

AMENDED IN ASSEMBLY APRIL 7, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2038

Introduced by Assembly Member Eng

February 17, 2010

An act to amend Sections 31, 476, and 7145.5 of, and to add and repeal Section 494.5 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 2038, as amended, Eng. Franchise Tax Board: professional or occupational licenses.

The Personal Income Tax Law and the 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.

~~The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State License Board within the Department of Consumer Affairs. Existing law provides that the board 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, or the Franchise Tax Board.

This bill would permit a state governmental licensing entity, that issues professional or occupational licenses, certificates, registrations, or permits, ~~and would require the Contractors' State License Board,~~ to suspend, revoke, or refuse to issue a license where the applicant or licensee has failed to pay income taxes, subject to specified procedures. This bill would also require those licensing entities 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, when the *specified* licensing ~~entity has failed~~ *entities fail* to make a decision regarding suspension or revocation of the license, to send a notice of suspension to the licensee. The bill would provide that the license of a licensee who fails to satisfy the unpaid taxes by a certain date shall be automatically suspended, except as specified, and would require the Franchise Tax Board to mail a notice of suspension to the applicable state governmental licensing entity and to the licensee, and would provide that the suspension be canceled upon compliance with the tax obligation. The bill would require the Franchise Tax Board to meet certain requirements and would make related changes.

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.

1 (c) “Compliance with a judgment or order for support,” has the
2 meaning given in paragraph (4) of subdivision (a) of Section 17520
3 of the Family Code.

4 (d) Each licensee who has not paid any applicable state income
5 tax, including interest, penalties, and other fees, shall be subject
6 to Section 494.5 or 7145 or to Section 19265 of the Revenue and
7 Taxation Code.

8 SEC. 2. Section 476 of the Business and Professions Code is
9 amended to read:

10 476. (a) Except as provided in subdivision (b), nothing in this
11 division shall apply to the licensure or registration of persons
12 pursuant to Chapter 4 (commencing with Section 6000) of Division
13 3, or pursuant to Division 9 (commencing with Section 23000) or
14 pursuant to Chapter 5 (commencing with Section 19800) of
15 Division 8.

16 (b) Section 494.5 shall apply to the licensure of persons
17 authorized to practice law pursuant to Chapter 4 (commencing
18 with Section 6000) of Division 3.

19 SEC. 3. Section 494.5 is added to the Business and Professions
20 Code, to read:

21 494.5. (a) A state governmental licensing entity may refuse
22 to issue, reinstate, reactivate, or renew a license or may suspend
23 a license if a licensee has failed to pay taxes, including any
24 penalties, interest, and any applicable fees, imposed under Part 10
25 (commencing with Section 17001), Part 10.2 (commencing with
26 Section 18401), or Part 11 (commencing with Section 23001) of
27 Division 2 of the Revenue and Taxation Code, where the licensee’s
28 name is included on a certified list.

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

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

40 (b) For purposes of this section:

(1) “Certified list” means a list provided by the Franchise Tax Board in which the Franchise Tax Board verifies that the names contained therein are persons that have failed to pay taxes, including any penalties, interest, and any applicable fees, imposed under Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code for which a notice of state tax lien has been recorded in any county recorder’s office in this state pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

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

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

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

(c) The Franchise Tax Board shall submit a certified list to state governmental licensing entities.

(d) Notwithstanding any other law, all state governmental licensing entities shall collect social security numbers from all applicants for the purposes of matching the names of the certified list provided by the Franchise Tax Board to applicants and licensees.

(e) (1) Promptly after receiving the certified list from the Franchise Tax Board, each state governmental licensing entity shall determine whether an applicant or licensee is on the most recent certified list provided by the Franchise Tax Board. The state governmental licensing entity shall have the authority to withhold issuance or renewal of the license of any applicant on the list or to suspend the license of any licensee on the list.

1 (2) If an applicant or licensee is on the list, the state
2 governmental licensing entity shall immediately serve notice on
3 the applicant or licensee of the entity's intent to suspend or
4 withhold issuance or renewal of the license. The notice shall be
5 made personally or by mail to the applicant's or licensee's last
6 known mailing address on file with the state governmental
7 licensing entity. Service by mail shall be complete in accordance
8 with Section 1013 of the Code of Civil Procedure.

9 (A) The state governmental licensing entity shall issue a
10 temporary license valid for a period of 90 days to any applicant
11 whose name is on the certified list if the applicant is otherwise
12 eligible for a license.

13 (B) The 90-day time period for a temporary license shall not be
14 extended. Only one temporary license shall be issued during a
15 regular license term and it shall coincide with the first 90 days of
16 that license term. A license for the full or remainder of the license
17 term shall be issued or renewed only upon compliance with this
18 section.

19 (C) In the event that a license is suspended or an application for
20 a license or the renewal of a license is denied pursuant to this
21 section, any funds paid by the applicant or licensee shall not be
22 refunded by the state governmental licensing entity.

23 (f) (1) The refusal to issue a license or the suspension of a
24 license as provided by this section shall be applicable only if the
25 state governmental licensing entity has mailed a notice preliminary
26 to the refusal or suspension that indicates that the license will be
27 refused or suspended by a date certain. This preliminary notice
28 shall be mailed via certified mail to the licensee within 30 days of
29 notification via the certified list.

30 (2) A state governmental licensing entity may, in its discretion,
31 issue a temporary license to a person subject to this section, if the
32 person is otherwise eligible for the issuance of a license.

33 (3) A state governmental licensing entity shall make a final
34 determination to refuse to issue or to suspend a license pursuant
35 to this section no sooner than 30 days and no later than 90 days of
36 the mailing of the preliminary notice. The procedures in the
37 administrative adjudication provisions of the Administrative
38 Procedure Act (Chapter 4.5 (commencing with Section 11400)
39 and Chapter 5 (commencing with Section 11500) of Part 1 of

Division 3 of Title 2 of the Government Code) shall not apply to the revocation or suspension of a license pursuant to this section.

(g) Notices shall be developed by each state governmental licensing entity. The notice shall include the address and telephone number of the Franchise Tax Board, and shall emphasize the necessity of obtaining a release from the Franchise Tax Board as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) The notice shall inform the applicant that the state governmental licensing entity shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 90 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the state governmental licensing entity has received a release from the Franchise Tax Board.

(2) The notice shall inform the licensee that any license suspended under this section will remain suspended until the expiration of the remaining license term, unless the state governmental licensing entity receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any moneys paid by the applicant or licensee shall not be refunded by the state governmental licensing entity. The state governmental licensing entity shall also develop a form that the applicant or licensee shall use to request a release by the Franchise Tax Board. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(h) If the applicant or licensee wishes to challenge the submission of his or her name on the certified list, the applicant or licensee shall make a timely written request for release to the Franchise Tax Board. The Franchise Tax Board shall immediately send a release to the appropriate state governmental licensing entity and the applicant or licensee, if any of the following conditions are met:

(1) The applicant or licensee entered into an installment payment agreement, as described in Section 19008 of the Revenue and Taxation Code.

(2) The applicant or licensee has submitted a request for release not later than 45 days after the applicant's or licensee's receipt of a preliminary notice described in paragraph (2) of subdivision (e), but the Franchise Tax Board will be unable to complete the release review and send notice of its findings to the applicant or licensee and state governmental licensing entity within the 45 days after the Franchise Tax Board's receipt of the applicant's or licensee's request for release.

(3) The applicant or licensee would experience financial hardship, as determined by the Franchise Tax Board.

(i) An applicant or licensee is required to act with diligence in responding to notices from the state governmental licensing agency and the Franchise Tax Board with the recognition that the temporary license will lapse or the license suspension will go into effect after 90 days and that the Franchise Tax Board must have time to act within that period. An applicant's or licensee's delay in acting, without good cause, which directly results in the inability of the Franchise Tax Board to complete a review of the applicant's or licensee's request for release shall not constitute the diligence required under this section which would justify the issuance of a release. An applicant or licensee shall have the burden of establishing that he or she diligently responded to notices from the state governmental licensing entity or the Franchise Tax Board and that any delay was not without good cause.

(j) The Franchise Tax Board shall create release forms for use pursuant to this section. When the applicant or licensee has entered into an installment payment agreement, the Franchise Tax Board shall mail a release form to the applicant or licensee and provide a release to the appropriate state governmental licensing entity. The receipt of a release shall serve to notify the applicant or licensee and the state governmental licensing entity that, for the purposes of this section, the applicant or licensee is no longer included on the certified list. Any state governmental licensing entity that has received a release from the Franchise Tax Board pursuant to this subdivision shall process the release within five business days of its receipt.

If the Franchise Tax Board determines subsequent to the issuance of a release that the licensee again failed to pay taxes, or has not complied with their installment payment agreement, the Franchise Tax Board may notify the state governmental licensing entity and

1 the licensee in a format prescribed by the Franchise Tax Board
2 that the obligor is not in compliance.

3 The Franchise Tax Board may, when it is economically feasible
4 for the state governmental licensing entity to develop an automated
5 process for complying with this subdivision, notify the state
6 governmental licensing entity in a manner prescribed by the
7 Franchise Tax Board, that the licensee has either failed again to
8 pay taxes or has not complied with the installment payment
9 agreement. Upon receipt of this notice, the state governmental
10 licensing entity shall immediately notify the licensee on a form
11 prescribed by the state governmental entity that the licensee's
12 license will be suspended on a specific date, and this date shall be
13 no longer than 30 days from the date the form is mailed. The
14 licensee shall be further notified that the license will remain
15 suspended until a new release is issued in accordance with
16 subdivision (h).

17 (k) The Franchise Tax Board may enter into interagency
18 agreements with the state governmental licensing entities necessary
19 to implement this section, to the extent that it is cost effective to
20 implement this section.

21 (l) Notwithstanding any other provision of law, a state
22 governmental licensing entity, with the approval of the appropriate
23 department director or governing body, may impose a fee on
24 licensees whose license has been suspended pursuant to this
25 section. The fee shall not exceed the amount necessary for the
26 licensing entity to cover its costs in carrying out the provisions of
27 this section. Fees imposed pursuant to this section shall be
28 deposited in the fund in which other fees imposed by the state
29 governmental licensing entity are deposited and shall be available
30 to that entity upon appropriation in the annual Budget Act.

31 (m) The process described in subdivision (h) shall constitute
32 the sole administrative remedy for contesting the issuance of a
33 temporary license or the denial or suspension of a license under
34 this section. The procedures specified in the administrative
35 adjudication provisions of the Administrative Procedure Act
36 (Chapter 4.5 (commencing with Section 11400) and Chapter 5
37 (commencing with Section 11500) of Part 1 of Division 3 of Title
38 2 of the Government Code) shall not apply to the denial,
39 suspension, or failure to issue or renew a license or the issuance
40 of a temporary license pursuant to this section.

1 (n) Any state governmental licensing entity receiving an inquiry
2 as to the licensed status of an applicant or licensee who has had a
3 license denied or suspended under this section or has been granted
4 a temporary license under this section shall respond only that the
5 license was denied or suspended or the temporary license was
6 issued pursuant to this section. Information collected pursuant to
7 this section by any state agency, board, or department shall be
8 subject to the Information Practices Act of 1977 (Chapter 1
9 (commencing with Section 1798) of Title 1.8 of Part 4 of Division
10 3 of the Civil Code).

11 (o) Any rules and regulations issued pursuant to this section by
12 any state agency, board, or department may be adopted as
13 emergency regulations in accordance with the rulemaking
14 provisions of the Administrative Procedure Act (Chapter 3.5
15 (commencing with Section 11340) of Part 1 of Division 3 of Title
16 2 of the Government Code). The adoption of these regulations
17 shall be deemed an emergency and necessary for the immediate
18 preservation of the public peace, health, and safety, or general
19 welfare. The regulations shall become effective immediately upon
20 filing with the Secretary of State.

21 (p) The Franchise Tax Board and state governmental licensing
22 entities, as appropriate, shall adopt regulations as necessary to
23 implement this section.

24 (q) (1) Neither the state governmental licensing entity, nor any
25 officer, employee, or agent, or former officer, employee, or agent
26 of a state governmental licensing entity, may disclose or use any
27 information obtained from the Franchise Tax Board, pursuant to
28 this section, except to inform the public of the suspension of a
29 license pursuant to this section. The release or other use of
30 information received by a state governmental licensing entity
31 pursuant to this section, except as authorized by this section, is
32 punishable as a misdemeanor.

33 (2) To the extent permitted under federal law, a suspension or
34 revocation of a license pursuant to this section shall not be reported
35 to the National Practitioners Data Bank.

36 (r) If any provision of this section or the application thereof to
37 any person or circumstance is held invalid, that invalidity shall not
38 affect other provisions or applications of this section which can
39 be given effect without the invalid provision or application, and
40 to this end the provisions of this section are severable.

(s) All rights to review afforded by this section to an applicant shall also be afforded to a licensee.

(t) (1) If the state governmental licensing entity, *as defined in Section 19265 of the Revenue and Taxation Code*, does not suspend, revoke, or deny renewal of a license within 90 days of the mailing of preliminary notice as described in subdivision (f), the Franchise Tax Board is authorized to suspend the license pursuant to Section 19265 of the Revenue and Taxation Code.

(2) If the state governmental licensing entity has not suspended, revoked, or denied the renewal of a license within 90 days of the mailing of the preliminary notice as described in subdivision (f), the state governmental licensing entity shall promptly notify the Franchise Tax Board *and the licensee. The notification shall include the reason why no action was taken by the state governmental licensing entity.*

(u) Unless otherwise provided in this section, the policies, practices, and procedures of a state licensing entity with respect to license suspensions shall be the same as those applicable with respect to suspensions pursuant to Section 17520 of the Family Code.

(v) No provision of this section shall be interpreted to allow a court to review and prevent the collection of income taxes prior to the payment of those taxes in violation of the California Constitution.

(w) The provisions of this section shall not apply to the Contractors' State License Board.

(x) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

~~SEC. 4. 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 registrar shall take action consistent with Section 17520 of the Family Code within 90 days of receipt of a certified list from the Franchise Tax Board with the name of the licensee or applicant contained within.~~

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) For purposes of this section, "certified list" means a list~~
13 ~~provided by the Franchise Tax Board in which the Franchise Tax~~
14 ~~Board verifies that the names contained therein are persons that~~
15 ~~have failed to pay taxes, including any penalties, interest, and any~~
16 ~~applicable fees, imposed under Part 10 (commencing with Section~~
17 ~~17001), Part 10.2 (commencing with Section 18401), and Part 11~~
18 ~~(commencing with Section 23001) for which a notice of state tax~~
19 ~~lien has been recorded in any county recorder's office in this state~~
20 ~~pursuant to Chapter 14 (commencing with Section 7150) of~~
21 ~~Division 7 of Title 1 of the Government Code.~~

22 ~~(c) The Franchise Tax Board shall submit a certified list to the~~
23 ~~registrar.~~

24 ~~(d) Notwithstanding any other law, the registrar shall collect~~
25 ~~social security numbers from all applicants for the purposes of~~
26 ~~matching the names of the certified list provided by the Franchise~~
27 ~~Tax Board to applicants and licensees.~~

28 ~~(e) (1) Promptly after receiving the certified list from the~~
29 ~~Franchise Tax Board, and prior to the issuance or renewal of a~~
30 ~~license, the registrar shall determine whether an applicant or~~
31 ~~licensee is on the most recent certified list provided by the~~
32 ~~Franchise Tax Board. The registrar shall have the authority to~~
33 ~~withhold issuance or renewal of the license of any applicant on~~
34 ~~the list or to suspend the license of any licensee on the list.~~

35 ~~(2) If an applicant or licensee is on the list, the registrar shall~~
36 ~~immediately serve notice as specified in subdivision (f) on the~~
37 ~~applicant or licensee of the registrar's intent to suspend or withhold~~
38 ~~issuance or renewal of the license. The notice shall be made~~
39 ~~personally or by mail to the applicant's or licensee's last known~~
40 ~~mailing address on file with the registrar. Service by mail shall be~~

1 ~~complete in accordance with Section 1013 of the Code of Civil~~
2 ~~Procedure.~~

3 ~~(A) The registrar shall issue a temporary license valid for a~~
4 ~~period of 90 days to any applicant whose name is on the certified~~
5 ~~list if the applicant is otherwise eligible for a license.~~

6 ~~(B) The 90-day time period for a temporary license shall not be~~
7 ~~extended. Only one temporary license shall be issued during a~~
8 ~~regular license term and it shall coincide with the first 90 days of~~
9 ~~that license term. A license for the full or remainder of the license~~
10 ~~term shall be issued or renewed only upon compliance with this~~
11 ~~section.~~

12 ~~(C) In the event that a license is suspended or an application for~~
13 ~~a license or the renewal of a license is denied pursuant to this~~
14 ~~section, any funds paid by the applicant or licensee shall not be~~
15 ~~refunded by the registrar.~~

16 ~~(f) The refusal to issue a license or the suspension of a license~~
17 ~~as provided by this section shall be applicable only if the registrar~~
18 ~~has mailed a notice preliminary to the refusal or suspension that~~
19 ~~indicates that the license will be refused or suspended by a date~~
20 ~~certain. This preliminary notice shall be mailed to the licensee at~~
21 ~~least 60 days before the date certain by certified mail.~~

22 ~~(g) In the case of outstanding final liabilities assessed by the~~
23 ~~Franchise Tax Board, this section shall be operative within 60 days~~
24 ~~after the Contractors' State License Board has provided the~~
25 ~~Franchise Tax Board with the information required under Section~~
26 ~~30, relating to licensing information that includes the federal~~
27 ~~employee identification number or social security number.~~

28 ~~(h) All versions of the applications for contractors' licenses and~~
29 ~~license renewal applications shall include, as part of the application,~~
30 ~~an acknowledgment by the applicant that submission of the~~
31 ~~application provides authorization to the Franchise Tax Board to~~
32 ~~disclose the tax information to the registrar administering this~~
33 ~~section. The Franchise Tax Board shall provide the tax information~~
34 ~~required for the registrar to administer this section.~~

35 ~~(i) (1) If the Contractors' State License Board does not suspend,~~
36 ~~revoke, or deny renewal of a license within 90 days, the Franchise~~
37 ~~Tax Board is authorized to suspend the license pursuant to Section~~
38 ~~19265 of the Revenue and Taxation Code.~~

39 ~~(2) If the Contractor's State License Board has not suspended,~~
40 ~~revoked, or denied the renewal of a license within 90 days of the~~

1 mailing of the preliminary notice as described in subdivision (f);
2 the Contractor's State License Board shall promptly notify the
3 Franchise Tax Board.

4 (j) No provision of this section shall be interpreted to allow a
5 court to review and prevent the collection of income taxes prior
6 to the payment of those taxes in violation of the California
7 Constitution.

8 *SEC. 4. Section 7145.5 of the Business and Professions Code*
9 *is amended to read:*

10 7145.5. (a) The registrar may refuse to issue, reinstate,
11 reactivate, or renew a license or may suspend a license for the
12 failure of a licensee to resolve all outstanding final liabilities, which
13 include taxes, additions to tax, penalties, interest, and any fees that
14 may be assessed by the board, the Department of Industrial
15 Relations, or the Employment Development Department, or the
16 Franchise Tax Board.

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

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

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

34 (c) ~~In the case of outstanding final liabilities assessed by the~~
35 ~~Franchise Tax Board, this section shall be operative within 60 days~~
36 ~~after the Contractors' State License Board has provided the~~
37 ~~Franchise Tax Board with the information required under Section~~
38 ~~30, relating to licensing information that includes the federal~~
39 ~~employee identification number or social security number.~~

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

8 SEC. 5. Section 19265 is added to the Revenue and Taxation
9 Code, to read:

10 19265. (a) (1) All state governmental licensing entities issuing
11 professional or occupational licenses, certificates, registrations, or
12 permits shall provide to the Franchise Tax Board the name and
13 social security number or federal taxpayer identification number,
14 as applicable, of each licensee of that state governmental licensing
15 entity.

16 (2) Pursuant to ~~Sections 494.5 and 7145.5~~ *Section 494.5* of the
17 Business and Professions Code, if any licensee has failed to pay
18 taxes, including any penalties, interest, and any applicable fees,
19 imposed under Part 10 (commencing with Section 17001), Part 11
20 (commencing with Section 23001), or this part, for which a notice
21 of state tax lien has been recorded in any county recorder's office
22 in this state, pursuant to Chapter 14 (commencing with Section
23 7150) of Division 7 of Title 1 of the Government Code, and the
24 license has not been suspended, revoked, or denied by the
25 applicable state governmental licensing entity pursuant to Section
26 ~~494.5 or Section 7145.5~~ of the Business and Professions Code, the
27 Franchise Tax Board shall mail a preliminary notice of suspension
28 to the licensee indicating that the license will be suspended by a
29 date certain, which shall be at least 60 days after the mailing of
30 the preliminary notice, unless prior to the date certain the licensee
31 pays the unpaid taxes or enters into an installment payment
32 agreement, as described in Section 19008, to satisfy the unpaid
33 taxes. The preliminary notice shall also advise the licensee of the
34 opportunity to request deferral or cancellation of a suspension
35 pursuant to subdivision (b).

36 (3) If any licensee subject to paragraph (2) fails to pay the unpaid
37 taxes or to enter into an installment payment agreement, as
38 described in Section 19008, to satisfy the unpaid taxes prior to the
39 date certain listed in the preliminary notice of suspension, his or
40 her license shall be automatically suspended by operation of this

1 section, except as provided in subdivision (b), and the Franchise
2 Tax Board shall provide a notice of suspension to the applicable
3 state governmental licensing entity and shall mail a notice of
4 suspension to the licensee. The rights, powers, and privileges of
5 any licensee whose professional or occupational license, certificate,
6 registration, or permit has been suspended pursuant to this section
7 shall be subject to the same prohibitions, limitations, and
8 restrictions as if the professional or occupational license, certificate,
9 registration, or permit were suspended by the state governmental
10 licensing entity that issued the professional or occupational license,
11 certificate, registration, or permit.

12 (4) Upon compliance by the licensee with the tax obligation,
13 either by payment of the unpaid taxes or entry into an installment
14 payment agreement, as described in Section 19008, to satisfy the
15 unpaid taxes, a suspension pursuant to this subdivision shall be
16 canceled. The Franchise Tax Board shall, within 10 business days
17 of compliance by the licensee with the tax obligation, notify both
18 the state governmental licensing entity and the licensee that the
19 unpaid taxes have been paid or that an installment payment
20 agreement, as described in Section 19008, has been entered into
21 to satisfy the unpaid taxes and that the suspension has been
22 canceled.

23 (5) If a license is not suspended, or if the suspension of a license
24 is canceled, based on the licensee entering into an installment
25 payment agreement as described in Section 19008, and the licensee
26 fails to comply with the terms of the installment payment
27 agreement, that license shall be suspended as of the date that is 30
28 days after the date of termination of that installment payment
29 agreement. If a license is suspended pursuant to this paragraph,
30 the Franchise Tax Board shall provide notice of suspension to the
31 applicable state governmental licensing entity and mail a notice
32 of suspension to the licensee.

33 (6) State governmental licensing entities shall provide to the
34 Franchise Tax Board the information required by this subdivision
35 at a time that the Franchise Tax Board may require.

36 (b) (1) The Franchise Tax Board may defer or cancel any
37 suspension authorized by this section if a licensee would experience
38 financial hardship. The Franchise Tax Board shall, if requested by
39 the licensee in writing, provide for an administrative hearing to

1 determine if the licensee will experience financial hardship from
2 the suspension of the license, certificate, registration, or permit.

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

6 (3) The Franchise Tax Board shall conduct a hearing within 30
7 days after receipt of a request pursuant to paragraph (1), unless
8 the board postpones the hearing, upon a showing of good cause
9 by the licensee, in which case a suspension pursuant to subdivision
10 (a) shall be deferred until the hearing has been completed.

11 (4) A licensee seeking relief under this subdivision shall only
12 be entitled to relief described in paragraph (1) if the licensee
13 provides the Franchise Tax Board with financial documents that
14 substantiate a financial hardship, and agrees to an acceptable
15 payment arrangement.

16 (5) If the deferral of a suspension of a license under this
17 subdivision is no longer operative, that license shall be suspended
18 as of the date that is 30 days after the date the deferral is no longer
19 operative. If a license is suspended pursuant to this paragraph, the
20 Franchise Tax Board shall provide notice of suspension to the
21 applicable state governmental licensing entity and mail a notice
22 of suspension to the licensee.

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

25 (1) “Financial hardship” means financial hardship within the
26 meaning of Section 19008, as determined by the Franchise Tax
27 Board, where suspension of a license will result in the licensee
28 being financially unable to pay any part of the amount described
29 in subdivision (a) and the licensee is unable to qualify for an
30 installment payment arrangement as provided for by Section 19008.
31 In order to establish the existence of a financial hardship, the
32 licensee shall submit any information, including information related
33 to reasonable business and personal expenses, requested by the
34 Franchise Tax Board for the purpose of making that determination.

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

38 (3) “Licensee” means an individual authorized by a license,
39 certificate, registration, or other authorization to engage in a

1 profession or occupation issued by a state governmental licensing
2 entity.

3 (4) “State governmental licensing entity” means any entity listed
4 in Section 101, 1000, or 19420 of the Business and Professions
5 Code, the office of the Attorney General, the Department of
6 Insurance, the Department of Real Estate, and any other state
7 agency, board, or commission that issues a license, certificate, or
8 registration authorizing an individual to engage in a profession or
9 occupation. “State governmental licensing entity” shall not include
10 the Department of Motor Vehicles or the State Bar of California.

11 (d) Notwithstanding any other law, a state governmental
12 licensing entity may, with the approval of the appropriate
13 department director or governing body, impose a fee on licensees
14 whose license has been suspended as described in subdivision (a).
15 The fee shall not exceed the amount necessary for the licensing
16 entity to cover its costs in carrying out the provisions of this
17 section. Fees imposed pursuant to this section shall be deposited
18 in the fund in which other fees imposed by the state governmental
19 licensing entity are deposited and shall be available to that entity
20 upon appropriation in the annual Budget Act.

21 (e) The process described in subdivision (b) shall constitute the
22 sole administrative remedy for contesting the suspension of a
23 license under this section. The procedures in the administrative
24 adjudication provisions of the Administrative Procedure Act
25 (Chapter 4.5 (commencing with Section 11400) and Chapter 5
26 (commencing with Section 11500) of Part 1 of Division 3 of Title
27 2 of the Government Code) shall not apply to the suspension of a
28 license pursuant to this section.

29 SEC. 6. Section 19571 is added to the Revenue and Taxation
30 Code, to read:

31 19571. (a) The Franchise Tax Board may disclose to state
32 governmental licensing entities information regarding suspension
33 of a license pursuant to Section 19265.

34 (b) Neither the state governmental licensing entity, nor any
35 officer, employee, or agent, or former officer, employee, or agent
36 of a state governmental licensing entity, may disclose or use any
37 information obtained from the Franchise Tax Board, pursuant to
38 this section, except to inform the public of the suspension of a
39 license pursuant to Section 19265.

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

3 SEC. 7. The Legislature hereby finds and declares the
4 following:

5 (a) It is the intent of the Legislature that, consistent with the
6 decision in *Gallo v. United States District Court* (9th Cir. 2003)
7 349 F.3d 1169, cert. den. (2004) 541 U.S. 1073, the suspension of
8 a professional or occupational license pursuant to Section 19265
9 of the Revenue and Taxation Code, as added by Section 5 of this
10 act, for failure to pay delinquent taxes, is a legislative act, for which
11 due process is satisfied by the legislative notice and hearing
12 procedures.

13 (b) To prevent financial hardship, Section 19265 of the Revenue
14 and Taxation Code, as added by Section 5 of this act, grants a
15 delinquent taxpayer the opportunity for an additional hearing for
16 financial hardship prior to the suspension of a professional or
17 occupational license.