

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:

- 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~~

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

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

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

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

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

17 ~~476. (a) Except as provided in subdivision (b), nothing in this~~
18 ~~division shall apply to the licensure or registration of persons~~
19 ~~pursuant to Chapter 4 (commencing with Section 6000) of Division~~
20 ~~3, or pursuant to Division 9 (commencing with Section 23000) or~~
21 ~~pursuant to Chapter 5 (commencing with Section 19800) of~~
22 ~~Division 8.~~

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

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

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

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

38 ~~(c) “Compliance with a judgment or order for support,” has the~~
39 ~~meaning given in paragraph (4) of subdivision (a) of Section~~
40 ~~11350.6 of the Welfare and Institutions Code.~~

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

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

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

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

16 (c) *“Compliance with a judgment or order for support,” has*
17 *the meaning given in paragraph (4) of subdivision (a) of Section*
18 *17520 of the Family Code.*

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

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

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

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

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

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

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

1 3, or pursuant to Division 9 (commencing with Section 23000) or
2 pursuant to Chapter 5 (commencing with Section 19800) of
3 Division 8.

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

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

13 ~~SEC. 3.~~

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

16 494.5. (a) A state governmental licensing entity may refuse
17 to issue, reinstate, reactivate, or renew a license or may suspend
18 a license if a licensee has failed to pay taxes, including any
19 penalties, interest, and any applicable fees, imposed under Part 10
20 (commencing with Section 17001), Part 10.2 (commencing with
21 Section 18401), or Part 11 (commencing with Section 23001) of
22 Division 2 of the Revenue and Taxation Code, where the licensee's
23 name is included on a certified list.

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

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

35 (b) For purposes of this section:

36 (1) "Certified list" means a list provided by the Franchise Tax
37 Board in which the Franchise Tax Board verifies that the names
38 contained therein are persons that have failed to pay taxes,
39 including any penalties, interest, and any applicable fees, imposed
40 under Part 10 (commencing with Section 17001), Part 10.2

1 (commencing with Section 18401), and Part 11 (commencing with
2 Section 23001) of Division 2 of the Revenue and Taxation Code
3 for which a notice of state tax lien has been recorded in any county
4 recorder's office in this state pursuant to Chapter 14 (commencing
5 with Section 7150) of Division 7 of Title 1 of the Government
6 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (3) A state governmental licensing entity shall make a final
29 determination to refuse to issue or to suspend a license pursuant
30 to this section no sooner than 30 days and no later than 90 days of
31 the mailing of the preliminary notice. The procedures in the
32 administrative adjudication provisions of the Administrative
33 Procedure Act (Chapter 4.5 (commencing with Section 11400)
34 and Chapter 5 (commencing with Section 11500) of Part 1 of
35 Division 3 of Title 2 of the Government Code) shall not apply to
36 the revocation or suspension of a license pursuant to this section.

37 (g) Notices shall be developed by each state governmental
38 licensing entity. The notice shall include the address and telephone
39 number of the Franchise Tax Board, and shall emphasize the
40 necessity of obtaining a release from the Franchise Tax Board as

1 a condition for the issuance, renewal, or continued valid status of
2 a license or licenses.

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

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

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

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

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

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

1 days after the Franchise Tax Board's receipt of the applicant's or
2 licensee's request for release.

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

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

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

31 If the Franchise Tax Board determines subsequent to the issuance
32 of a release that the licensee again failed to pay taxes, or has not
33 complied with their installment payment agreement, the Franchise
34 Tax Board may notify the state governmental licensing entity and
35 the licensee in a format prescribed by the Franchise Tax Board
36 that the obligor is not in compliance.

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

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

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

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

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

36 (n) Any state governmental licensing entity receiving an inquiry
37 as to the licensed status of an applicant or licensee who has had a
38 license denied or suspended under this section or has been granted
39 a temporary license under this section shall respond only that the
40 license was denied or suspended or the temporary license was

1 issued pursuant to this section. Information collected pursuant to
2 this section by any state agency, board, or department shall be
3 subject to the Information Practices Act of 1977 (Chapter 1
4 (commencing with Section 1798) of Title 1.8 of Part 4 of Division
5 3 of the Civil Code).

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

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

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

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

31 (r) If any provision of this section or the application thereof to
32 any person or circumstance is held invalid, that invalidity shall not
33 affect other provisions or applications of this section which can
34 be given effect without the invalid provision or application, and
35 to this end the provisions of this section are severable.

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

38 (t) (1) If the state governmental licensing entity, as defined in
39 Section 19265 of the Revenue and Taxation Code, does not
40 suspend, revoke, or deny renewal of a license within 90 days of

1 the mailing of preliminary notice as described in subdivision (f),
2 the Franchise Tax Board is authorized to suspend the license
3 pursuant to Section 19265 of the Revenue and Taxation Code.

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

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

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

20 (w) This section shall *become operative on January 1, 2012,*
21 *and shall remain in effect only until January 1, 2016, and as of*
22 *that date is repealed, unless a later enacted statute, that is enacted*
23 *before January 1, 2016, deletes or extends that date. 2016, and as*
24 *of that date is repealed.*

25 ~~SEC. 4. Section 7145.5 of the Business and Professions Code~~
26 ~~is amended to read:~~

27 ~~7145.5. (a) The registrar may refuse to issue, reinstate,~~
28 ~~reactivate, or renew a license or may suspend a license for the~~
29 ~~failure of a licensee to resolve all outstanding final liabilities, which~~
30 ~~include taxes, additions to tax, penalties, interest, and any fees that~~
31 ~~may be assessed by the board, the Department of Industrial~~
32 ~~Relations, or the Employment Development Department.~~

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

39 ~~(2) The license of any other renewable licensed entity with any~~
40 ~~of the same personnel of record that have been assessed an~~

1 ~~outstanding liability covered by this section shall be suspended~~
2 ~~until the debt has been satisfied or until the same personnel of~~
3 ~~record disassociate themselves from the renewable licensed entity.~~

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

10 *SEC. 6. Section 7145.5 of the Business and Professions Code*
11 *is amended to read:*

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

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

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

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

36 (c) In the case of outstanding final liabilities assessed by the
37 Franchise Tax Board, this section shall be operative within 60 days
38 after the Contractors' State License Board has provided the
39 Franchise Tax Board with the information required under Section

1 30, relating to licensing information that includes the federal
2 employee identification number or social security number.

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

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

13 SEC. 7. Section 7145.5 is added to the Business and Professions
14 Code, to read:

15 7145.5. (a) *The registrar may refuse to issue, reinstate,*
16 *reactivate, or renew a license or may suspend a license for the*
17 *failure of a licensee to resolve all outstanding final liabilities,*
18 *which include taxes, additions to tax, penalties, interest, and any*
19 *fees that may be assessed by the board, the Department of*
20 *Industrial Relations, or the Employment Development Department.*

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

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

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

38 (c) *This section shall become operative on January 1, 2012,*
39 *and shall remain in effect only until January 1, 2016, and as of*
40 *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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (4) "State governmental licensing entity" means any entity listed
35 in Section 101, 1000, or 19420 of the Business and Professions
36 Code, the office of the Attorney General, the Department of
37 Insurance, the Department of Real Estate, and any other state
38 agency, board, or commission that issues a license, certificate, or
39 registration authorizing an individual to engage in a profession or
40 occupation. "State governmental licensing entity" shall not include

1 *the Department of Alcoholic Beverage Control* the Department of
2 Motor Vehicles or the State Bar of California.

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

14 (e) The process described in subdivision (b) shall constitute the
15 sole administrative remedy for contesting the suspension of a
16 license under this section. The procedures in the administrative
17 adjudication provisions of the Administrative Procedure Act
18 (Chapter 4.5 (commencing with Section 11400) and Chapter 5
19 (commencing with Section 11500) of Part 1 of Division 3 of Title
20 2 of the Government Code) shall not apply to the suspension of a
21 license pursuant to this section.

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

25 ~~SEC. 6.~~

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

28 19571. (a) The Franchise Tax Board may disclose to state
29 governmental licensing entities information regarding suspension
30 of a license pursuant to Section 19265.

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

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

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

4 ~~SEC. 7.~~

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

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

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

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