of the Government Code.~~

34 (3) ~~Present affidavits and other documentary evidence.~~

35 (4) ~~Present oral argument.~~

36 (e) ~~The board, or an administrative law judge sitting alone as~~
37 ~~provided in subdivision (h), shall issue a decision on the petition~~
38 ~~for interim order within five business days following submission~~
39 ~~of the matter. The standard of proof required to obtain an interim~~
40 ~~order pursuant to this section shall be a preponderance of the~~

1 ~~evidence standard. If the interim order was previously issued~~
2 ~~without notice, the board shall determine whether the order shall~~
3 ~~remain in effect, be dissolved, or modified.~~

4 ~~(f) The board shall file an accusation within 15 days of the~~
5 ~~issuance of an interim order. In the case of an interim order issued~~
6 ~~without notice, the time shall run from the date of the order issued~~
7 ~~after the noticed hearing. If the licensee files a Notice of Defense,~~
8 ~~the hearing shall be held within 30 days of the agency's receipt of~~
9 ~~the Notice of Defense. A decision shall be rendered on the~~
10 ~~accusation no later than 30 days after submission of the matter.~~
11 ~~Failure to comply with any of the requirements in this subdivision~~
12 ~~shall dissolve the interim order by operation of law.~~

13 ~~(g) Interim orders shall be subject to judicial review pursuant~~
14 ~~to Section 1094.5 of the Code of Civil Procedure and shall be heard~~
15 ~~only in the superior court in and for the Counties of Sacramento,~~
16 ~~San Francisco, Los Angeles, or San Diego. The review of an~~
17 ~~interim order shall be limited to a determination of whether the~~
18 ~~board abused its discretion in the issuance of the interim order.~~
19 ~~Abuse of discretion is established if the respondent board has not~~
20 ~~proceeded in the manner required by law, or if the court determines~~
21 ~~that the interim order is not supported by substantial evidence in~~
22 ~~light of the whole record.~~

23 ~~(h) The board may, in its sole discretion, delegate the hearing~~
24 ~~on a petition for an interim order to an administrative law judge~~
25 ~~in the Office of Administrative Hearings. If the board hears the~~
26 ~~noticed petition itself, an administrative law judge shall preside at~~
27 ~~the hearing, rule on the admission and exclusion of evidence, and~~
28 ~~advise the board on matters of law. The board shall exercise all~~
29 ~~other powers relating to the conduct of the hearing but may~~
30 ~~delegate any or all of them to the administrative law judge. When~~
31 ~~the petition has been delegated to an administrative law judge, he~~
32 ~~or she shall sit alone and exercise all of the powers of the board~~
33 ~~relating to the conduct of the hearing. A decision issued by an~~
34 ~~administrative law judge sitting alone shall be final when it is filed~~
35 ~~with the board. If the administrative law judge issues an interim~~
36 ~~order without notice, he or she shall preside at the noticed hearing,~~
37 ~~unless unavailable, in which case another administrative law judge~~
38 ~~may hear the matter. The decision of the administrative law judge~~
39 ~~sitting alone on the petition for an interim order is final, subject~~
40 ~~only to judicial review in accordance with subdivision (g).~~

1 (i) Failure to comply with an interim order issued pursuant to
2 subdivision (a) or (b) shall constitute a separate cause for
3 disciplinary action against a licensee, and may be heard at, and as
4 a part of, the noticed hearing provided for in subdivision (f).
5 Allegations of noncompliance with the interim order may be filed
6 at any time prior to the rendering of a decision on the accusation.
7 Violation of the interim order is established upon proof that the
8 licensee was on notice of the interim order and its terms, and that
9 the order was in effect at the time of the violation. The finding of
10 a violation of an interim order made at the hearing on the
11 accusation shall be reviewed as a part of any review of a final
12 decision of the agency.

13 If the interim order issued by the agency provides for anything
14 less than a complete suspension of the licensee from his or her
15 business or profession, and the licensee violates the interim order
16 prior to the hearing on the accusation provided for in subdivision
17 (f), the agency may, upon notice to the licensee and proof of
18 violation, modify or expand the interim order.

19 (j) A plea or verdict of guilty or a conviction after a plea of nolo
20 contendere is deemed to be a conviction within the meaning of
21 this section. A certified record of the conviction shall be conclusive
22 evidence of the fact that the conviction occurred. A board may
23 take action under this section notwithstanding the fact that an
24 appeal of the conviction may be taken.

25 (k) The interim orders provided for by this section shall be in
26 addition to, and not a limitation on, the authority to seek injunctive
27 relief provided in any other provision of law.

28 (l) In the case of a board, a petition for an interim order may be
29 filed by the executive officer. In the case of a bureau or program,
30 a petition may be filed by the chief or program administrator, as
31 the case may be.

32 (m) "Board," as used in this section, shall include any agency
33 described in Section 22, and any allied health agency within the
34 jurisdiction of the Medical Board of California. Board shall also
35 include the Osteopathic Medical Board of California and the State
36 Board of Chiropractic Examiners. The provisions of this section
37 shall not apply to the Medical Board of California, the Board of
38 Podiatric Medicine, or the State Athletic Commission.

O