

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1660 (Kalra) – As Amended April 3, 2017

SUBJECT: Court reporter providers.

SUMMARY: Authorizes an individual or entity to engage in the business of providing or arranging for court reporting services if specified conditions are met, including if an individual or entity is registered with the Court Reporters Board (CRB), as specified, and places certain prohibitions on engaging in the practice of court reporting with an individual or entity that is not registered with the CRB.

EXISTING LAW:

- 1) Establishes the CRB under the jurisdiction of the Department of Consumer Affairs (DCA) for the licensure and regulation of certified shorthand reporters. (Business and Professions Code (BPC) Section 8000 *et seq.*)
- 2) Prohibits a person from engaging in the practice of shorthand reporting, as defined, unless that person holds a certificate issued by the CRB and is not a salaried, full-time employee of any department or agency of the state who is employed as a hearing reporter. (BPC Section 8016)
- 3) Defines the "practice of shorthand reporting" as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record or any oral court proceeding, deposition, court ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner and the accurate transcription thereof. (BPC Section 8017)
- 4) Defines a "shorthand reporting corporation" as a corporation which is authorized to render professional services, as defined in Section 13401 if the Corporations Code, as long as that corporation and all of its shareholders, officers, directors, and employees rendering professional services who are certified shorthand reporters are in compliance with the Moscone-Knox Professional Corporations Act, as specified. (BPC Section 8040)
- 5) States that a shorthand reporting corporation cannot do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect which pertains to shorthand reporters or shorthand reporting, and in conducting its practice it must observe and be bound by such statutes, rules, and regulations to the same extent as a person holding a license. (BPC Section 8046)

THIS BILL:

- 1) Authorizes an individual or entity to engage in the business of providing or arranging court reporters for the transcription of court proceedings if one of the following requirements are met:

- a) The individual is a licensed court reporter;
 - b) The entity is a licensee-owned shorthand reporting corporation; or,
 - c) The individual or entity is registered with the CRB as a court reporter provider.
- 2) Specifies that an individual or entity registered with the CRB is subject to the same laws and regulations that are applicable to the conduct of certified shorthand reporters.
- 3) Prohibits a certified shorthand reporter from engaging in the practice of court reporting on behalf of an individual or entity that is not registered with the CRB as a court reporter provider and requires the certified shorthand reporter to verify whether a person or entity is registered with the Board as a court reporter provider before engaging in the practice of court reporting on behalf of that person or entity.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the **Court Reporters Board of California**. According to the author, "[this bill] requires all individuals and businesses providing court reporting services must comply with the same laws and regulations to ensure services are honestly and accurately prepared. The bill does this by requiring out-of-state corporations that provide court reporting services to register with the Court Reporters Board of California. In so doing, [this bill] protects consumers of court reporting services from unfair practices and levels the playing field for all parties in order to uphold public trust in the integrity of the judicial process and fair oversight."

Background. *Court Reporters Board.* The CRB is responsible for licensing and disciplining certified shorthand reporters. Certified shorthand reporters are responsible for reporting depositions in legal cases as well as court proceedings. Since 1972, the CRB has permitted the certification of individuals and at one time, the registration of shorthand reporting corporations. Currently, the CRB oversees approximately 7,000 certified shorthand reporters. In addition to the licensing and discipline functions, the CRB specifies the professional standards of practice (16 CCR Section 2475) for professionals, which include: 1) acting without bias toward, or prejudice against, any parties and/or their attorneys; 2) not entering into, arranging, or participating in a relationship that compromises the impartiality of the certified shorthand reporter, including but not limited to a relationship in which compensation for reporting services is based upon the outcome of the proceeding; and 3) maintaining confidentiality of information, among others.

Shorthand Reporters. The CRB establishes the educational requirements for certification including authorizing the minimal educational standards and approving schools. In order to qualify for licensure as a certified shorthand reporter, an individual must have a high school education, twelve months (or 1,400 hours) of full-time work experience related to making records of hearings, obtain a passing score on the California State Hearing Reporters Examination, and complete a course from an approved court-reporting school. Currently, certified shorthand reporters in California work in two separate capacities: 1) as an "official reporter" who works as a court reporter employed by a state court or 2) as a "freelance reporter" who is hired privately by court reporting businesses, firms, or attorneys to report depositions.

Both official and freelance reporters are required to meet the same educational and examination qualifications.

Laws governing all certified shorthand reporters are found in the Shorthand Reporters Act (Act) (BPC Section 8000 *et seq.*) and all licensed shorthand reporters are required to abide by the laws specified in the Act and other applicable statutes and regulations. In addition, Codes governing deposition/freelance reporter practices can be found in the Code of Civil Procedure (CCP) Section 2025 *et seq.* The CRB is charged with enforcing the provisions of the Act and the regulations established by the CRB.

Shorthand Reporting Corporations. BPC Section 8044 specifies that each director, shareholder, and officer of a shorthand reporting corporation must be a licensed shorthand reporter. Business models for shorthand reporting corporations and other service providers vary throughout the state and country. While there are a number of licensee-owned corporations in California, there are a number of businesses that provide litigation services but are not currently under the jurisdiction of the CRB. The CRB does not register or certify corporations in California. BPC Sections 8044 and 8046 provide the CRB with authority over licensee-owned shorthand reporting corporations incorporated in California. However, the CRB currently does not have direct jurisdiction over corporations which have no license to discipline. Therefore, the CRB may have difficulty pursuing non-licensee owned corporations that it suspects may be offering or arranging for court reporting services through employment or independent contractors yet violating ethical codes of conduct that shorthand reporting corporations would have to follow. This bill would authorize an entity to engage in the business of providing or arranging for court reporter services if that entity is registered with the CRB. As currently drafted, it is unclear what the registration process would consist of including, but not limited to, the fee authority or approval/denial process, if any. In addition, this bill would explicitly prohibit a licensee from providing shorthand reporting services for a person or entity that has not registered with the CRB.

The issue of shorthand reporting corporations was raised during the CRB's 2015 sunset review. At that time, it was noted in the Committee's staff background paper that, from the CRB's perspective, there are two frequent types of unlicensed activity, licensees allowing their license to lapse and corporations who arrange for court reporting services in violation of the Act. In the first situation, there are court reporters who neglect to renew their licenses on time but continue to report, which is unlicensed activity from the standpoint that they are working without a current license. The CRB issues citations and fines for this violation.

The second type of unlicensed activity relates to foreign corporations who are offering court reporting services in California without authorization. In response to complaints about unethical gift giving (violation of 16 CCR Section 2475(a)(8)) and violations of the minimum transcript format standards (violation of 16 CCR Section 2473), a task force was appointed by the CRB in 2007, to study the issue of firm oversight. The members of the task force included small, medium and large-firm owners. Ultimately, the task force determined that a legislative fix was necessary to address this issue, which was included in AB 1461 (Ruskin), of 2009. That bill sought to clarify that in addition to corporations, a firm, partnership, sole proprietorship, or other business entity providing or arranging for shorthand reporting services (any entity offering or providing the services of a shorthand reporter) was barred from doing or failing to do any act that constitutes unprofessional conduct under any statute, rule or regulation pertaining to shorthand reporters or shorthand reporting. That bill died in the Assembly Appropriations Committee.

In 2010, the CRB received a complaint that U.S. Legal, a Texas-based corporation, was violating gift-giving provisions under 16 CCR 22475(b)(8). After investigation, the CRB issued a citation and fine, but U.S. Legal denied the CRB's jurisdiction to issue it the citation. In April of 2011, the CRB brought suit against U.S. Legal for declaratory relief (Court Reporters Board v. U.S. Legal). After a hearing, the Court ruled in an unpublished opinion that, even if U.S. Legal was rendering court reporting services in California and was in violation of gift-giving regulations, the CRB is not authorized to impose citations or fines against U.S. Legal because U.S. Legal was not a "professional corporation" but instead a "foreign professional corporation," as defined under the Corporations Code. Corporations Code Section 13401(c) provides that, "'Foreign professional corporation' means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the BPC for the performance of professional services by a foreign professional corporation."

As currently drafted, this bill makes clear that an individual or entity registered with the CRB as a court reporter provider is subject to the same laws and regulations that are applicable to the conduct of certified shorthand reporters.

Last year, SB 270, (Mendoza) of 2015, was introduced and subsequently held in the Assembly Committee on Business and Professions. That bill faced opposition from foreign court reporting corporations, among others. While that bill initially sought to clarify the CRB's authority over foreign professional corporations and increase penalties for violations of law, the author proposed amendments that would have instead required those corporations to register with the Board; and later required certain corporations to abide by only specified professional standards of practice.

Current Related Legislation. AB 1631 (Salas) of the current legislative session, prohibits a person or entity employing shorthand reporters or contracting with shorthand reporters for services from providing cash or cash equivalents of any amount for marketing purposes, as specified; and states that nothing in existing law limits a person or entity from entering into long-term or multi-case contracts with attorneys, law firms, or third parties that are financing all or part of the action, as specified, and requires the Attorney General (AG) to enforce the provisions of the bill. *STATUS: This bill is currently pending in the Assembly Committee on Business and Professions.*

SB 484 (Roth) of the current legislative session, make it unlawful for a person who is employed by or who independently contracts with an entity that arranges for deposition officers to give or receive any gift, incentive, reward, or anything of value as inducement or compensation in connection with the provision of services by a deposition officer. Although these practices are already prohibited under California regulatory law for covered persons and entities, this bill would empower the Attorney General, a district attorney, or a city attorney to enforce this professional standard of conduct against all specified persons engaging in this conduct. *STATUS: This bill is currently pending on the Senate Floor.*

Prior Related Legislation. SB 270 (Mendoza) of 2015, would have provided the CRB with broad powers of enforcement, as specified, over foreign or domestic corporations that offer or arrange for shorthand reporting services, as specified, in California, and clarified that the provisions of the bill do not regulate the setting of negotiated transcript fees and reasonable fees

for non-contracting parties. *NOTE: This bill was held in the Assembly Committee on Business and Professions.*

AB 1461 (Ruskin) of 2009, would have prohibited a firm, partnership, sole proprietorship, or other business entity providing or arranging for shorthand reporting services, from doing or failing to do any act that constitutes unprofessional conduct under any statute, rule or regulation pertaining to shorthand reporters or shorthand reporting. *NOTE: This bill was held in the Assembly Committee on Appropriations.*

ARGUMENTS IN SUPPORT:

The **California Court Reporters Board** writes in support, "The [CRB] is sponsoring AB 1660 to ensure the consumers of court reporting services in California are protected whether they secure those services through a licensee-owned firm or through a non-licensee-owned firm. There is room in the California court reporting market for all competition who are willing to follow the law as properly set out by the California. While out-of-state firms have operated successfully in California for a number of years, it has only been within the last ten years or so that a growing number have boldly asserted that they are not subject to the laws and regulations that govern the court reporting industry and that the [CRB] has no jurisdiction over them."

The **California Court Reporters Association** writes in support, "[This bill] ensures that consumers are protected from unethical behavior and preserves the integrity of the deposition process. This bill does not single out any type of business, but levels the playing field; providing equal application of all ethical obligations. We urge you to support this bill."

The **Deposition Reporters Association** writes in support, "This bill is needed because out-of-state companies that are closely regulated in their home states as providers of court reporting services insist here in California that they do not provide court reporting services. Unlike in their home states, they are forcing the tiny California Board (7,000 licensees) to sue them to comply with California laws that protect consumers, the integrity of the judicial record, and ensure a fair and level competitive marketplace. The Board has candidly said before this Committee it simply does not have the money to sue these large companies so the law must be changed to make the Board's important enforcement job easier."

ARGUMENTS IN OPPOSITION:

Esquire Deposition Services, LLC, Magna Legal Services, U.S. Legal Support, Inc. and Veritext Corporation write in opposition "By subjecting the business activities of these deposition services to companies the jurisdiction of the [CRB], [this bill] will threaten their ability provide competitive services to large users of deposition services, denying choice and potentially raising costs...Because [this bill] threatens legitimate, established business practices and could undermine the competitive market place for deposition services to the detriment of our clients, we would again respectfully request a "No" vote on this bill.

POLICY ISSUES FOR CONSIDERATION:

Concerns have been raised by the opposition that by subjecting an individual or entity to the jurisdiction of the CRB, this bill could infringe upon these entities' ability to provide services to large users of deposition services. If the author's intent is to allow those practices which are not

in violation of current shorthand reporter laws and regulations, that author may wish to clarify how this intent can be actualized.

It is unclear how this bill and AB 1631 (Salas) of the current legislative session will interact if both bills were to be chaptered. This bill would require specified corporations to register with the CRB and abide by all of the current laws and professional standards of practice for licensed shorthand reporters and would provide the CRB with broad enforcement authority, while AB 1631 would require entities to comply with only one provision related to the professional standards of practice and would require the AG to enforce the provisions of this bill.

IMPLEMENTATION ISSUES:

As currently drafted, this bill requires an individual or entity which engages in the business of providing or arranging for shorthand reporting services to register with the CRB if the individual or entity is not a certified shorthand reporter or a licensee-owned corporation. However, it is unclear what that registration process would entail, including any fees and an application approval and denial process.

In addition, this bill is scheduled to take effect on January 1, 2018, which does not provide sufficient time for the CRB to establish a registration program. In order to address this issue, the author may wish to amend the bill to provide more clarity about the registration process.

This bill also prohibits certified shorthand reporters from engaging in the practice of shorthand reporting on behalf of an individual or entity that is not registered with the CRB; however, it is unclear how a certified shorthand reporter would be able to have sufficient knowledge of those registered entities. The CRB should make this information easily accessible for certified shorthand reporters and the public.

In addition, as this bill prohibits certified shorthand reporters from engaging in the practice of court reporting services on behalf of an individual or entity who is not registered with the CRB, the bill should clarify this could subject the certified shorthand reporter to the CRB's current disciplinary standards.

Given the number of outstanding implementation concerns and potentially conflicting bills, the author may wish to convene stakeholder meetings to work on the issues going forward.

AMENDMENTS:

In order to address some of the implementation issues raised above, the author should amend the bill as follows:

- 1) On page 3, line 7, after "(a)" insert, Commencing January 1, 2019
- 2) On page 3, in between line 25 and 26 insert (a) The board may charge a fee for the registration of an individual or entity described in paragraph (3) of subdivision (a) which shall be no more than reasonably necessary for the administration of a registration program.
(b) The board shall create and make available on its Internet Web Site a directory of registered court reporter providers.

REGISTERED SUPPORT:

California Court Reporters Board (sponsor)
California Court Reporters Association
Deposition Reporters Association

REGISTERED OPPOSITION:

Esquire Deposition Services, LLC
Magna Legal Services
U.S. Legal Support, Inc.
Veritext Corporation

Analysis Prepared by: Elissa Silva / B. & P. / 916-319-3301