AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

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, *add, and repeal* Sections 31, 476, and 7145.5 of, and to add and repeal Section 494.5 of, the Business and Professions Code, and to add *and repeal* Sections 19265 and 19571 ~~to~~ *of* 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.

This bill would, *beginning January 1, 2012, and ending January 1, 2016*, permit a state governmental licensing entity, that issues professional or occupational licenses, certificates, registrations, or permits, 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*, beginning January 1, 2012, and ending January 1, 2016,* 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 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.

The bill would provide that the release or other use of information received by a state governmental licensing entity pursuant to these provisions, except as authorized, is punishable as a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

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.

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

~~SECTION 1. Section 31 of the Business and Professions Code is amended to read:~~

~~31. (a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state~~

~~agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.~~

~~(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.~~

~~(c) "Compliance with a judgment or order for support," has the meaning given in paragraph (4) of subdivision (a) of Section 17520 of the Family Code.~~

~~(d) Each licensee who has not paid any applicable state income tax, including interest, penalties, and other fees, shall be subject to Section 494.5 or 7145.5 or to Section 19265 of the Revenue and Taxation Code.~~

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

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

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

SECTION 1. Section 31 of the Business and Professions Code is amended to read:

31. (a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 11350.6 of the Welfare and Institutions Code.

(c) "Compliance with a judgment or order for support," has the meaning given in paragraph (4) of subdivision (a) of Section 11350.6 of the Welfare and Institutions Code.

(d) This section shall become inoperative on January 1, 2012, and remain inoperative until January 1, 2016, at which time this section shall become operative.

SEC. 2. Section 31 is added to the Business and Professions Code, to read:

31. (a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.

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

(d) Each licensee who has not paid any applicable state income tax, including interest, penalties, and other fees, shall be subject to Section 494.5 or 7145.5 or to Section 19265 of the Revenue and Taxation Code.

(e) This section shall become operative on January 1, 2012, and shall remain in effect only until January 1, 2016, and as of that date is repealed.

SEC. 3. Section 476 of the Business and Professions Code is amended to read:

476. *(a)* Nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(b) This section shall become inoperative on January 1, 2012, and remain inoperative until January 1, 2016, at which time this section shall become operative.

SEC. 4. Section 476 is added to the Business and Professions Code, to read:

476. (a) Except as provided in subdivision (b), nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division

3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(b) Section 494.5 shall apply to the licensure of persons authorized to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3, and the licensure or registration of persons pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(c) This section shall become operative on January 1, 2012, and shall remain in effect only until January 1, 2016, and as of that date is repealed.

~~SEC. 3.~~

SEC. 5. Section 494.5 is added to the Business and Professions Code, to read:

494.5. (a) A state governmental licensing entity may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license if a licensee has 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), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, where the licensee's name is included on a certified list.

(1) Until the liabilities covered by this section are satisfied, the qualifying person and any other personnel of record named on a license who have 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 who have been assessed an outstanding liability covered by this section shall be suspended until the liability has been satisfied or until the same personnel of record disassociate themselves from the renewable licensed entity.

(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.

(2) If an applicant or licensee is on the list, the state governmental licensing entity shall immediately serve notice on the applicant or licensee of the entity's intent to suspend or withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's or licensee's last

known mailing address on file with the state governmental licensing entity. Service by mail shall be ~~complete~~ *completed* in accordance with Section 1013 of the Code of Civil Procedure.

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

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

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

(f) (1) The refusal to issue a license or the suspension of a license as provided by this section shall be applicable only if the state governmental licensing entity 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 via certified mail to the licensee within 30 days of notification via the certified list.

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

(3) A state governmental licensing entity shall make a final determination to refuse to issue or to suspend a license pursuant to this section no sooner than 30 days and no later than 90 days of the mailing of the preliminary notice. The procedures in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) 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 ~~government~~ *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~~ *entity* 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 the licensee in a format prescribed by the Franchise Tax Board that the obligor is not in compliance.

The Franchise Tax Board may, when it is economically feasible for the state governmental licensing entity to develop an automated process for complying with this subdivision, notify the state governmental licensing entity in a manner prescribed by the

Franchise Tax Board, that the licensee has either failed again to pay taxes or has not complied with the installment payment agreement. Upon receipt of this notice, the state governmental licensing entity shall immediately notify the licensee on a form prescribed by the state governmental *licensing* entity that the licensee's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The licensee shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h).

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

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

(m) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) 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 denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

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

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

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

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

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

(r) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and 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 *governmental* 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) This section shall *become operative on January 1, 2012, and 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.~~ *2016, and as of that date is repealed.*

~~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, or the Employment Development Department.~~

~~(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.~~

SEC. 6. 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, or the Franchise Tax Board.

(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) This section shall become inoperative on January 1, 2012, and remain inoperative until January 1, 2016, at which time this section shall become operative.

SEC. 7. Section 7145.5 is added to the Business and Professions Code, 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, or the Employment Development Department.

(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) This section shall become operative on January 1, 2012, and shall remain in effect only until January 1, 2016, and as of that date is repealed.

~~SEC. 5.~~

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

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

(2) Pursuant to Section 494.5 of the Business and Professions Code, if any licensee has failed to pay taxes, including any penalties, interest, and any applicable fees, imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, 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, and the license has not been suspended, revoked, or denied by the applicable state governmental licensing entity pursuant to Section 494.5 of the Business and Professions Code, the Franchise Tax Board shall mail a preliminary notice of suspension to the licensee indicating that the license will be suspended by a date certain, which shall be at least 60 days after the mailing of the preliminary notice, unless prior to the date certain the licensee pays the unpaid taxes or enters into an installment payment agreement, as described in Section 19008, to satisfy the unpaid taxes. The preliminary notice shall also advise the licensee of the opportunity to request deferral or cancellation of a suspension pursuant to subdivision (b).

(3) If any licensee subject to paragraph (2) fails to pay the unpaid taxes or to enter into an installment payment agreement, as described in Section 19008, to satisfy the unpaid taxes prior to the date certain listed in the preliminary notice of suspension, his or her license shall be automatically suspended by operation of this section, except as provided in subdivision (b), and the Franchise Tax Board shall provide a notice of suspension to the applicable state governmental licensing entity and shall mail a notice of suspension to the licensee. The rights, powers, and privileges of any licensee whose professional or occupational license, certificate, registration, or permit has been suspended pursuant to this section shall be subject to the same prohibitions, limitations, and

restrictions as if the professional or occupational license, certificate, registration, or permit were suspended by the state governmental licensing entity that issued the professional or occupational license, certificate, registration, or permit.

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

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

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

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

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

(3) The Franchise Tax Board shall conduct a hearing within 30 days after receipt of a request pursuant to paragraph (1), unless the board postpones the hearing, upon a showing of good cause

by the licensee, in which case a suspension pursuant to subdivision (a) shall be deferred until the hearing has been completed.

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

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

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

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

(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 of the Business and Professions Code, the office of the Attorney General, the Department of Insurance, 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 Alcoholic Beverage Control the Department of Motor Vehicles or the State Bar of California.

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

(e) The process described in subdivision (b) shall constitute the sole administrative remedy for contesting the suspension of a license under this section. The procedures in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) 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 suspension of a license pursuant to this section.

(f) This section shall become operative on January 1, 2012, and shall remain in effect only until January 1, 2016, and as of that date is repealed.

~~SEC. 6.~~

SEC. 9. Section 19571 is added to the Revenue and Taxation Code, to read:

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

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

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

(d) This section shall become operative on January 1, 2012, and shall remain in effect only until January 1, 2016, and as of that date is repealed.

~~SEC. 7.~~

SEC. 10. The Legislature hereby finds and declares the following:

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

(b) To prevent financial hardship, Section 19265 of the Revenue and Taxation Code, as added by Section ~~5~~ *8* of this act, grants a delinquent taxpayer the opportunity for an additional hearing for financial hardship prior to the suspension of a professional or occupational license.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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