

SUMMARY ANALYSIS OF AMENDED BILL

Author: Eng Analyst: Angela Raygoza Bill Number: AB 2038
 Related Bills: See Prior Analysis Telephone: 845-7814 Amended Date: April 13, 2010
 Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

SUBJECT: Failure To Resolve Outstanding Liability As Grounds For Refusal To Renew, Issue, Or Revoke A License

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended April 5 and April 7, 2010.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 5 and April 7, 2010, STILL APPLIES.

OTHER – See comments below.

SUMMARY

This bill would do the following for occupational or professional licensees with an unpaid income tax liability:

- Provide discretionary authority to licensing entities to determine whether to suspend occupational or professional licenses, as specified.
- If a licensing entity fails to suspend an occupational or professional license, the license will be suspended as a matter of law.

SUMMARY OF AMENDMENTS

The April 13, 2010, amendments would make the provisions of this bill apply to the Contractors' State License Board and make technical non-substantive changes.

As a result of the amendments, the "This Bill," "Fiscal Impact," and the "Revenue Impact" discussions, as provided in the department's analysis of the bill as amended April 5 and 7, 2010, have been revised. The remainder of that analysis still applies.

Board Position:	Legislative Director	Date
<input checked="" type="checkbox"/> S	Brian Putler	4/19/10
<input type="checkbox"/> NA		
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NP		
<input type="checkbox"/> O		
<input type="checkbox"/> NAR		
<input type="checkbox"/> PENDING		

Summary of Suggested Amendments

Amendment 1 is provided to suggest that implementation of this bill is contingent upon funding.

ANALYSIS

THIS BILL

This bill would provide discretionary authority to a state governmental licensing entity, including the Contractors' State License Board, to withhold issuance or renewal of the license of an applicant or to suspend the license of a licensee that is on a certified list provided by the FTB.

This bill would exclude the Gambling Control Commission and the Department of Alcoholic Beverage Control, and the Department of Motor Vehicles from the license suspension provisions in the Business and Professions Code.

This bill defines "certified list" as a list provided by the FTB in which the FTB verifies that the names contained therein are persons that have failed to pay taxes, including any penalties, interest, and any applicable fees, imposed under the Personal Income Tax Law and Corporate Tax Law for which a state tax lien has been recorded.

This bill would require the FTB to do the following:

- Submit a certified list of tax debtors with a license to a state governmental licensing entity,
- Create release forms to remove the licensee's name from the certified list,
- Provide a release to a state governmental licensing entity and licensee,
- Notify the state governmental licensing entity when the licensee falls out of an installment payment arrangement.

The bill would also allow the FTB and state governmental licensing entities to enter into interagency agreements to implement this bill.

This bill would authorize the FTB to notify a licensee of suspension for unpaid tax debts if the state governmental licensing fails to take action within 90 days of a preliminary notice. Additionally, a state governmental licensing entity would be required to notify the FTB if no action is taken and the reason why.

The FTB suspension process is detailed below:

If a state governmental licensing entity does not suspend a licensee or applicant for unpaid tax liabilities, this bill would suspend an occupational or professional license by operation of law because of an unpaid income tax liability. The suspension would occur only after the following have been provided by the FTB to the debtor:

Notice of State Income Tax Due,
Final Notice Before Levy,
OTW is issued (if debtor's bank information is available to the FTB),
Notice of State Tax Lien (issued when a state tax lien is recorded) and,
60-day preliminary suspension notice.

This bill would require the FTB to disclose to the licensing boards the fact for the suspension-- unpaid taxes.

This bill would specify that the FTB staff would provide a hearing, upon request of a debtor, for a license holder who believes he or she would experience a financial hardship as a result of the suspension. "Financial hardship" would be defined by reference to R&TC section 19008, as determined by the FTB, where suspension of a license will result in the licensee being financially unable to pay his or her taxes including penalties, interest, and applicable fees and is unable to qualify for an installment payment arrangement pursuant to R&TC section 19008. In order to establish that a financial hardship exists, the licensee shall submit any information, including information related to reasonable business and personal expenses, requested by the FTB for making the determination. The FTB would conduct the hearing within 30 days of receipt of the request, unless the FTB postpones the hearing upon a showing of good cause. Suspension would be deferred until the hardship hearing was completed. If a debtor substantiates financial hardship, the FTB would defer or cancel the suspension.

This bill would define the following:

- "Hardship" means financial hardship, as determined by the FTB, where the taxpayer is financially unable to pay any part of their taxes including penalties, interest, and applicable fees and is unable to qualify for an installment payment arrangement pursuant to Section 19008 of the R&TC.
- "License" includes certificate, registration, or any other authorization to engage in a business or profession issued by a state governmental licensing entity.
- "Licensee" means any entity authorized by a license, certificate registration, or other authorization to engage in a business or profession issued by a state governmental licensing entity.
- "State governmental licensing entity" means any entity included in Sections 101, 1000, or 19420 of the Business and Professions Code (approximately 41 licensing entities), the Office of 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 a person to engage in a business or profession. "State governmental licensing entity" excludes the Department of Motor Vehicles and State Bar of California.

But the provisions of the Business and Professions Code are made applicable to the licensure of persons authorized to practice law. Please see the Appendix for a list of licenses that would be affected by this provision.

This bill requires licensing boards to provide the FTB information at a time requested by the FTB.

FISCAL IMPACT

Staff estimates a one-time cost of approximately \$2.4 million (27.9 PYs) to program, develop, and test a new process within existing systems and add collection staff to review, process, and suspend accounts that have been matched to licensees. Staff estimates on-going annual costs of approximately \$1.1 million (12.4 PYs) for mailing notices and responding to taxpayer inquiries resulting from those notices. This new function would be operative in the latter part of the 2010-11 fiscal year. Implementing this bill would be contingent upon funding approval and prioritization of department projects.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2038 Operative For Tax Years Beginning On or After January 1, 2011 Enactment Assumed September 30, 2010 (\$ in Millions)			
2010-11	2011-12	2012-13	2013-14
\$18.5	\$18.5	\$18.5	\$18.5

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2038
As Amended April 13, 2010

On page 14, after line 28, insert:

(f) Implementation of this section shall be contingent on the appropriation of funds for the purposes of this section in the annual Budget Act.