

ANALYSIS OF ORIGINAL BILL

Author: Torlakson Analyst: Gloria McConnell Bill Number: AB 1950

Related Bills: See Legislative History Telephone: 845-4336 Introduced Date: 02/17/98

Attorney: Doug Bramhall Sponsor:

SUBJECT: Suspended Corporations/Fines for Transacting Business Do Not Apply to Insurers/Counsel

SUMMARY

This bill, among other things, would preclude an insurer of a suspended corporation from being prosecuted in a misdemeanor action if it defends an insured suspended corporation client in a civil action relating to the insurer's responsibilities to defend and indemnify the insured. This analysis discusses only those issues that impact the Franchise Tax Board (FTB).

EFFECTIVE DATE

This provision would be effective on January 1, 1999.

LEGISLATIVE HISTORY

AB 594 (1997).

SPECIFIC FINDINGS

Under current law, FTB has the authority to suspend a domestic corporation's powers, rights, and privileges, or forfeit a foreign corporation's qualification to transact business in California, if it fails to file its tax returns and pay its taxes. By law, only two powers, rights, and privileges of a corporation cannot be suspended or the exercise thereof forfeited: (1) the ability to file an application for tax exempt status, and (2) the ability to amend its articles of incorporation to perfect an application for exemption or change its name. Case law provides that a suspended or forfeited corporation loses the right to defend any suit that may be brought against it in this state. It is a misdemeanor for any person to attempt or purport to exercise the corporate powers, rights and privileges of a suspended or forfeited corporation. For a corporation to be revived from a suspended or forfeited status, the corporation must file an application for revival and file all tax returns and pay the delinquent taxes. An application may be filed on behalf of a corporation by any stockholder or creditor, by a majority of the surviving trustees or

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE

GOVERNOR'S APPOINTMENT

Board Position:

S O
 SA OUA
 N NP
 NA NAR
 X PENDING

Agency Secretary Position:

S O
 SA OUA
 N NP
 NA NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved
Position Disapproved
Position Noted

Department Director

Gerald H. Goldberg

Agency Secretary

Date

3/19/98

By:

Date:

directors thereof, by an officer or by any other person who has interest in the relief of suspension or forfeiture.

Under this bill, it would not be a misdemeanor for an insurer, or counsel retained by an insurer, to exercise a suspended corporation's powers, rights and privileges of providing a defense for its insured suspended corporation in insurance related civil actions.

Additional Comment

Although this bill exempts the insurer from a misdemeanor prosecution, it does not provide the insurer with the express opportunity to defend the suspended corporation without actually reviving the corporation from suspended status. Upon request from the author, staff is available if technical assistance is needed.

Implementation Consideration

Past experience indicates that the provision relating to the prosecution of an insurer who was defending a suspended corporation would not significantly impact the administration of the Bank and Corporation Tax Law. FTB program staff does not know how many applications or tax returns, if any, have been filed by other than the corporation, but program staff suspects that it would be infrequently, if ever. Historically FTB has not sought to prosecute an insurer in the situation described under this bill.

Technical Consideration

This bill applies to only suspended corporations and not foreign corporations that have qualified to do business in California. It is unclear if this is the author's intent.

FISCAL IMPACT

Departmental Costs

FTB historically has not sought such sanctions in the circumstances described in the bill. Therefore, based on past experience, the exception provided by this bill should not significantly affect FTB's departmental costs.

Tax Revenue Estimate

If this bill is interpreted or were to allow an insurer to represent a suspended corporation without reviver, some tax revenue could be lost as a result of returns not being filed and taxes not being paid, however, the loss is not expected to be significant.

BOARD POSITION

Pending.