California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

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AGENDA

Tuesday, April 2, 2024
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

1.	AB 1775	Haney	Cannabis: retail preparation, sale, and consumption of noncannabis food and beverage products.
2.	AB 1918	Wood	State building standards: solar-ready requirement: exemption.
3.	AB 2012	Lee	Rabies control data.
4.	AB 2107	Chen	Clinical laboratory technology: remote review.
5.	AB 2148	Low	Professional fiduciaries.
6.	AB 2202	Rendon	Short-term rentals: disclosure: cleaning tasks.
7.	AB 2269*	Flora	Board membership qualifications: public members.
8.	AB 2327	Wendy Carrillo	Optometry: mobile optometric offices: regulations.
9.	AB 2471*	Jim Patterson	Professions and vocations: public health nurses.
10.	AB 2540*	Chen	Cannabis: license transfers.
11.	AB 2702*	Chen	Training programs for clinical laboratory scientists and medical laboratory technicians: grants.
12.	AB 2860	Garcia	Licensed Physicians and Dentists from Mexico programs.
13.	AB 2864*	Garcia	Licensed Physicians and Dentists from Mexico Pilot Program: extension of licenses.(Urgency)
14.	AB 2888	Chen	Cannabis: invoices: payment.
15.	AB 3063	McKinnor	Pharmacies: compounding.(Urgency)

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** Proposed for Consent*

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1775 (Haney) – As Introduced January 3, 2024

NOTE: This bill is double referred and if passed by this Committee will be re-referred to the Assembly Committee on Governmental Organization.

SUBJECT: Cannabis: retail preparation, sale, and consumption of noncannabis food and beverage products.

SUMMARY: Authorizes local jurisdictions to allow cannabis retailers to prepare and serve non-cannabis food and beverages, and to sell tickets to live musical or other performances, in the area of the premises where consumption of cannabis and cannabis goods is authorized, and to allow for the sale of prepackaged, non-cannabis-infused food and beverages by a cannabis retailer.

EXISTING LAW:

1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000 *et seq.*)

2) Establishes the Department of Cannabis Control (Department) within the Business, Consumer Services, and Housing Agency, for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

3) Provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness. (BPC § 26050)

4) Requires the Department to convene an advisory committee to advise state licensing authorities on the development of standards and regulations for legal cannabis, including best practices and guidelines that protect public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose such barriers so as to perpetuate, rather than reduce and eliminate, the illicit market for cannabis. (BPC § 26014)

5) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements as well as local laws and ordinances. (BPC § 26030)

6) Prohibits a cannabis licensee from selling alcoholic beverages or tobacco products on its premises. (BPC § 26054)

7) Requires cannabis or cannabis products purchased by a customer to be placed in an opaque package prior to leaving a licensed retail premises. (BPC § 26070.1)

8) Expresses that state cannabis laws shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate cannabis businesses. (BPC § 26200(a))

9) Authorizes a local jurisdiction to allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a licensed retailer or microbusiness if all of the following are met:

   a) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older.

   b) Cannabis consumption is not visible from any public place or nonage-restricted area.

   c) Sale or consumption of alcohol or tobacco is not allowed on the premises.

   (BPC § 26200(g))

THIS BILL:

1) Authorizes a local jurisdiction to allow a licensed cannabis retailer or microbusiness to conduct the following business activities on its premises in addition to consuming cannabis or cannabis products:

   a) Preparing and selling non-cannabis-infused food and nonalcoholic beverages.

   b) Hosting, and selling tickets for, live musical or other performances.

2) Requires all noncannabis food or beverage products to be prepared and sold in compliance with the California Retail Food Code.

3) Authorizes a local jurisdiction to allow for the sale of prepackaged, noncannabis-infused, non-hemp, nonalcoholic food and beverages by a licensed cannabis retailer.

4) Require all noncannabis food and beverages to be stored and displayed separately and distinctly from all cannabis and cannabis products present on the premises.

5) Prohibits a retailer from engaging in the above activities if their license is suspended.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Nightlife Association** and **California NORML**. According to the author:

> "California is known worldwide as the birthplace of cannabis culture—but California's small cannabis businesses are struggling. Issues like over-saturation, high taxes, and the thriving illicit market are hurting cannabis businesses who follow the rules and pay taxes. California's decade of medical marijuana only policies has led to pharmacy-like cannabis "dispensaries" that encourage customers to buy cannabis and leave. Other cities, like Amsterdam, are known for their social, community style cannabis cafés. While consuming cannabis on site is technically legal in California, selling non-cannabis-infused products is not. AB 1775 legalizes cannabis cafes by allowing the sale of non-cannabis food and soft drink, allowing small cannabis retailers to diversify their business and move away from the limiting dispensary model."

Background.

Brief History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. This regulatory scheme was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program. After several years of lawful cannabis cultivation and consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis's continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. Threat of action by the federal government created apprehension within California's cannabis community.

After several prior attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis. While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions could also choose to ban cannabis establishments altogether.

Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented.

In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was passed to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws. On January 16, 2019, the state's three cannabis licensing authorities—the Bureau of Cannabis Control, the California Department of Food and Agriculture, and the California Department of Public Health—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively.

In early 2021, the Department of Finance released trailer bill language to create a new Department with centralized authority for cannabis licensing and enforcement activities. This new department was created through a consolidation of the three prior licensing authorities' cannabis programs. As of July 1, 2021, the Department has been the single entity responsible for administering and enforcing the majority of MAUCRSA. New regulations went into effect on January 1, 2023 to effectuate the consolidation and make other changes to cannabis regulation.

Cannabis Consumption Lounges. The author states that the intent of this bill is to allow for cannabis retailers to engage in a business model analogous to establishments found in Amsterdam. While cannabis is officially a controlled substance in the Netherlands and both possession and cultivation of the plant is a crime, the country has long applied what is referred to as *gedoogbeleid*—a policy of tolerance. The Dutch Ministry of Justice has consistently tolerated possession of up to five grams of cannabis for personal and cultivation of up to five plants. This policy effectively decriminalizes recreational consumption of cannabis, though possession or cultivation beyond personal use is still subject to criminal penalties.

As a result of the country's tolerance policy, there has been a proliferation of so-called "coffeeshops" in cities such as Amsterdam where cannabis may be sold and consumed. While there is no formally lawful way for these establishments to purchase bulk cannabis for resale, consumers may safely purchase and consume cannabis within the personal use limits on the premises. According to the author, these establishments often serve as social hubs where live music may be performed, and food and beverages not containing cannabis are available for purchase and consumption.

There are some restrictions on the Amsterdam model. Dutch law prohibits the sale and consumption of alcohol in coffeeshops, and a national tobacco smoking ban applies to those establishments. Since 2008, Dutch law has prohibited coffeeshops from being operated within 250m of schools. In an effort to combat concerns of "drug tourism," the Dutch government announced in 2011 that tourists were to be banned from patronizing coffeeshops.

The coffeeshop establishment model is arguably only partially allowable under California law. MAUCRSA generally prohibits smoking, vaporizing, or ingesting cannabis or cannabis products in any public place. However, Proposition 64 authorized local jurisdictions to allow for cannabis or cannabis products to be consumed on the premises of a retailer or microbusiness licensed under certain conditions. This language gave cities and counties the option of locally allowing for the establishment of settings referred to commonly as "consumption lounges" where cannabis use can occur socially.

However, MAUCRSA law does not expressly allow for licensees to sell non-cannabis food or beverages within a consumption lounge. The law also does not speak to the legality of selling tickets to performances held on the premises. However, Section 15407 in the Department's regulations states: "In addition to cannabis goods, a licensed retailer may sell only cannabis accessories and the branded merchandise of any licensee." This regulation historically prohibited cannabis retailers from selling food or beverages not infused with cannabis, including on the premises of a consumption lounge.

This prohibition would not allow for the type of consumption lounges proposed by the City of West Hollywood, which adopted a Cannabis Ordinance on November 20, 2017. License applicants presented the city with hospitality-focused business proposals, where customers would be able to consume cannabis and cannabis products in a "social lounge" setting. One proposal described itself as a "full service restaurant" offering meals "featuring local, organic ingredients with farm-to-table preparation." Under the proposal, these meals could be optionally enhanced "with CBD and THC infused dressings and sauces, natural agave sweeteners, and wellness shots." The City of West Hollywood sponsored multiple bills to preempt the Department's regulations, but these measures did not reach the Governor's desk.

In 2022, the Department revised its regulations to additionally state that cannabis retailers who operate a consumption area to "may also sell prepackaged, non-cannabis-infused, non-alcoholic food and beverages if the applicable local jurisdiction allows such sales." The Department's revised regulations further clarified that nothing in its regulations prevents consumers from "bringing or receiving non-cannabis-infused, non-alcoholic food and beverages from a restaurant or food delivery service for consumption in the designated consumption area on the licensed premises, if the applicable local jurisdiction allows such activities."

The Department's revised regulations created a model wherein non-cannabis food and beverages can be sold and consumed in a consumption lounge. However, the law still doesn't allow cannabis retailers to prepare fresh food or beverages on the premises. The regulations also do not allow for any other types of sales to occur on the premises of a cannabis retailer, including the sale of tickets to live musical performances.

This bill seeks to preempt the Department's regulations and amend MAUCRSA to explicitly allow cannabis retailers to sell non-cannabis-infused food, nonalcoholic beverages, and tickets to live musical or other performances. This allowance would remain within the context of the consumption lounge model, which requires local authorization and approval. The bill would also retain MAUCRSA's prohibition against cannabis retailers selling or serving alcoholic beverages or tobacco products, and access to the consumption lounge area would remain restricted to persons 21 or older and be kept out of sight from the general public. The author believes that by expressly allowing for these sales to occur under MAUCRSA, California can more effectively market consumption lounges as a social venue where consumers can enjoy activities that are more inclusive than simply consuming cannabis.

Additionally, this bill would expand the current authority for cannabis retailers to sell prepackaged, non-cannabis-infused, non-hemp, nonalcoholic food and beverages with local approval. While the Department's regulations currently limit these sales to within an authorized consumption area, this bill would extend the authority of local governments to allow for any cannabis retailer to sell prepackaged food and beverages, including those that conduct sales exclusively through delivery. This provision of the bill is intended to expand the amount of non-cannabis commercial activity a retailer may engage in.

The author of this proposal introduced a bill in 2023 that was substantially similar to this one. Assembly Bill 374 (Haney) was passed by the Legislature but was ultimately vetoed by the Governor, who cited concerns that had been raised by opposition to the bill by public health advocacy organizations. In his veto message, the Governor wrote:

> "I appreciate the author's intent to provide cannabis retailers with increased business opportunities and an avenue to attract new customers. However, I am concerned this bill could undermine California's long-standing smoke-free workplace protections. Protecting the health and safety of workers is paramount. I encourage the author to address this concern in subsequent legislation."

The author has indicated that he intends to consider further amendments to this bill in response to the concerns outlined in the Governor's veto. Specifically, potential language would address the opposition's concerns as they relate to secondhand smoke in the workplace. As this bill continues to move through the process, the author and stakeholders will presumably remain engaged in discussions to resolve the Governor's concerns so that the reintroduced bill may be successfully signed into law.

Current Related Legislation.

SB 285 (Allen) similarly authorizes a local jurisdiction to allow for the preparation or sale of non-cannabis food or beverage products by a licensed cannabis retailer or microbusiness in an area where the consumption of cannabis is allowed. *This bill is pending in the Assembly Committee on Governmental Organization.*

Prior Related Legislation.

AB 374 (Haney) of 2023 was substantially similar to this bill. *This bill was vetoed by the Governor.*

AB 1034 (Bloom) of 2021 would have authorized a local jurisdiction to allow for the preparation or sale of non-cannabis food or beverage products by a licensed cannabis retailer or microbusiness in an area where the consumption of cannabis is allowed. *This bill died in the Senate Committee on Business, Professions and Economic Development.*

AB 1465 (Bloom) of 2019 would have created a new cannabis license type for a "consumption cafe/lounge," in which customers may consume cannabis and cannabis products onsite within an establishment that may also prepare and sell non-cannabis products. *This bill died in Assembly Appropriations Committee.*

SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) combined AUMA and MCRSA into one system for the regulation of cannabis, resulting in MAUCRSA.

ARGUMENTS IN SUPPORT:

Americans for Safe Access (ASA) writes the following in support of the bill: "All activities permitted by AB 1775 would be subject to prior local approval, as well as applicable state and local laws. Additionally, the HVAC and air exchange requirements for these establishments are the result of local ordinances. Historically these ordinances are so rigorous that workers in these lounges face no health risks relating to the air they breathe while at work. The augmented services contemplated in AB 1775 would enhance the clean, quiet operations that have always characterized consumption lounges in California. The highly regulated nature of these establishments ensures that both patrons and employees face no risks, health or otherwise, if they populate these venues."

ARGUMENTS IN OPPOSITION:

The **American Cancer Society Cancer Action Network**, the **American Heart Association**, and the **American Lung Association** write jointly in opposition to this bill: "Secondhand marijuana smoke contains many of the same toxins and carcinogens found in directly inhaled marijuana smoke, in similar amounts if not more. In addition, particulate levels from marijuana smoke are higher than tobacco smoke. Exposure to fine particulate matter can cause cardiovascular disease, lung irritation, asthma attacks and makes respiratory infections more likely. Marijuana smoke has been shown to injure the cell linings of the large airways, and can lead to symptoms such as chronic cough, phlegm production, wheeze and acute bronchitis." The coalition argues that "California has fought hard to protect workers and ensure a safe, healthy, smoke-free work environment. AB 1775 will undo that by re-creating the harmful work environments of the past."

POLICY ISSUE(S) FOR CONSIDERATION:

Prepackaged Food and Beverage Sales. In addition to allowing cannabis retailers to sell freshly prepared non-cannabis food and beverages within their authorized consumption areas, this bill would allow any licensed cannabis retailer to sell prepackaged non-cannabis food and beverages as part of its general retail operations. This would mean that a cannabis retailer could feature bags of chips or cans of soda on its shelves alongside cannabis products, and that a nonstorefront retailer could deliver these types of items. As previously discussed, the Department's regulations currently only allow for these items to be sold within an approved consumption area.

While it may appear reasonable to allow a cannabis retailer to additionally sell non-cannabis goods that may be appealing to its customers, this expansion may open the door to the incorporation of cannabis sales into otherwise non-cannabis oriented enterprises. For example, if a cannabis retailer may sell grocery items, there is nothing that would necessarily prevent a local grocery store from obtaining a cannabis license. This is arguably not what the voters envisioned when they approved Proposition 64.

It should be noted that the bill would only allow for such sales of non-cannabis food and beverage goods if a local government chooses to allow it. Retail stores would be prohibited from selling tobacco or alcohol products, which may discourage them from choosing to obtain a cannabis retail license, and they would have to comply with a litany of additional regulations under MAUCRSA that do not currently apply to grocery stores. However, given that the Department's regulations have historically sought to limit the extent to which a cannabis retailer may offer other goods and services to consumers, the author may wish to consider whether this is an appropriate step to take in the direction of expanding where cannabis and non-cannabis food products may be sold concurrently.

Attractiveness to Children. Another potential issue with the proposal to broaden the sale of prepackaged non-cannabis food and beverage products involves potential conflict with protections in Proposition 64 relating to attractiveness to children. The AUMA includes a number of specified safeguards for minors, including a prohibition against cannabis products that are "designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana." It would arguably be inconsistent with the intent of the initiative to allow for cannabis retailers to sell cannabis products alongside the actual candy they are prohibited from resembling.

AMENDMENTS:

To remove language in the bill authorizing local jurisdictions to allow for the sale of prepackaged, non-cannabis-infused, nonalcoholic food and beverages by a retailer, strike subdivision (h) as proposed in the bill, along with additional references to that subdivision.

REGISTERED SUPPORT:

Americans for Safe Access
California NORML
Lompoc Valley Cannabis Association, Santa Barbara County
UFCW – Western States Council

REGISTERED OPPOSITION:

American Cancer Society Cancer Action Network
American Heart Association
American Lung Association in California
Americans for Nonsmokers' Rights
Public Health Institute
Tobacco Education and Research Oversight Committee

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1918 (Wood) – As Introduced January 24, 2024

SUBJECT: State building standards: solar-ready requirement: exemption.

SUMMARY: Permanently exempts new construction within the service territory of the Trinity Public Utilities District (TPUD), whose electricity is generated by 100% carbon-free hydropower, from state solar ready building standards.

EXISTING LAW:

1) Authorizes for the purpose of increasing the supply of water in the Central Valley of California, the construction, operation, and maintenance of a major storage reservoir on the Trinity River, a conveyance system to transport Trinity River water to the Sacramento River, and hydroelectric powerplants and transmission facilities to supply energy to Central Valley Project (CVP) facilities and Trinity County. (Public Law 84-386, Section 1)

2) Establishes a preference right for utility customers in Trinity County to purchase up to 25 percent of the net electricity produced by the hydroelectric powerplants constructed pursuant to the Trinity River Division Act. (Public Law 84-386, Section 4)

3) Requires the California Energy Commission (CEC; also known as the State Energy Resources Conservation and Development Commission) to prescribe water and energy efficiency and conservation standards for new residential and nonresidential buildings in California. The standards are required to be cost-effective, as specified. (Public Resources Code § 25402)

4) Requires every retail supplier that makes an offering to sell electricity that is consumed in California to disclose its electricity sources and the associated greenhouse gas emissions intensity for the previous calendar year. (Public Utilities Code (PUC) § 398.4)

5) Deems a public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress under the Trinity River Division Act of 1955 compliant with the renewable energy procurement requirements of the Renewables Portfolio Standard. (PUC § 399.90(g))

6) Requires solar photovoltaic (PV) and battery storage systems to be installed on newly constructed nonresidential and multifamily buildings. (2022 California Building Energy Efficiency Standards §§ 140.0; 140.10; 170.2(f),(g),(h); and 170.1))

7) Requires solar PV systems to be installed on newly constructed single-family homes. (2022 California Building Energy Efficiency Standards §§ 150.0(c)14, 150.1(a),(b))

8) Requires newly constructed residential and nonresidential buildings, including hotels and motels that are not equipped with solar PV systems, to be “solar ready.” (2022 California Building Energy Efficiency Standards §§ 110.10, 160.8)

9) Authorizes the CEC to exempt any building if it finds that 1) substantial funds had been expended in good faith on planning, designing, architecture, or engineering of the building before the adoption date of the provision; and 2) compliance with the requirements of the provision would be impossible without both substantial delays and increases in costs of construction above what is considered to be reasonable. (2022 California Building Energy Efficiency Standards § 10-108(a))

10) Authorizes the CEC to, upon written application or its own motion, determine that the solar PV or battery storage requirements do not apply, if the CEC finds that the implementation of public agency rules regarding utility system costs and revenue requirements, compensation for customer-owned generation, interconnection fees, or other factors, cause the CEC's cost effectiveness conclusions to not hold for particular buildings. (2022 California Building Energy Efficiency Standards § 10-109(k))

THIS BILL:

1) Specifies that a building is exempt from solar ready requirements for new construction established by the State Energy Resources Conservation and Development Commission and the California Building Standards Commission if all of the following conditions are met:

   a) The building is constructed in the service territory of a public utility district.

   b) The building receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress under the Trinity River Division Act of 1955.

   c) The electricity that the building receives is carbon-free.

2) Conditions the above exemption on the public utility district filing annual resource mix disclosures as required by existing law.

3) Makes various findings and declarations.

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the **Trinity Public Utility District**. According to the author:

> Trinity Public Utility District is unique in that it is the only Publicly Owned Utility District in the state that generates and distributes 100% hydropower. The Renewable Portfolio Standard is written to exclude the utility district because it is completely carbon-free. Unfortunately, the Building Energy Efficiency Standards enforced by the California Energy Commission do not take a similar approach. Instead the CEC requires the utility district to apply for an exemption every three years to re-certify that it has not procured any carbon generating power sources, even though the utility district has operated on 100% hydropower since TPUD formed in 1982. Because TPUD uses a fraction of the hydropower to which it is legally entitled, there are no circumstances in which TPUD will ever need another energy resource. The process of recertifying for an exemption takes a year and a half, is costly, and an immense burden for a small utility district made up of only 25 employees, only six of whom are administrators. Exempting

the Trinity Public Utility District from this redundant exercise will allow both the CEC and utility district to devote time and resources to where they are truly needed.

Background.

Trinity County's electricity has for the last six decades been supplied by carbon-free hydropower. In 1955, Congress passed the Trinity River Division Act, which authorized, for the purpose of increasing the supply of water in the Central Valley, the construction, operation, and maintenance of a major storage reservoir on the Trinity River, a conveyance system to transport Trinity River water to the Sacramento River, and hydroelectric powerplants and transmission facilities to supply energy to Central Valley Project (CVP)[1] facilities and Trinity County. The Act granted Trinity County utility customers first right to purchase up to 25 percent of the net electricity produced by the hydroelectric powerplants, approximately 58 megawatts of electricity. The TPUD, which is the main electricity service provider with approximately 7,200 customers, reports that its customers use only a fraction of the energy to which they are legally entitled. The TPUD also reports having the lowest electric rates in the state.[2] Because 100 percent of its electricity is generated by carbon-free hydropower, the TPUD is exempt from the Renewables Portfolio Standard.[3] It is not, however, exempt from the Building Energy Efficiency Standards (California Code of Regulations, Title 24, Part 1, Chapter 10, Part 6; also known as the California Energy Code).

The California Energy Code contains energy and water efficiency requirements for buildings, and currently requires that solar PV and battery storage systems be installed on all newly constructed buildings, unless the building qualifies for an exemption. Newly constructed buildings, including single-family residences, multifamily buildings, hotels/motels, and nonresidential buildings that are *not* equipped with a solar PV system, most commonly due to an exemption, are generally required to be "solar ready." The building standards effectively reserve a penetration-free and shade-free portion of the roof of the building for the potential future installation of a solar PV system.[4]

In addition to exemptions specified in the California Energy Code, the CEC may exempt any building if it finds that a significant investment had been made prior to the adoption of a new requirement and compliance with the requirement would be impossible without both substantial delays and increases in costs. Moreover, the CEC may, upon written application or its own motion, determine that the solar PV or battery storage requirements for new construction do not apply if they are found not to be cost-effective. Though the TPUD has successfully obtained exemptions from the solar PV requirements[5] [6] [7], the TPUD reports that doing so has been costly, time-consuming, and resource intensive.

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[1] Managed by the Bureau of Reclamation, the CVP is a 400-mile network of dams, reservoirs, canals, hydroelectric powerplants, and other facilities. The role of the CVP is multipurpose: reduce flood risk for the Central Valley, supply water for domestic and commercial use, produce clean energy, offer recreational opportunities, restore and protect fish and wildlife, and enhance water quality.
[2] Trinity PUD Serving Renewable Hydroelectric Energy District History
[3] The Renewable Portfolios Standard sets continuously escalating renewable energy procurement requirements for load serving entities (i.e., electric companies).
[4] 2022 Building Energy Efficiency Standards
[5] "Staff Review and Analysis for Trinity Public Utility District's Application for a Solar Photovoltaic Determination," California Energy Commission, February 2019

The majority of new construction in Trinity County is likely already to be exempt from solar ready building standards. Single family homes in subdivisions with 10 or more houses and multi-family buildings—the residential buildings to which the solar ready building standards apply—are very uncommon. Moreover, buildings (residential and nonresidential) that are shaded by trees or neighboring buildings may also be exempt. Nonetheless, this bill would permanently exempt buildings within the TPUD service area from the solar ready requirements provided that it files disclosures related to its electricity and emissions as required by law. According to the author's office, a permanent exemption would lower the cost of housing in Trinity County and result in significant time and cost savings for TPUD.

Current Related Legislation.

AB 2787 (Joe Patterson & Jim Patterson) of 2024, would exempt, until January 1, 2028, residential construction intended to repair, restore, or replace a residential building that was damaged or destroyed as a result of a disaster in an area in which a state of emergency has been proclaimed by the Governor from any additional or conflicting solar requirements that were not in effect or that differ from solar requirements in effect at the time the damaged or destroyed residential building was originally constructed, provided that certain conditions are met. *This bill is pending a hearing in the Natural Resources Committee.*

Prior Related Legislation.

AB 704 (Joe Patterson & Jim Patterson) of 2023 was identical to AB 2787 of this year. *This bill dies in the Assembly Appropriations Committee.*

AB 178 (Dahle), Chapter 259, Statutes of 2019, was identical to AB 704 of 2023 and AB 2787 of this year.

ARGUMENTS IN SUPPORT:

The **Trinity Public Utilities District (TPUD)** writes as the sponsor of this bill:

> TPUD provides electricity to virtually all residents and businesses in Trinity County (with a population of only 16,000). The electricity provided by TPUD to its customers is 100% carbon-free hydropower. TPUD's right to this hydropower source is memorialized in federal law, specifically, the Trinity River Division Act of 1955. TPUD only uses a fraction of the power to which it is legally entitled. Moreover, TPUD forecasts flat or declining load in the foreseeable future. For these reasons, there are quite literally no circumstances in which TPUD will ever require another energy source. Moreover, the electricity supplied by TPUD to its customers is, and will remain, among the least expensive electricity in the state. In short, the installation of rooftop solar in Trinity County results in a net increase in greenhouse gas emissions, increased costs, and runs contrary to the state's decarbonization goals.

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[6] "Staff_Paper_Staff Review and Analysis for Trinity Public Utility District's Application for a PV Determination," California Energy Commission, December 2022

[7] "Revised Staff Review and Analysis of Trinity Public Utility District's 2022 Non Residential Determin," California Energy Commission, August 2023

ARGUMENTS IN OPPOSITION:

The **California Solar & Storage Association** writes in opposition:

> While California should be doubling down on its commitment to solar, [this bill] would take the state in the opposite direction. For properties in Trinity Public Utilities District, AB 1918 would allow new homes on those properties to be exempt from the solar mandate. The reasoning is that this utility gets its energy from hydropower facilities. However, we are headed for prolonged drought, and even if the utility's hydroelectric production continues at current levels and customer demand goes down, the utility can sell power to other utilities. Reducing customer demand so that the utility has excess power is not a negative outcome. We would not discourage energy efficiency because the utility has clean generating sources.

IMPLEMENTATION ISSUES:

Conflating Solar PV and Solar Ready Requirements. The California Energy Code requires new buildings to be equipped with solar PV and battery storage systems. Buildings that are exempt from these requirements may be required to be "solar ready" meaning that the building can accommodate the installation of solar PV system at a later date, but solar panels or other related equipment are not required to be installed during initial construction. It is this committee's understanding that the author wishes to permanently exempt new buildings in the TPUD service area from the requirement to install solar PV at the time of initial construction in addition to the solar ready requirements that are intended to make it easier for people to install solar PV systems in the future. However, as currently drafted, this bill only exempts new buildings from solar ready building standards.

AMENDMENTS:

To additionally exempt new buildings in the TPUD service area from existing solar PV and battery storage system building standards, the author has agreed to amend the bill as follows:

On page 2, after line 2:

> 18940.3. A building that is constructed in the service territory of a public utility district and that receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to Section 4 of the Trinity River Division Act of August 12, 1955, (Public Law 84-386), if that electricity is carbon free, is exempt from the building standards adopted by the State Energy Resources Conservation and Development Commission and the California Building Standards Commission that require new residential and commercial buildings to be solar ~~ready.~~ *ready or to have photovoltaic and battery storage systems installed.* This section only applies to a public utility district that files annual disclosures pursuant to Section 398.4 of the Public Utilities Code.

On page 2, after line 14:

> SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because the Trinity Public Utilities

District (TPUD) is unique in that it is the only publicly owned utility that relies solely on hydropower, a completely carbon-free electricity source. Building standards adopted by the State Energy Resources Conservation and Development Commission require that new homes and some commercial spaces be built "solar ready." Because TPUD's ratepayers receive entirely carbon-free electricity at extremely low rates pursuant to the Trinity River Division Act of 1955, the installation of rooftop solar results in a net increase in housing costs and carbon emissions in the TPUD's service territory. In order to further California's climate goals and avoid increasing the cost of housing unnecessarily, it is necessary to exempt buildings in the Trinity Public Utilities District's service territory from ~~the~~ *these* ~~state building standards that require new residential and commercial buildings to be solar ready.~~ *standards.*

REGISTERED SUPPORT:

Trinity Public Utilities District *(Sponsor)*

REGISTERED OPPOSITION:

California Solar & Storage Association

Analysis Prepared by: Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2012 (Lee) – As Introduced January 31, 2024

SUBJECT: Rabies control data.

SUMMARY: Requires the California Department of Public Health (CDPH) to collect specified data from public animal shelters as part of their annual rabies control activities reporting, and authorizes the CDPH to contract out this requirement to a California-accredited veterinary school.

EXISTING LAW:

1) Governs the operation of animal shelters by, among other things, setting a minimum holding period for stray dogs, cats, and other animals, and requiring animal shelters to ensure that those animals, if adopted, are spayed or neutered and, with exceptions, microchipped. (Food and Agricultural Code (FAC) §§ 30501 *et seq.*; § 31108.3; §§ 31751 *et seq.*; §§ 32000 *et seq.*)

2) Requires all public and private animal shelters to keep accurate records on each animal taken up, medically treated, or impounded, which shall include all of the following information and any other information required by the Veterinary Medical Board of California:

   a) The date the animal was taken up, medically treated, euthanized, or impounded.

   b) The circumstances under which the animal was taken up, medically treated, euthanized, or impounded.

   c) The names of the personnel who took up, medically treated, euthanized, or impounded the animal.

   d) A description of any medical treatment provided to the animal and the name of the veterinarian of record.

   e) The final disposition of the animal, including the name of the person who euthanized the animal or the name and address of the adopting party. These records shall be maintained for three years after the date on which the animal's impoundment ends.

   (FAC § 32003)

3) Defines "rabies" as including both rabies and any other animal disease dangerous to human beings that may be declared by the CDPH. (Health and Safety Code (HSC) § 121575)

4) Requires the CDPH to make a preliminary investigation whenever any case of rabies is reported as to whether the disease exists, and as to the probable area of the state in which the population or animals are endangered. (HSC § 121595)

5) Authorizes the CDPH to institute special measures of control to supplement the efforts of the local authorities in any county or city whenever it becomes necessary in the judgment of the department, to enforce the state's rabies control laws. (HSC § 121665)

6) Requires every owner of a dog, after the dog attains the age of four months, to secure a license for the dog as provided by ordinance of the responsible city, city and county, or county. (HSC § 121690(a))

7) Requires every owner of a dog, after the dog attains the age of three months or older and at intervals of time not more often than once a year, as may be prescribed by the CDPH, to procure its vaccination by a licensed veterinarian with a canine anti-rabies vaccine approved by the department and administered according to the vaccine label. (HSC § 121690(b)(1))

8) Specifies that the responsible city and county retains documentation of any exemption, unless a licensed veterinarian determines, on an annual basis, that a rabies vaccination would endanger the dog's life due to disease or other considerations, the veterinarian can verify and document; the responsible city, county, or city and county, may specify the means by which a dog's owner is required to provide proof of the dog's rabies vaccination, including, but not limited to, by electronic transmission or facsimile. (HSC § 121690(b)(1-2))

9) Allows for exemptions from an approved form developed and approved by the CDPH, which must be signed by the veterinarian explaining the inadvisability of the vaccination and a signed statement by the dog owner affirming that the owner understands the consequences and accepts all liability associated with owning a dog that has not received the canine anti-rabies vaccine. (HCS § 121690(b)(2))

10) Directs this requested information be submitted to the local county health officer, who may issue an exemption from the canine anti-rabies vaccine; requires local county health offices to report exemptions to the CDPH. (HSC § 121690(b)(3))

11) Specifies that any exempted canines from its local city and county vaccination requirements of this section be considered unvaccinated. (HSC 121690(b)(4))

12) Exempts from the vaccination requirements, at the discretion of the local health officer or the officer's designee, be confined to the premises of the owner, keeper, or harbor and, when off the premises, shall be on a leash the length of which shall not exceed six feet and shall be under the direct physical control of an adult. (HSC § 121690(b)(5))

13) Requires the governing body of each city, city and county, or county to maintain or provide for the maintenance of an animal shelter system and a rabies control program. (HSC § 121690(e))

THIS BILL:

1) Requires the CDPH to collect the following rabies control program data from each local government annually, or quarterly if deemed necessary by the CDPH:

   a) Total number of dogs and cats licensed.

   b) Number of public rabies vaccinations administered.

   c) Number of domestic dogs and cats received by local animal control authorities, including, but not limited to, number surrendered by owner, by the public, or transferred from other shelters.

d) Number of domestic dogs and cats discharged by local animal control authorities, including, but not limited to, number reclaimed by owner, adopted, relinquished to a rescue organization, euthanized, died, or transferred to another shelter.

e) Animal bite data deemed necessary by the CDPH.

f) Animal rabies quarantine data deemed necessary by the CDPH.

g) Any other data deemed necessary by the CDPH.

2) Authorizes the CDPH to:

a) Require every local animal care and control agency to certify that the data they submit is true and correct.

b) Determine an annual or quarterly date by which each local jurisdiction shall report collected rabies control program data to the department.

c) Determine an annual date by which the department shall publicly post on its internet website rabies control program data collected from each county.

3) Authorizes the CDPH to contract out the requirements under this bill to a California accredited veterinary school.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by **Social Compassion in Legislation**. According to the author:

> "The official state pet is the 'Shelter Pet.' AB 2012 will help provide important data about shelter animals so that resources are better optimized to find more pets their forever homes. State, local jurisdictions, and nonprofits invest hundreds of millions of dollars in our shelter system to save animals' lives. Yet the data these entities rely on to direct these resources is no longer available. This transparency will ensure that the state and other entities are able to direct funding efficiently to shelters with the greatest need, while also giving policymakers a more complete picture of the pet overpopulation problem to make informed policy decisions."

Background.

Rabies control programming. As part of its mission to protect and promote public health in California, the CDPH monitors and prevents the spread of communicable diseases in the state, including rabies. This is achieved through myriad reporting requirements and data collection initiatives. All owners of dogs three months or older must ensure their dog is vaccinated against rabies unless a veterinarian determines the rabies vaccination would endanger the dog's life. Veterinarians are required to report rabies vaccination information to the CDPH, including the name and address of the owner, the date of vaccination, and the type of vaccine used. In addition, veterinarians and animal control agencies are required to report any suspected or confirmed cases of rabies to the CDPH. Health care providers, animal control agencies, and law enforcement must also report any animal bite incidents to the CDPH.

The CDPH releases an annual report regarding rabies surveillance programming, detailing among other data points: confirmed cases of rabies in California, the species of each rabies case, and general observations regarding rabies spread and prevention. From 1995 to 2016, the CDPH also reported data as detailed under this bill that was voluntarily submitted from public animal shelters, including the total number of licensed dogs and cats in California, the number of rabies vaccines administered, and animal bite incidents.

This bill intends to clarify that the CDPH is required to collect and report these data points from local governments. In addition, the CDPH would also be required to collect data on the number of domestic dogs and cats discharged by local animal control authorities, including, but not limited to: the number reclaimed by owner, adopted, relinquished to a rescue organization, euthanized, died, or transferred to another shelter. This bill would also authorize the CDPH to contract out these data collection and reporting requirements to a California accredited veterinary school, a notable addition since the prior iteration of this bill—AB 332 (Lee) from 2023—that was approved by this committee.

Accredited veterinary schools. Currently, California accredits two veterinary schools – the UC Davis School of Veterinary Medicine in Davis, and the Western University of Health Sciences in Pomona. In particular, UC Davis oversees the Koret Shelter Medicine Program (KSMP), with research specializing in the state's adoption outcomes and shelter management improvement. Among other research projects and initiatives, KSMP administers the $50 million "California for All Animals" grant program established in the 2020-21 budget which aims to fulfill the state's goal that no healthy animal is euthanized in a shelter. Recipients of these grant funds - many of which are public and private shelters that would be captured under this bill – must submit substantive data to KSMP, much of which is the same or similar to data required to be disclosed under this bill. As such, data collection and reporting requirements under this bill do seem consistent with the current scope of at least one of the state's two accredited veterinary schools.

SPARC vs. The County of Los Angeles. Since the previous version of this legislation was heard, a consequential court decision has made certain data disclosed under this bill more relevant to a number of stakeholders involved in animal control and dog rescue. Santa Paula Animal Rescue Center, Inc. (SPARC) and Lucky Pup Dog Rescue (Lucky Pup) sued the LA County Department of Animal Care and Control (LADACC), arguing the county overstepped its authority when they denied transferring dogs to the respective rescues, citing behavioral issues. The dogs were then euthanized.

While the LA County Superior Court initially ruled in favor of the LADACC, the decision was overturned in the Second District Court of Appeal, a reversal upheld when the California Supreme Court denied LADACC's request to review the appellate court's judgement. As a result of this decision, local animal shelters must relinquish any requested dog to non-profit rescue partners, even if the shelter determines the dog to be "potentially dangerous" or otherwise unadoptable due to behavior. Therefore, some supporters argue certain data disclosed under this bill – including bite incidents and specifics around shelter transfers - can aid the state and relevant stakeholders to better track potential "dangerous" incidents involving adopted dogs.

Current Related Legislation.

AB 1988 (Muratsuchi) would authorize that any puppy or kitten relinquished to a public or private animal shelter by the purported owner be made immediately available for release to a

nonprofit organization, animal rescue organization, or adoption organization. *This bill is pending consideration in this committee.*

AB 2265 (McCarty) would, among other things, require that all animal shelters provide public notice at least 24 hours before a dog or cat is scheduled to be euthanized, to be posted daily on their internet website or Facebook page, and that the notice be physically affixed on the kennel of a dog to cat scheduled to be euthanized, as well as mandates time certain that a dog or cat must be spayed or neutered by an animal shelter upon being given to a foster. *This bill is pending consideration in this committee.*

AB 2425 (Essayli) would, among other things, require an animal shelter to provide public notice regarding the adoption availability of any animal, and require the Department of Food and Agriculture (CDFA) to conduct a study on certain topics, including overcrowding of state animal shelters. The bill would also make changes and additions to state law pertaining to dog breeders. *This bill is pending consideration in this committee.*

SB 1358 (Nguyen) is substantially similar to this bill, and would require the CDPH to collect and report specified data from public animal shelters as part of their annual rabies control activities reporting. *This bill is pending consideration in the Senate Health Committee.*

SB 1459 (Nguyen) would, among other things, require public animal control agencies and shelters in counties with a population greater than 400,000 to publish and update specified data on their internet website, and exempt a veterinarian or registered veterinary technician from prosecution if they willfully release a cat as part of a trap, neuter, and release activity. *This bill is pending referral by the Senate Rules Committee.*

SB 1478 (Nguyen) would require the inclusion of specified information in any order issued by a veterinarian that authorizes a registered veterinary technician to perform animal health care services on animals impounded by a public shelter. *This bill is pending referral by the Senate Rules Committee.*

Prior Related Legislation.

AB 332 (Lee) from 2023 was substantially similar to this bill, and would have required the CDPH to collect and report specified data as part of their rabies control program. *This bill was held in the Senate Appropriations Committee.*

AB 595 (Essayli) would have required that all animal shelters provide public notice at least 72 hours before euthanizing any animal with information that includes the scheduled euthanasia date and required the California Department of Food and Agriculture to conduct a study on animal shelter overcrowding and the feasibility of a statewide database for animals scheduled to be euthanized. *This bill was held in the Senate Appropriations Committee.*

AB 1881 (Santiago) from 2022 would have required every public animal control agency, shelter, or rescue group to conspicuously post or provide a copy of a Dog and Cat Bill of Rights.

AB 2723 (Holden, Chapter 549, Statutes of 2022) established additional requirements on various types of public animals related to microchip registration and the release of dogs and cats.

AB 588 (Chen, Chapter 430, Statutes of 2019) required any shelter or rescue group in California disclose when a dog with a bite history when it is being adopted out.

ACR 153 (Santiago, Chapter 72, 2018) urged communities in California to implement policies that support the adoption of healthy cats from shelters by 2025.

AB 2791 (Muratsuchi, Chapter 194, Statutes of 2018) permitted a puppy or kitten that is reasonably believed to be unowned and is impounded in a shelter to be immediately made available for release to a nonprofit animal rescue or adoption organization before euthanasia.

SB 1785 (Hayden, Chapter 752, Statutes of 1998) established that the State of California's policy is that no adoptable animal should be euthanized if it can be adopted into a suitable home.

ARGUMENTS IN SUPPORT:

This bill is sponsored by **Social Compassion in Legislation (SCIL).** According to SCIL: "AB 2012 will give the state, local jurisdictions, and philanthropic organizations the visibility they need to ensure funds are most effectively and efficiently targeted, while giving lawmakers a complete picture of the pet overpopulation problem as they move forward with legislative solutions, as well as ensure animal shelter data is available in the unfortunate event of a zoonotic disease outbreak."

This bill is supported by a wide array of animal welfare organizations, including but not limited to: the **California Animal Welfare Association**, **Animal Wellness Action, Humboldt Humane**, and more. These organizations write: "AB 2012 will give the state, local jurisdictions, and philanthropic organizations the visibility they need to ensure funds are most effectively and efficiently targeted, while giving lawmakers a complete picture of the pet overpopulation problem as they move forward with legislative solutions, as well as ensure animal shelter data is available in the unfortunate event of a zoonotic disease outbreak.

This bill is supported by the **American Kennel Club (AKC),** representing "470 California dog clubs and thousands of constituent dog owners in California". According to AKC: "this factual and uniformly collected data—along with the greater clarity provided by it—will serve as an objective and unambiguous dataset that will help to address assumptions that are often made about animal shelters."

ARGUMENTS IN OPPOSITION:

This bill is opposed by the **California Professional Scientists (CAPS),** representing "more than 4,000 highly educated, specially trained state-employed scientists working in over 30 state departments and 81 scientific classifications". According to CAPS: "While CAPS is not opposed to collecting this information, we are opposed to contracting out scientific work when scientific expertise already exists within [Bargaining Unit 10]. Rather than contracting out data collection and management to an accredited California veterinary school, this work is better done by state scientists (through creation of new positions) within the CDPH."

REGISTERED SUPPORT:

Social Compassion in Legislation (*Sponsor*)
American Kennel Club, Inc.

Animal Wellness Action
Buddy's Angels
California Animal Welfare Association
Catmosphere Laguna Foundation
Foods by Jude
Hanaeleh
Humboldt Humane
Michelson Center for Public Policy
NY 4 Whales
People Advocating for Animal Welfare
Poison Free Malibu
Saving Imperial Rescue
Start Rescue
Terra Advocati
The Animal Coalition Group
The Canine Condition
The German Shepherd Rescue of Orange County
UnchainedTV
1121 Individuals

REGISTERED OPPOSITION:

California Association of Professional Scientists

Analysis Prepared by: Edward Franco / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2107 (Chen) – As Amended March 21, 2024

SUBJECT: Clinical laboratory technology: remote review.

SUMMARY: Authorizes pathologists and laboratory personnel who review digital data, results, and images to do so from a temporary remote site.

EXISTING LAW:

1) Defines "CLIA" as the federal Clinical Laboratory Improvement Amendments of 1988 and the relevant regulations adopted by the federal Health Care Financing Administration that are also adopted by the California Department of Public Health (CDPH). (BPC Business and Professions Code (BPC) § 1202.5(a))

2) Regulates clinical laboratories and the performance of clinical laboratory tests through the licensing of clinical laboratories and laboratory directors, scientists, and other laboratory personnel under the CDPH and CLIA. (BPC §§ 1200-1327)

3) Defines "clinical laboratory test or examination" means the detection, identification, measurement, evaluation, correlation, monitoring, and reporting of any particular analyte, entity, or substance within a biological specimen for the purpose of obtaining scientific data that may be used as an aid to ascertain the presence, progress, and source of a disease or physiological condition in a human being, or used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition in a human being, or for the performance of nondiagnostic tests for assessing the health of an individual. (BPC § 1206(a)(5))

4) Defines "clinical laboratory" as a place or organization used for the performance of clinical laboratory tests or examinations or the practical application of the clinical laboratory sciences. (BPC § 1206(a)(8))

5) Requires every clinical laboratory to have a laboratory director who is responsible for the overall operation and administration of the clinical laboratory, including (1) administering the technical and scientific operation of a clinical laboratory, the selection and supervision of procedures, the reporting of results, and active participation in its operations to the extent necessary to ensure compliance with state clinical laboratory laws and CLIA, (2) the proper performance of all laboratory work of all subordinates, and (3) employing a sufficient number of laboratory personnel with the appropriate education and either experience or training to provide appropriate consultation, properly supervise and accurately perform tests, and report test results in accordance with the personnel qualifications, duties, and responsibilities described in CLIA and state clinical laboratory laws. (BPC § 1209(d)(1))

THIS BILL:

1) Authorizes pathologists and laboratory personnel acting within their scope of practice to review digital clinical laboratory data, digital results, and digital images at a remote location under a primary site's CLIA certificate if CLIA requirements are met.

2) Authorizes a clinical laboratory to utilize a temporary site for remote review and reporting of digital clinical laboratory data, digital results, and digital images if the designated primary site or home base is certified under CLIA and the work being performed in the temporary site falls within the parameters of the primary site's CLIA certificate.

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

COMMENTS:

Purpose. This bill is sponsored by the *California Society of Pathologists*. According to the author, "Unfortunately, California law does not allow remote review of digital slides or data despite [authorization from the Centers for Medicare & Medicaid Services (CMS)]. [This bill] will bring California into conformity with federal law, and 49 other states, by allowing Pathologists and licensed lab personnel, to review digital clinical laboratory data, digital results and digital images at a remote location under a primary location's Clinical Laboratory Improvement Amendments (CLIA) certificate as long as CLIA requirements under the Code of Federal Regulations are met."

Background. At both the federal and state level, a facility or location where people perform laboratory tests on human specimens for diagnostic or assessment purposes must be certified under CLIA. While CLIA establishes the minimum standards under federal law, it allows states to establish more stringent requirements. The purpose of CLIA and the state requirements is to minimize the risk of incorrect or unreliable results, patient harm during testing, and improper diagnoses, among other things. Laboratories are licensed and regulated by the California Department of Public Health.

Both CLIA and state law require ordinarily require the performance of laboratory tests, which includes the review and reporting of the test results, to be done in a licensed clinical laboratory. The purpose of the requirement is to ensure that the proper equipment and protocols needed to ensure accuracy and quality are in place.

This bill would authorize California laboratories to allow remote reviewing and reporting of digital materials if federal CLIA requirements are met. CLIA, pursuant to CMS guidance, allows remote reviewing and reporting by pathologists and other laboratory personnel of digital materials, defined as digital laboratory data, digital results, and digital images.

Specifically, CMS allows laboratories to allow staff to remotely review digital materials if the following criteria are met:

1) The primary, home site, laboratory has a current, unrevoked or unsuspended certificate of waiver, registration certificate, certificate of compliance, certificate for provider-performed microscopy procedures, or certificate of accreditation issued by the federal Department Health and Human Services applicable to the category of examinations or procedures performed by the laboratory.

2) The primary laboratory complies with other applicable federal laws, including the Health Insurance Portability and accountability Act (HIPPA).

3) The laboratory director of the primary site CLIA number is responsible for all testing performed under its CLIA certificate, including testing and reporting performed remotely.

4) Survey findings are cited under the primary laboratory's CLIA certificate and enforcement actions, if taken, will affect the primary laboratory's CLIA certificate.

5) The primary laboratory's test reports indicate the remote site location where the testing is performed.

6) The primary laboratory is certified in the specialties or subspecialties of the work performed at the remote site.

7) The primary laboratory provides CMS a list of all staff working remotely, upon request.

8) The primary location is responsible for retaining all documentation, including testing performed by staff working remotely.

9) The individual performing remote review must be on the primary laboratory's Form CMS-209, Laboratory Personnel Report (CLIA).

ARGUMENTS IN SUPPORT:

The *California Society of Pathologists* (sponsor) writes in support:

> Without [the authorization under this bill], pathologists and other laboratory personnel will be limited to viewing digital data, results, and images inside a licensed laboratory, even though no actual laboratory equipment is utilized or needed. For example, a pathologist can walk into their laboratory, open their laptop, and review any digital image on their computer. However, if that same pathologist went home with that same laptop and wanted to review those same images, current law does not allow it. Such limitations impede timely access to health care, most notably test results and diagnosis.
>
> By allowing remote digital data review and interpretation, [this bill] will benefit a wide range of health care practices and services, including anatomic pathology (digital slides), hematology (digital slides, urinalysis, HPLC), immunology (SPEP/UPEP, flow cytometry), microbiology (NGS, PCR, LC-MS), blood bank (immunotyping), histocompatibility, molecular analysis, cytogenetic analysis (karyotype and FISH), etc. As an example, much of the COVID PCR results early in the pandemic required pathologist interpretation; this interpretation could have occurred remotely.
>
> [This bill] can expedite diagnosis of critical conditions. For example, diagnosing a specific subtype of acute leukemia in order to emergently initiate therapy must be done within hours, lest the patient have a 20% mortality risk; this can only reliably be done during non-business hours for all patients, regardless of hospital location, using digital image review. The same applies to the use of remote

interpretation of flow cytometry data in the diagnosis of acute leukemia which also requires same day diagnosis in order to initiate critically important chemotherapy.

Additionally, allowing digital data review/interpretation will also address workforce shortages. For example, licensed cytogenetics are in extremely short supply at present and most jobs across the country offer 100% remote work options. Without being able to offer a similar option, California labs will not be competitive in hiring/retaining necessary clinical staff.

In medically underserved rural and urban areas, a lack of primary care practitioners, specialty providers, clinical laboratory personnel and other medical professionals continues to pose significant barriers to access to health care services. Digital pathology and remote review by pathologists will become increasingly vital for the efficient delivery of health care in these and other communities.

ARGUMENTS IN OPPOSITION:

The *California Labor Federation*, *Service Employees International Union, California State Council*, and *United Food and Commercial Workers, Western States Council*, write in opposition:

During the COVID-19 Public Health Emergency, the US Department of Health and Human Services temporarily allowed for pathologists to review slides and laboratory data from a remote location to reduce the exposure and transmission of COVID-19 within our labs and allowed for off-site review of slides for speciality practices, like gastrointestinal and dermatology practices, without violating the Stark Law on-site requirements. Since the ending of the public health emergency, off-site pathology interpretations expired but the Centers for Medicare and Medicaid services temporarily extended the Clinical Laboratory Improvements Amendments (CLIA) certificate flexibilities to allow for remote review of digital data. The same risks that clinical laboratory workers faced at the height of the pandemic are not present today, prompting the question why remote review of digital laboratory data is still needed?

The waivers issued through the pandemic applied in scope to pathologists, but [this bill] seeks to make these waivers permanent and significantly expand the laboratory personnel that would be able to conduct remote review, including unlicensed personnel. Additionally, [this bill] lacks safeguards to protect and secure sensitive patient information from being accessed in an individual's home, requirements on the workspace where digital laboratory tests will be analyzed, recordkeeping, and lacks enforcement mechanisms to promote compliance with CLIA and other requirements set forth by the primary site before tests can be remotely analyzed. Sensitive patient data could fall into the hands of bad actors, significantly compromising the privacy of patients and the integrity of our health care system. Lastly, if there are challenges with interpreting or reading digital laboratory data, there are no other laboratory personnel in the individual's home to assist with the interpretation or the ability for that laboratory personnel to rerun a test for a patient, potentially leading to delayed results or inaccurate test results.

Furthermore, the push to a fully remote at-home model will impact employment of clinical laboratory workers. There are no protections in the bill that prevent outsourcing of jobs in California out of state or out of country. We are deeply concerned with the potential job loss that could occur within our clinical laboratories if this bill is passed. Furthermore, there are no protections in this proposal to ensure that already overworked laboratory personnel are not expected to continue to work after they have left the primary job site, which could impact the analysis of digital tests.

We understand that clinical laboratories in California can experience surges or waves of tests that need to be analyzed in an urgent and timely manner, which is why we understand the need for transfer of tests between licensed facilities to assist with these workload challenges. Licensed facilities offer additional security and safety of patient information, allow access to other personnel and equipment needed to analyze clinical tests, and give peace of mind to the laboratory personnel performing work that their license isn't in jeopardy if something goes wrong at home.

While we agree that timely access to lab results are vital, we must oppose the bill in its current form. This bill would put patients' lives at risk with insufficient guardrails for patient safety, includes no protocols for reviewing sensitive information at home, and lacks protections from outsourcing jobs.

AMENDMENTS:

To (1) reduce the use of serial lists and conform the bill to CMS terminology, (2) clarify that materials needing laboratory equipment for interpretation may not be reviewed remotely, (3) further limit temporary remote sites to intermittent use, and (4) clarify that remote review and reporting may only be performed if related to onsite work, amend the bill as follows:

(a) *For purposes of this section, "digital materials" means digital laboratory data, digital results, and digital images that do not require a microscope or other equipment essential to a separate laboratory.*

(b) Pathologists and *licensed* laboratory personnel acting within their scope of practice may review digital ~~clinical laboratory data, digital results, and digital images~~ *materials* at a remote location *on a temporary or intermittent basis* under a primary site's CLIA certificate if CLIA requirements are met.

~~(b)~~ *(c)* A clinical laboratory may utilize a temporary *or intermittent* site for remote review and for reporting of digital ~~clinical laboratory data, digital results, and digital images~~ *materials* if the designated primary site or home base is certified under CLIA and the work being performed in the temporary *or intermittent* site falls within the parameters of the primary site's CLIA certificate.

(d) Pathologists and licensed laboratory personnel may only remotely review digital materials under this Section if the digital materials are related to their ordinary course of onsite work.

REGISTERED SUPPORT:

California Society of Pathologists (sponsor)
Affiliated Pathologists Medical Group
American Society for Clinical Pathology
Analytic Pathology Medical Group
Association for Pathology Informatics
California Clinical Laboratory Association
California Life Sciences
College of American Pathologists
Stanford Health Care
University of California
University of California, San Francisco, Department of Laboratory Medicine
1 Individual

REGISTERED OPPOSITION:

California Labor Federation, AFL-CIO
Service Employees International Union, California State Council
United Food and Commercial Workers, Western States Council

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2148 (Low) – As Amended March 18, 2024

NOTE: This bill is double referred and if passed by this Committee will be re-referred to the Assembly Judiciary Committee.

SUBJECT: Professional fiduciaries.

SUMMARY: Authorizes the Professional Fiduciaries Bureau (PFB) to issue a certificate of registration to fiduciary corporations and specifies that a superior court may not appoint unlicensed fiduciaries or unregistered entities as a guardian, conservator, personal representative, trustee, or other officer.

EXISTING LAW:

1) Regulates and licenses professional fiduciaries under the Professional Fiduciaries Act. (Business and Professions Code (BPC) §§ 6500-6592)

2) Establishes the PFB within the Department of Consumer Affairs to administer and enforce the Professional Fiduciaries Act. (BPC § 6510)

3) Prohibits a person from acting or holding themselves out to the public as a professional fiduciary unless licensed as a professional fiduciary, except as specified. (BPC § 6530)

4) Defines a "professional fiduciary" as the following:

    a) A person who acts as a guardian or conservator of the person, the estate, or the person and estate, for two or more individuals at the same time who are not related to the professional fiduciary or to each other. (BPC § 6501(f)(1)(A))

    b) A personal representative of a decedent's estate, as defined in the Probate Code, for two or more individuals at the same time who are not related to the professional fiduciary or to each other. (BPC § 6501(f)(1)(B), Probate Code (PROB) § 58(a))

    c) A person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three individuals, at the same time. (BPC § 6501(f)(2))

5) Authorizes the formation of professional corporations under the Moscone-Knox Professional Corporation Act. (Corporations Code (CORP) §§ 13400-13410)

6) Defines "professional services" as any type of professional services that may be lawfully rendered pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act. (CORP § 13401(a))

7) Defines "professional corporation" as a corporation that is engaged in rendering professional services in a single profession pursuant to a certificate of registration issued by the governmental agency regulating the profession as provided in the Moscone-Knox

Professional Corporation Act and that in its practice or business designates itself as a professional or other corporation as may be required by statute. (CORP § 13401(b))

8) Prohibits a superior court from appointing a person to carry out the duties of a professional fiduciary, or permit a person to continue those duties, unless the person holds a valid, unexpired, unsuspended license as a professional fiduciary, is exempt from the definition of "professional fiduciary", or is exempt from the licensing requirements of Professional Fiduciaries Act. (PROB § 2340)

THIS BILL:

1) Specifies that the definitions under the Moscone-Knox Professional Corporation Act apply to the provisions being added by this bill.

2) Specifies that "certificate of registration" has the same meaning as used in the Moscone-Knox Professional Corporation Act.

3) Defines "registrant" as a professional corporation that has an active certificate of registration.

4) Expands the definition of "professional fiduciary" to include a professional corporation that is a registrant.

5) Prohibits a professional corporation from acting or holding itself out to the public as an entity acting in a fiduciary capacity unless the professional corporation is a registrant.

6) Authorizes the PFB to issue a certificate of registration to a professional corporation if the professional corporation files with the PFB under penalty of perjury all of the following:

   a) A copy of the professional corporation's articles of incorporation.

   b) Proof that the professional corporation is an active professional corporation.

   c) Proof that the professional corporation is in good standing.

   d) Proof that all directors, officers, and shareholders of the professional corporation are licensed under the Professional Fiduciaries Act.

7) Specifies that, if the PFB issues a certificate of registration to a professional corporation, the professional corporation may render professional services.

8) Specifies that a registrant must also comply with both of the following:

   a) After receiving a certificate of registration, a registrant must annually file with the PFB under penalty of perjury all of the initial registration information required by this bill.

   b) The income of a registrant attributable to professional services rendered while a shareholder is a disqualified person may not accrue to the benefit of that shareholder or their shares in the professional corporation.

9) Specifies that the fee to obtain and annually renew a certificate of registration must be set by the PFB in an amount necessary to recover the reasonable costs to the PFB in carrying out those functions.

10) Prohibits a superior court from appointing a professional fiduciary as a guardian, conservator, personal representative, trustee, or other officer, or allow a professional fiduciary to continue in any of those offices, unless the professional fiduciary satisfies any of the following:

    a) Holds a current, unsuspended license as a professional fiduciary.

    b) Is exempt from the licensing requirements for professional fiduciaries.

    c) Holds a current, unsuspended certificate of registration under the Professional Fiduciaries Act.

11) Makes other technical or conforming changes.

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

COMMENTS:

Purpose. This bill is sponsored by the *Professional Fiduciary Association of California*. According to the author, "This legislation will clarify the consumer protection statutes that apply when courts appoint entities to serve in representative capacities such as guardians, conservators, personal representatives and trustees. The bill will require that they register with the Professional Fiduciaries Bureau as professional corporations and be subject to Bureau oversight and enforcement."

Background. In general, fiduciaries are individuals who have been granted another individual's confidence and trust. Those who are paid to handle fiduciary duties for clients, such as conservators, guardians, trustees, personal representatives of a decedent's estate, and agents under durable power of attorney, are considered professional fiduciaries and require a license.

Because a license is required to provide professional fiduciary services, and corporations and other business entities are not able to obtain a license under existing law, corporations and other business entities are prohibited from providing professional services.

However, according to the sponsor, there are situations in which unlicensed corporate entities can be designated as professional fiduciaries. For example, the Probate Code is silent as to whom a testator may name as successor trustee in the context of a trust, where the trustee's appointment is determined by the testator's stated wishes as opposed to a court appointment. Therefore, there is no restriction on the entity the testator may name as a trustee, regardless of the licensing status of the members of that entity.

This bill attempts to address the problem by authorizing the formation of professional fiduciary corporations under the Moscone-Knox Professional Corporation Act, specifically prohibiting corporations and other business entities from acting as professional fiduciaries unless registered with the PFB.

ARGUMENTS IN SUPPORT:

The *Professional Fiduciary Association of California* (sponsor) writes in support:

> This legislation resolves issues that have been identified which courts, attorneys and licensed Professional Fiduciaries acknowledge exist in current law:
>
> - Although the Probate Code does not authorize the court to appoint entities (other than financial institutions) in representative capacities, courts have approved petitions seeking the appointment of professional fiduciary organizations (as opposed to an individual professional fiduciary).
> - Because the Probate Code is silent as to whom a testator may name as Executor or Trustee of their Trust, no restriction exists for a testator to name an entity, regardless of the licensing status of the members of that entity, to serve in representative capacities.
> - Because the Professional Fiduciaries Bureau's authority is limited to licensing and regulating individuals, the Bureau does not currently have jurisdiction over a fiduciary entity nor the members acting on behalf of that entity.
> - In the scenario of an entity serving in a representative capacity, depending on the type of entity, the extent of liability on the part of the entity can be limited leaving consumers vulnerable.

ARGUMENTS IN OPPOSITION:

None on file

AMENDMENTS:

1) To clarify that an entity may not render professional fiduciary services or act as a professional fiduciary without being a registrant and remove the erroneous reference to "board," amend the bill as follows:

   On page 7, after line 20:

   (b) A professional corporation shall not *render professional services requiring a license under this act or* act or hold itself out to the public as an entity acting ~~in a fiduciary capacity~~ *as a professional fiduciary* unless the professional corporation is a registrant.

   On page 7, strike out lines 37-39:

   ~~(d) If the board issues a certificate of registration to a professional corporation, the professional corporation may render professional services.~~

2) To clarify that the PFB must issue a certificate of registration to qualified entities, amend the bill as follows:

   On page 7, after line 24:

(c) The bureau ~~may~~ *shall* issue a certificate of registration to a professional corporation if the professional corporation files with the bureau under penalty of perjury all of the following:

3) To clarify that the PFB can enforce against the certificate of registration as if it were a license, amend the bill as follows:

On page 8, between lines 24 and 25, insert:

(e) A certificate of registration shall be subject to the same enforcement and disciplinary proceedings as a license under Article 5 (commencing with Section 6580).

4) To give the PFB time to implement the new certificate of registration, amend the bill as follows:

On page 8, between lines 28 and 29, insert:

(g) This section shall become operative July 1, 2025.

REGISTERED SUPPORT:

Professional Fiduciary Association of California (sponsor)

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2202 (Rendon) – As Amended March 21, 2024

SUBJECT: Short-term rentals: disclosure: cleaning tasks.

SUMMARY: Requires places of short-term lodging to disclose to consumers any cleaning tasks that guests will be required to complete to avoid an additional fee or penalty, such as a low guest rating.

EXISTING LAW:

1) Prohibits, beginning July 1, 2024, a place of short-term lodging, an internet website, application, or other similar centralized platform, or any other person from advertising, displaying, or offering a room rate, as defined, that does not include all fees or charges required to stay at the short-term lodging, except taxes and fees imposed by a government. (Business and Professions Code (BPC) § 17568.6)

2) Requires, beginning July 1, 2024, a place of short-term lodging, an internet website, application, or other similar centralized platform, or any other person, to include all taxes and fees imposed by a government in the total price to be paid before the consumer reserves the stay. (BPC § 17568.6)

3) Defines "short-term lodging" to mean any hotel, motel, bed and breakfast inn, or other transient lodging. "Short-term lodging" also includes a short-term rental, or a residential property that is rented to a visitor for 30 consecutive days or less through a centralized platform whereby the rental is advertised, displayed, or offered and payments for the rental are processed. (BPC § 17568.6)

4) Subjects a person that knew or should have known that it has advertised, displayed, or offered a room rate in violation of the restrictions and requirements above to a civil penalty not exceeding $10,000 for each violation. (BPC § 17568.6)

THIS BILL:

1) Requires a place of short-term lodging, an internet website, application, or other similar centralized platform, or any other person to include both of the following in a notice that is affirmatively acknowledged by the consumer, before the consumer reserves the stay:

   a) A disclosure of any additional fees or charges that will be added to the total price to be paid to stay at the short-term lodging, or other penalty that will be imposed, if the consumer fails to perform certain cleaning tasks at the end of the stay.

   b) An explicit description of the cleaning tasks subject to the additional fees, charges, or penalties.

2) Defines "notice" to mean a written or electronic statement that is presented to the consumer in a font size that is at least as large as the standard or default font size of the other text in the

advertisement or that is displayed on the internet website, platform, application, or other centralized platform and requires that the consumer interact with the internet website, application, or platform to affirmatively acknowledge that they have read the notice. Affirmative acknowledgment may be accomplished by including a statement in the notice that the consumer acknowledges having read the notice before the internet website, application, or platform functions to allow the consumer to reserve the stay.

3) Defines "penalty" to mean subjecting a consumer to inferior terms, privileges, or conditions in comparison to other consumers including, but not limited to, designating or threatening to designate the consumer as a less favorable guest, decreasing or threatening to decrease the consumer's status with or on the short-term lodging, internet website, application, or other similar centralized platform, or hindering or barring the consumer from reserving a stay at a place of short-term lodging that would otherwise be advertised or available to the consumer to view and reserve on the internet website, application, or platform.

4) Makes non-substantive and conforming changes.

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

COMMENTS:

Purpose. This bill is author-sponsored. According to the author:

> Transparency helps California's consumers make informed choices when it comes to short-term vacation rentals. Current California law requires that taxes and fees need to be outlined in advance to consumers. But cleaning requirements, meaning tasks they are asked to complete before they checkout, remain unclear and unregulated. By requiring that short-term vacation rentals disclose requested cleaning duties in advance, we can ensure consumers have the information they need to make a truly informed choice about their short-term vacation rentals.

Background.

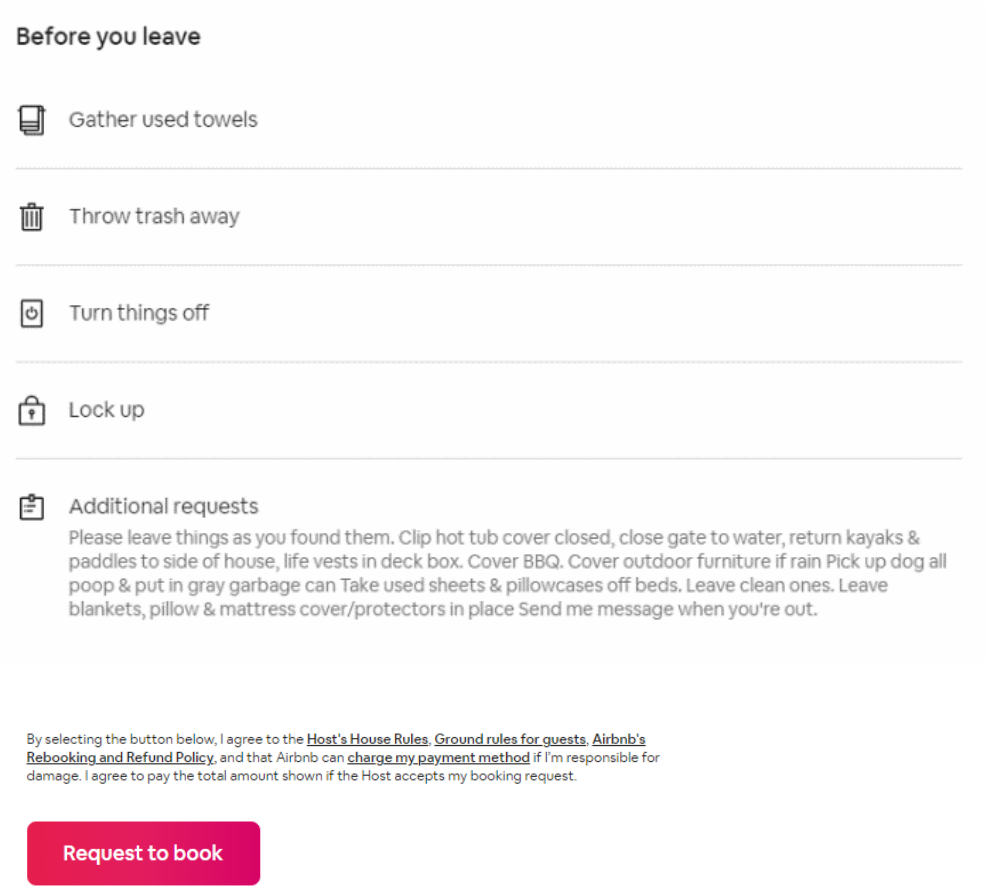
Numerous articles and social media posts suggest widespread consumer frustration with the cleaning requirements imposed by short-term rental (e.g. Airbnb and VRBO) hosts.[1] While existing law requires price transparency for all short-term rentals, hotels, motels, and the like (collectively called short-term lodging), there is currently no requirement to disclose cleaning responsibilities (e.g. strip beds, take out the trash, vacuum, or start a load of laundry) that if left uncompleted would result in the guest having to pay a fee or risk being penalized by, for example, a low guest rating.

Guests' dissatisfaction stems in part from often having to complete specified chores in addition to paying a cleaning fee. In 2022, a NerdWallet analysis of 1,000 U.S. Airbnb reservations for a one-night stay with check-in dates in 2022 or 2023 revealed that 85 percent of listings included a

[1] Airbnb Host Giving Guests 'Chores List' on Top of $165 Cleaning Fee Slammed; Welcome to Your Airbnb, the Cleaning Fees Are $143 and You'll Still Have to Wash the Linens

cleaning fee, the median of which was $75.[2] Moreover, the analysis found that cleaning fees accounted for roughly 25 percent of the total price per booking.

According to the author, Airbnb has endeavored to address guests' complaints by directing short-term rental owners to disclose cleaning requirements prior to booking. Upon review of several Airbnb listings, it appears that owners may disclose chores via the host's house rules, which are viewable at the bottom of the listing alongside safety information and the host's cancellation policy. When consumers press the "Request to book" or "Confirm and pay" button, they agree to the host's house rules, including any cleaning requirements.



This committee is not aware of additional short-term rental sites requiring hosts to disclose guest cleaning requirements.

This bill would require the disclosure of any additional fees or charges that will be added to the total price of a stay at a place of short-term lodging, or any other penalty that will be imposed, if the consumer fails to complete certain cleaning tasks at the end of their stay. The disclosure is required to include a description of the cleaning tasks and be affirmatively acknowledged by the consumer before a reservation is made. According to the author's office, this bill would benefit all consumers, including those in vulnerable communities, by enabling consumers to more easily make informed decisions.

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[2] Airbnb Has a Plan to Fix Cleaning Fees

Current Related Legislation.

SB 1424 (Glazer) of 2024 requires a hosting platform, hotel, third-party booking service, or short-term rental to allow a reservation for a hotel accommodation or a short-term rental advertised in California to be canceled without penalty for at least 24 hours after the reservation is confirmed if the reservation is made 72 hours or more before the time of check-in. *SB 1424 is pending in the Senate Judiciary Committee.*

Prior Related Legislation.

AB 537 (Berman), Chapter 805, Statutes of 2023 prohibits, beginning July 1, 2024, a place of short-term lodging, as defined, from advertising, displaying, or offering a room rate that does not include all fees or charges required to stay at the short-term lodging, except government-imposed taxes and fees.

SB 644 (Glazer), Chapter 718, Statutes of 2023, requires a hosting platform, hotel, third-party booking service, or short-term rental to allow a consumer to cancel a reservation within 24 hours of making the reservation without penalty and to have the funds refunded to the original form of payment, if the reservation is made 72 hours or more before the time of check-in.

SB 683 (Glazer) of 2023 would require, beginning July 1, 2024, a person or an internet website, application, or other similar centralized platform that advertises a hotel room rate or short-term rental rate to include all mandatory fees in the advertised rental rate and include all government-imposed taxes and fees in the total price before the consumer reserves the stay. *SB 683 is on the Assembly Inactive File.*

SB 478 (Dodd) Chapter 400, Statutes of 2023, makes it an unlawful business practice under the Consumers Legal Remedies Act to advertise, display, or offer a price for a good or service that does not include all mandatory fees or charges, other than government-imposed taxes or fees.

AB 3235 (Chu) of 2020 was substantially similar AB 537 (Berman) of 2023. *AB 3235 failed passage in the Assembly Business and Professions Committee.*

ARGUMENTS IN SUPPORT:

The **California Consumer Federation of California** and **Consumer Watchdog** write in support:

> Current legislation mandates the upfront disclosure of all taxes and fees associated with short-term vacation rentals once dates are selected. However, cleaning requirements, meaning the tasks consumers are often required to complete during their stay at a short-term vacation rental, remain largely unregulated. Many consumers have complained about booking vacation rentals, paying the required cleaning fees (which are often outrageous), and arriving at the rental only to find a laundry list of additional cleaning duties they must complete - duties not disclosed to them in advance. This system unduly burdens consumers and reeks of "double paying," which appears to be an unfair business practice under California law.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Consumer Federation of California
Consumer Watchdog

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2269 (Flora) – As Introduced February 8, 2024

SUBJECT: Board membership qualifications: public members.

SUMMARY: Prohibits any public member of a board established under the Department of Consumer Affairs (DCA) from having certain business relationships with a licensee of the board during their tenure, nor within the three years preceding their appointment.

EXISTING LAW:

1) Establishes the DCA under the Business, Consumer Services, and Housing Agency (BCSH), comprised of specified boards, bureaus, and commissions vested with the authority to license and regulate various professions and vocations, and to enforce the standards and regulations set forth. (Business and Professions Code (BPC) §§ 100 *et. seq.*)

2) Mandates that boards established under the DCA shall meet at least two times each calendar year, with at least one meeting in northern California and one meeting in southern California, subject to certain exemptions or additional meetings as discerned by the Director of Consumer Affairs. (BPC § 101.7)

3) Authorizes boards that regulate occupations created by an initiative act to give the duties of administration of the board to the Director of Consumer Affairs. (BPC § 102)

4) Establishes that each member of a board, commission, or committee overseeing the healing arts, general professions and vocations, athletics or household goods and services shall receive a per diem of $100 for each day spent in discharge of official service, and shall be reimbursed for any travel or other necessary expenses incurred. (BPC § 103)

5) Requires members of boards to take an oath of office as provided in the Constitution and the Government Code. (BPC § 105)

6) Authorizes the appointing authority of a respective board to, at any time, remove any board member for dereliction of duties required by law, for incompetence, or for unprofessional or dishonorable conduct. (BPC § 106)

7) Grants the Governor authority to remove any board member from office if it is shown such member has knowledge of the specific questions to be asked on the licensing entity's next examination and directly or indirectly discloses any such question in advance of or during the examination to any applicant. (BPC § 106.5)

8) Establishes that each board comprising the DCA exists as a separate unit, and has the functions of regulation, standard setting, investigation and enforcement as set forth by statute to each respective board. (BPC § 108)

9) For certain boards under the DCA, establishes service terms of four years expiring on June 1. (BPC § 130)

10) Establishes that no member of a board under the DCA may serve more than two consecutive full terms. (BPC § 131)

11) Authorizes each member of a board, and the executive officer, to administer oaths and affirmations in performance of business of the board, and to certify official acts. (BPC § 159)

12) Prohibits public or lay member of a board under the DCA from being, or having been within the five years preceding their appointment, any of the following:

    a) An employer, officer, director, or substantially full-time representative of an employer or group of employers,

    b) A person maintaining a contractual relationship, or

    c) An employee.

    (BPC § 450)

13) For purposes of relationships with licensees of a board, establishes an exception that a board member may be, or have been within the five years preceding their appointment, engaged in an employment or contractual relationship with a licensee of the board so long as the relationship does not constitute more than 2 percent of the overall practice or business of the licensee. (BPC §§ 450(a) – 450(c))

14) Prohibits a public board member from being a current or past licensee of the board, or a close family member of a licensee. (BPC § 450.2)

15) Prohibits a public member from having any financial interest in any organization that is subject to regulation by the board of which they are a member. (BPC § 450.3)

16) Prohibits a public or lay member from engaging in pursuits which lie within the field of the industry or profession regulated by the board of which they are a member, or providing representation to the industry or profession, during the term of their service or within the five year period preceding their appointment. (BPC § 450.5)

17) Establishes that, if as part of its functions any board delegates any duty or responsibility to be performed by a single board member, public or lay members shall not:

    a) Prepare, administer, or grade examinations, or

    b) Inspect or investigate licensees, their manner or method of practice or business, or their place of practice or business.

    (BPC § 451)

18) Mandates that each newly appointed board member shall complete a training and orientation program offered by the DCA regarding, among other things, their functions, responsibilities, and obligations as a board member, within one year of assuming office. (BPC § 453)

THIS BILL:

1) Revises provisions of law prohibiting public or lay members of a board from having specified relationships with licensees of that board to situations where the board member is or has been:

    a) An employer, officer, director, or substantially full-time representative of an employer or group of employers,

    b) A person maintaining a contractual relationship, or

    c) An employee.

2) Reduces the existing prohibition against a public member or lay member of a board under the DCA having specified relationships with licensees of the respective board from within a five year period to within a three year period preceding their appointment.

3) Removes the percentage threshold for determining whether a public member or lay member of a board is engaged in a prohibited relationship with the respective board's licensee.

4) Clarifies that changes established under this bill are effective upon board appointments or reappointments on or after January 1, 2025.

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

COMMENTS:

Purpose. This bill is author-sponsored. According to the author:

> "Public members serve a vital role on professional licensing boards, providing an important check and balance to the professional members in assuring that boards achieve their consumer protection goal. To that end, current law appropriately prohibits a public member from having had a significant recent employment or contractual relationship with a licensee. AB 2269 would update and simplify that statute by repealing an arbitrary exception to that prohibition for relationships not exceeding 2 percent of a licensee's employment or business."

Background.

Among the various regulatory entities under the jurisdiction of the DCA are myriad boards overseeing professional licensing and standards in many fields, including accounting, barbering and cosmetology, dentistry, physicians and medical professionals, psychologists, veterinarians, and more. Boards are comprised of a combination of members of the regulated profession that are appointed by the Governor, and members of the public – or "lay members" – that are appointed by the Governor and the Legislature. Board members serve varying term lengths depending on the entity they are serving a term with, with many established in statute at four years. Additionally, depending on the board, members may receive compensation for their service.

Public board members, first established under legislation enacted by then-Assemblymember Phillip Burton *(AB 735, Stats. of 1961, Ch. 2232)* are intended to ensure boards include input that is representative of the interests of the public at large, in contrast to professional members who are involved by business or practice in the area being regulated by the respective board. In order to ensure public members are free from real or perceived conflicts of interest, law dictates that no public member shall be – or have been within five years prior to their appointment – in an employment or contractual relationship with a licensee of the board, *unless* that relationship constitutes, or did constitute, no more than 2 percent of the overall practice or business of the respective licensee.

While this minor threshold is sensible in theory, providing reasonable leeway for negligible employment or contractual relationships the board member may be or have been involved in, statute as written has proven to be challenging in practice to implement and enforce. As written, current law necessitates the Governor's office, Assembly Speaker's office and Senate Rules Committee to request relevant records from licensees disclosed by the prospective board appointee in order to verify the employment or contractual relationship does not exceed the two percent income threshold. The author notes that this section of law has not been updated for relevance since its creation in 1961, with the exception of technical amendments included in AB 496 *(Low, Stats. of 2019, Ch. 351, Sec. 48)*.

This bill would update restrictions related to public members of boards holding employment or contractual relationships with licensees by repealing the "two-percent" standard imposed under current law, altogether prohibiting any sort of employment or contractual relationships with a licensee of the board, while shortening the window of time within which such relationships are considered a conflict of interest for a prospective public member. Additionally, in order to avoid disruption of the service of current public members of boards under DCA, provisions of this bill would only apply to public members appointed to a board on or after January 1, 2025.

Prior Related Legislation.

AB 496 (Low, Stats. of 2019, Ch. 351, Sec. 48) made various technical corrections and nonsubstantive changes to the BPC, including replacing gendered terms with nongendered terms and giving all appointing authorities the ability to remove its own appointees from a board.

AB 735 (Burton, Stats. of 1961, Ch. 2232) prescribed qualifications and limitations on public members of boards including the prohibition against public members or lay members from holding, or having previously held within five years prior to their appointment, any employment or contractual relationship with a licensee of the board, unless said relationship constitutes no more than 2 percent of the overall practice or business of the respective licensee.

IMPLEMENTATION ISSUES:

This bill reasonably shortens the window of time by which prohibited relationships with a board licensee apply to a prospective public board member from five years to three years. However, BPC § 450.5 maintains that a prospective member is prohibited from engaging in pursuits which lie within the relevant field of industry or profession, or providing representation to the industry or profession, within the *five* year period preceding their appointment. As this bill moves forward in the legislative process, the author may wish to amend the bill to address these technical concerns.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Edward Franco / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2327 (Wendy Carrillo) – As Introduced February 12, 2024

SUBJECT: Optometry: mobile optometric offices: regulations.

SUMMARY: Extends the sunset date for a registration program within the California State Board of Optometry (CBO) that allows for nonprofits and charitable organizations to provide optometric services to patients regardless of the patient's ability to pay through mobile optometric offices.

EXISTING LAW:

1) Establishes the Optometry Practice Act to provide for the regulation and oversight of optometry. (Business and Professions Code (BPC) §§ 3000 *et seq.*)

2) Establishes the CBO within the Department of Consumer Affairs (DCA) for the licensure and regulation of optometrists, registered dispensing opticians, contact lens dispensers, spectacle lens dispensers, and nonresident contact lens dispensers. (BPC § 3010.5)

3) Makes it unlawful for a person to engage in or advertise the practice of optometry without having first obtained an optometrist license from the CBO. (BPC § 3040)

4) Provides that the practice of optometry includes the prevention, diagnosis, treatment, and management of disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services, and specifically authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat the human eye for various enumerated conditions. (BPC § 3041)

5) Requires optometrists to notify the CBO in writing of the address where they intend to engage in the practice of optometry and of any changes to their place of practice, except for limited cases where they engage in temporary practice. (BPC § 3070)

6) Requires optometrists to post in each location where they practice optometry, in an area that is likely to be seen by all patients who use the office, their current license or other evidence of current license status issued by the CBO. (BPC § 3075)

7) Defines "office" as any office or other place for the practice of optometry, including but not limited to vans, trailers, or other mobile equipment, and limits optometrists to a maximum of 11 offices. (BPC § 3077)

8) Requires the CBO to adopt regulations by January 1, 2023 establishing a registry for mobile optometric office owned and operated by nonprofit or charitable organizations, which are required to report specified information to the CBO and provide patients with information on their care and the availability of followup care; provides that the statute establishing this registration program shall remain in effect only until July 1, 2025. (BPC § 3070.2)

THIS BILL:

1) Extends the sunset date for the CBO's mobile optometric office registry to July 1, 2035.

2) Extends the date by which the CBO is required to adopt regulations for the registry to no later than January 1, 2026, and correspondingly extends safe harbor language prohibiting the CBO from taking action against an owner and operator of a mobile optometric office prior to that date.

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

COMMENTS:

Purpose. This bill is sponsored by **Vision To Learn**. According to the author:

> "Los Angeles Unified School District is the birthplace of Vision to Learn. Previous to the 2020 law, non-profit mobile optometric offices could only operate if they were affiliated with a school of optometry. This limitation constrained non-profit vision care providers like Vision to Learn from legally serving populations that needed optometric care but were not receiving it. While many optometrists take MediCal and do their best to reach out to low-income patients, they can't replicate the model used by non-profits who will bring a mobile clinic to a school, church or other community facility. AB 2327 allows non-profit mobile optometric offices to continue to provide vital optometric services to ensure low- income students have the best chance possible to succeed in school and in life."

Background.

Practice of Optometry. California first formally regulated optometrists in 1903 when the Legislature defined the practice of optometry and established the California State Board of Examiners in Optometry. In 1913, the Legislature replaced the act with a new Optometry Law, which created a State Board of Optometry with expanded authority over optometrists, opticians, and schools of optometry. Much of the language enacted in this 1913 legislation survives in the Optometry Practice Act today. Education requirements for optometrists were subsequently enacted in 1923.

As of 2021, the current CBO is responsible for overseeing approximately 31,937 optometrists, opticians, and optical businesses. The CBO is also responsible for issuing certifications for optometrists to use Diagnostic Pharmaceutical Agents (DPA); Therapeutic Pharmaceutical Agents (TPA); TPA with Lacrimal Irrigation and Dilation (TPL); and TPA with Glaucoma Certification (TPG); and TPA with Lacrimal Irrigation and Dilation and Glaucoma Certification (TLG). The CBO additionally issues statements of licensure and fictitious name permits.

Under the Optometry Practice Act, the practice of optometry "includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services." Statute establishes the scope of practice for optometrists by enumerating the examinations, procedures, and treatments that an optometrist may perform. No person may engage in the practice of optometry or advertise themselves as an optometrist in California without a valid license from the CBO.

Mobile Optometric Offices. Existing law allows for healing arts licensees to deliver services through mobile health care units to the extent authorized by written policies established by the governing body of the licensee. Previously, CBO regulations allowed for the provision of optometry services through registered "extended optometric clinical facilities." This registration program was restricted to clinical facilities employed by an approved school of optometry where optometry services were rendered outside or beyond the walls, boundaries, or precincts of the primary campus of the school. Mobile optometric facilities were only allowed to function as a part of a school teaching program, as approved by the CBO.

While the extended optometric clinical facility program was historically used to provide mobile optometry services to low-access communities, optometrists seeking to provide those services were limited to the extent that they were required to be affiliated with a school of optometry. This limitation created challenges for charitable organizations and nonprofits dedicated to providing care through mobile clinics as a way to address the widely recognized need for expanded access to optometric care for patients who are uninsured and unable to pay out of pocket. One reputable nonprofit, Vision to Learn, had provided more than 186,500 eye exams and more than 148,500 pairs of glasses to students and other Californians, regardless of income, between when it was established in 2012 and 2020.

While Vision To Learn and similar programs have been broadly celebrated as successful, there were concerns that their operation was technically unsupported by statute or board regulation to the extent that the provision of services was technically unaffiliated with a school of optometry. This lack of clarity led to concerns relating to the possibility of enforcement action by the CBO against nonprofit optometry service providers. To resolve this lack of certainty and provide nonprofits like Vision To Learn with statutory reassurance, the Legislature enacted Assembly Bill 896 (Low) in 2020. This bill sought to satisfy any apprehension by creating a new registration program to formalize the presence of mobile optometric offices operated by nonprofits and charitable organizations.

Under the provisions of AB 896, organizations are required to submit information to the CBO regarding services provided and any complaints received by the organization. Further, all medical operations of a mobile optometric office must be directed by a licensed optometrist. Finally, the bill created a safe harbor for charitable organizations and nonprofits currently providing services while the CBO promulgated regulations to implement the new registration program.

AB 896 required the CBO to adopt its regulations establishing a registry for the owners and operators of mobile optometric offices prior to January 2023; however, the CBO did not submit its notice of proposed regulatory action until December 2023, and those regulations are still pending. Meanwhile, the safe harbor provision intended to protect nonprofits from enforcement action prior to the adoption of regulations has expired. In addition, AB 896 contained a sunset clause subjecting the entire law to repeal on July 1, 2025 unless extended by the Legislature.

This bill would extend each of these three dates. First, the bill would extend the sunset on the mobile optometric offices law until July 1, 2035. Next, it would extend the deadline by which the CBO is required to adopt regulations until January 1, 2026. Finally, it would extend the safe harbor language to that same January 1, 2026 timeline. These changes will allow nonprofits like Vision To Learn to continue operating with peace of mind despite the CBO's delays in adopting their regulations to fully implement the program.

Prior Related Legislation.

AB 896 (Low, Chapter 121, Statutes of 2020) expressly allowed for nonprofits and charitable organizations to provide optometric services to patients regardless of the patient's ability to pay through mobile optometric offices under a new registration program within CBO.

ARGUMENTS IN SUPPORT:

Vision To Learn, the sponsor of this bill, writes: "One in five kids in public schools lack the glasses they need to see the board, read a book, or participate in class; and in low-income communities up to 95% of kids who need glasses do not have them." Vision to Learn argues that "passage of AB 2327 will give the Board the time it needs to promulgate regulations for Mobile Optometry clinics and will allow Vision To Learn and other non-profits to continue to serve California's vulnerable student populations and give them the tools they need to succeed in school."

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:

This bill extends both the CBO's deadline to adopt regulations and language providing safe harbor to mobile optometric clinics to January 1, 2026. These dates were previously aligned to ensure that the CBO would not take enforcement action against a nonprofit for failing to comply with regulations that had not yet been adopted. However, given that the CBO is in the final stages of the rulemaking process, there is cause for optimism that regulations will be adopted well in advance of 2026, and that safe harbor will not be needed for that extended an amount of time. The author may wish to consider providing that the safe harbor provision is valid either until January 1, 2026, or until the CBO's regulations are adopted, whichever is earlier.

AMENDMENTS:

To provide that the safe harbor language is valid until the earlier of either January 1, 2026, or until the CBO's regulations are adopted, amend subdivision (l) as follows:

> *(l) The board shall not bring an enforcement action against an owner and operator of a mobile optometric office based solely on its affiliation status with an approved optometry school in California for remotely providing optometric service prior to the adoption of the board's final regulations pursuant to subdivision (j), or before January 1, 2026, whichever occurs first.*

REGISTERED SUPPORT:

Vision To Learn *(Sponsor)*

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2471 (Jim Patterson) – As Introduced February 13, 2024

SUBJECT: Professions and vocations: public health nurses.

SUMMARY: Deletes the requirement for public health nurses to renew certificates.

EXISTING LAW:

1) Regulates the practice of nursing under the Nursing Practice Act. (Business and Professions Code (BPC) §§ 2700-2838.4)

2) Establishes the Board of Registered Nursing (BRN) within the Department of Consumer Affairs (DCA) to administer and enforce the Nursing Practice Act until January 1, 2027. (BPC § 2701)

3) Prohibits the use of the title "public health nurse" without a public health nurse certificate issued by the BRN. (BPC § 2818(c))

4) Specifies that the public health nurse certificate does not expand the scope of practice of a registered nurse. (BPC § 2820)

5) Requires the BRN to set the application fee for the public health nurse certificate between $300 and $1,000 and the renewal fee between $125 and $500. (BPC § 2816)

THIS BILL:

1) Deletes the requirement that public health nurses renew their certificates.

2) Makes conforming changes.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, this bill "addresses the financial barrier to public health nurses by removing provisions related to the renewal of certificates. This change simplifies the certification process, reducing financial barriers for registered nurses and encouraging more individuals to pursue or continue their careers in public health nursing."

Background. Public health nurses (PHNs) are specialized registered nurses (RNs) that provide direct patient care and services related to maintaining the public and community's health and safety. Historically, the PHN designation was intended to establish uniform titles and training in response to conflicting definitions created by state agencies and private organizations, so it does not modify the scope of practice of RNs who specialize as PHNs.

To qualify for PHN certification, applicant RNs must hold a baccalaureate or entry-level master's degree in nursing awarded by a school accredited by a BRN-approved accrediting body and proof of supervised clinical experience. Equivalency methods are provided for individuals whose baccalaureate or entry-level master's degree in nursing is from non-approved accredited schools and for those who have a baccalaureate degree in a field other than nursing.

ARGUMENTS IN SUPPORT:

The *Board of Registered Nursing* (BRN) writes in support:

> Currently, a PHN must apply and pay a fee to renew their Registered Nursing (RN) license as well as apply and pay a fee to renew their PHN certificate every two years. The PHN certificate renewal requirement mirrors the certificate renewal requirement for Advance Practice Registered Nurses (APRNs). However, APRNs have an expanded scope of practice which incurs additional investigations and enforcement costs for the Board. These additional costs are covered by the fee APRNs pay to renew their certificates every two years.
>
> While PHNs complete specialized coursework and clinical experience to obtain a certificate, they do not have an expanded scope of practice beyond that of an RN. Consequently, PHNs do not have the same need for a renewal fee. Removing the renewal requirement and associated fee would help to reduce the financial burden of the renewal fee for PHNs and assist in community recruitment efforts.

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

Board of Registered Nursing
County Health Executives Association of California (CHEAC)
County of Mono, California
Health Officers Association of California
Mariposa County Board of Supervisors
Tulare; County of
Westhillscollege.com

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2540 (Chen) – As Introduced February 13, 2024

SUBJECT: Cannabis: license transfers.

SUMMARY: Authorizes the Department of Cannabis Control (DCC or department) to transfer, assign, or reassign licenses for commercial cannabis activity.

EXISTING LAW:

1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to provide a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000-26325)

2) Establishes the DCC within the Business, Consumer Services, and Housing Agency (previously established as the Bureau of Cannabis Control, the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation) for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

3) Grants the department the sole authority to create, issue, deny, renew, discipline, condition, suspend, or revoke licenses for commercial cannabis activity. (BPC § 26012(a)).

4) Authorizes the department to create additional licenses that it deems necessary to effectuate its duties. (BPC § 26012(b)).

5) Establishes grounds for disciplinary action against cannabis licensees, including failure to comply with state licensing requirements as well as local laws and ordinances. (BPC § 26030)

6) Provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness; requires each licensee except for testing laboratories to clearly designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)

7) Expresses that state cannabis laws shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate cannabis businesses. (BPC § 26200(a))

8) Prohibits a license from being transferred or assigned to another person or owner. (California Code of Regulations, Title 4 (Cal. Code Regs. Tit. 4) § 15023(c))

9) Specifies that in the event of the sale or other transfer of the business or operations covered by the licensee, changes in ownership must be made as follows: If one or more of the owners change, the new owners shall submit specified information for each new owner to the DCC within 14 calendar days of the effective date of the ownership change. The business may continue to operate under the active license while the DCC reviews the qualifications of the new owner(s) to determine whether the change would constitute grounds for denial of the

license, if at least one existing owner is not transferring their ownership interest and will remain as an owner under the new ownership structure. If all owners will be transferring their ownership interest, the business shall not operate under the new ownership structure until a new license application has been submitted to and approved by the DCC, and all application and license fees for the new application have been paid. (Cal. Code Regs. Tit. 4 § 15023(c)(1))

10) Specifies that a change in ownership does not occur when one or more owners leave the business by transferring their ownership interest to the other existing owner(s). (Cal. Code Regs. Tit. 4 § 15023(c)(1)(b))

11) In cases where one or more owners leave the business by transferring their ownership interest to the other existing owner(s), requires the owner or owners that are transferring their interest to provide a signed statement to the DCC confirming that they have transferred their interest within 14 calendar days of the change. (Cal. Code Regs. Tit. 4 § 15023(c)(2))

12) In the event of death, incapacity, receivership, assignment for the benefit of creditors or other event rendering one or more owners incapable of performing the duties associated with the license, requires the owner(s) successor in interest (e.g., appointed guardian, executor, administrator, receiver, trustee, or assignee) to notify the DCC in writing, within 14 calendar days, by submitting a specified form.

THIS BILL:

1) Authorizes the DCC to transfer, assign, or reassign licenses for commercial cannabis activity.

2) Specifies that the Legislature finds and declares that the bill furthers the purposes and intent of the MAUCRSA.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Cannabis Manufacturers Association** and **Kiva Confections**. According to the author:

> [This bill] is a critical step forward in regulation of the legal cannabis industry, keeping consumer safety in the forefront while ensuring the industry operates as efficiently as possible. In this way, the DCC will be explicitly authorized to create a simplified process to transfer and reassign licenses. This bill is another important step to ensure fairness and efficiency in an industry that is still taking shape here in California. Current regulations simply do not reflect optimal conditions for the cannabis industry, it is critical that the Legislature rewards those who play by the rules within the legal cannabis market.

Background.

Since July 1, 2021, the DCC has been the single entity responsible for administering and enforcing the majority of California's cannabis laws, collectively known as MAUCRSA. The DCC is additionally responsible for licensing commercial cannabis businesses and regulating

activity related to the cultivation, manufacture, testing, transportation, labeling, and sale of cannabis and cannabis products in this state.[1] Cannabis businesses are also subject to local rules and requirements, including the obligation to obtain a *local* permit or license, which may or may not be transferred depending on the jurisdiction.

DCC applicants are required to submit an application and specified accompanying documents including, but not limited to, evidence that the applicant has the legal right to occupy and use the proposed location, diagrams of the proposed business premises, proof of a surety bond of at least $5,000 per location, evidence of compliance with the California Environmental Quality Act, a list of every owner of the business, and a list of all financial interest holders.[2] Applicants must also pay an application fee and every owner is required to undergo a background check.

In Fiscal Year (FY) 2022-23, the average time for processing state license applications was:

- Cultivation Licenses: 258 days
- Manufacturing Licenses: 190 days
- Distribution Licenses: 215 days
- Testing Laboratory Licenses: 964 days
- Retailer Licenses: 162 days
- Microbusiness Licenses: 198 days
- Event Organizer Licenses: 96 days
- Temporary Cannabis Event Licenses: 107 days[3]

The DCC reports that the average times provided above are impacted by delays resulting from incomplete applications, document verification, correspondence with other local and state entities to ensure compliance with statutory and regulatory requirements, and the DCC's processing a backlog of over 6,000 applications. With the exception of cultivation, manufacturing, testing laboratory, and temporary cannabis event licenses, the average number of days to process applications for all other license types has decreased compared to FY 2021-22.

Under existing law, the DCC does not have explicit authorization to transfer, assign, or reassign a license. Additionally, if one or more of the owners of a license change, a new license application and fee must be submitted to the DCC within 14 days of the effective date of the ownership change. The business may continue to operate under the active license if at least one existing owner will remain on the license under the new ownership structure. However, if all owners will be transferring their ownership interest, the business must cease operations until the new license application is approved.

Currently, the only way to acquire an active license without suspending operations is to buy out the license holder (i.e. the business entity) and undergo the change of ownership process described above. Once the new license application is approved, the seller can leave the business by transferring their ownership interest to the new owner(s).

This bill would authorize the DCC to transfer, assign, and reassign DCC-issued licenses.

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[1] Department of Cannabis Control
[2] Department of Cannabis Control Annual License Application Checklist
[3] Department of Cannabis Control Annual Report 2024

Prior Related Legislation.

AB 351 (Chen) of 2023 was identical to this bill. *This bill died in the Assembly Appropriations Committee.*

ARGUMENTS IN SUPPORT:

The **California Cannabis Manufacturers Association** writes in support:

> [This bill] would enact necessary improvements to the Department of Cannabis Control; the bill would state the intent of the Legislature to enact legislation that would authorize the Department of Cannabis Control to transfer licenses for commercial cannabis activity from a licensee to another person, subject to the requirements of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This legislation would positively impact the growing legal market and cannabis-friendly culture; there is a growing recognition for the need of transferable licenses; current statute dictates that licenses are not transferable.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Cannabis Manufacturers Association *(Co-Sponsor)*
Kiva Confections *(Co-Sponsor)*

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Kaitlin Curry / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2702 (Chen) – As Amended March 14, 2024

NOTE: This bill is double referred and if passed by this Committee will be re-referred to the Assembly Higher Education Committee.

SUBJECT: Training programs for clinical laboratory scientists and medical laboratory technicians: grants.

SUMMARY: Authorizes the California Department of Public Health (CDPH) to, upon appropriation by the Legislature, establish a grant program to provide funding to approved training programs for clinical laboratory scientists (CLSs) and medical laboratory technicians (MLTs).

EXISTING LAW:

1) Regulates clinical laboratories and the performance of clinical laboratory tests through the licensing of clinical laboratories and laboratory directors, scientists, and other laboratory personnel under the CDPH and CLIA. (BPC §§ 1200-1327)

2) Defines "clinical laboratory scientist" as a person who is licensed to engage in clinical laboratory practice under the overall operation and administration of a laboratory director, unless serving as a director of specified laboratories. (BPC § 1204)

3) Requires the CDPH to issue a CLS or a limited CLS license to applicants who hold a baccalaureate or an equivalent or higher degree and the qualifications established by CDPH, as specified. (BPC § 1261(a)(1), California Code of Regulations (CCR), Title 17, § 1030.7)

4) Requires the CDPH to establish an "MLT-to-CLS" pathway program by January 1, 2022, that would authorize a licensed MLT to apply their work experience and training from a CDPH-approved MLT training program towards the completion of a CLS training program. The work experience and training may only be eligible for the pathway program upon approval by the CDPH. (BPC § 1261(b))

5) Requires the CDPH to issue an MLT license to applicants who have completed specified MLT training programs and the qualifications established by the CDPH. (BPC § 1260.3, CCR, tit. 17, § 1030.6)

THIS BILL:

1) Authorizes the CDPH to, upon appropriation by the Legislature, establish a grant program to provide funding to schools training programs that meet both of the following criteria:

   a) Offer training programs for clinical laboratory scientists or medical laboratory technicians.

   b) Are approved by the CDPH or accredited by a recognized accrediting program approved by the CDPH.

2) Limits the amount of the grants to no more than $600,000.

3) Require the funds to be used within three years of receiving a grant.

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

COMMENTS:

Purpose. This bill is sponsored by the *California Association for Medical Laboratory Technology*. According to the author, "The need for clinical laboratory scientists and medical laboratory technicians has grown in recent years at a rate severely disproportionate to the growth rate of educational training program opportunities for up and coming lab professionals. With state law requiring that each clinical laboratory scientist or medical laboratory technician have experience in such programs, the process of students becoming professionals must be streamlined and provided for by the state."

Background. At both the federal and state level, a facility or location where people perform laboratory tests on human specimens for diagnostic or assessment purposes must be certified under CLIA. The federal CLIA law establishes minimum standards but allows states to establish more stringent requirements. The purpose of CLIA and the state requirements is to minimize the risk of incorrect or unreliable results, patient harm during testing, and improper diagnoses, among other things. Laboratories are licensed and regulated by the CDPH.

In California, two of the licensed personnel authorized to work in clinical laboratories are MLTs and CLSs. MLTs are personnel that are authorized to perform laboratory tests that are classified as "waived" (low complexity) and certain tests classified as "moderate complexity" under CLIA. To become licensed as an MLT, applicants must have a minimum of an associate degree with specified coursework in physical or biological sciences, chemistry, and biology. They must also complete a training program or obtain specified on the job experience and pass a CDPH-approved examination.

Similarly, CLS are personnel that are generally authorized to perform any work in a laboratory that they are trained to perform. To become licensed as a CLS, applicants must have a minimum of a bachelor degree with specified coursework in clinical chemistry or analytical and biochemistry, hematology, immunology, medical microbiology, and physics, except that the CDPH can make exceptions for military applicants. They must also complete at least one year of post-graduate training or experience as a licensed CLS trainee and pass a CDPH-approved examination.

ARGUMENTS IN SUPPORT:

The *California Association for Medical Laboratory Technology (CAMLT)* (sponsor) writes in support, "Passage of this bill may finally provide funding to Clinical Laboratory Science educational programs to expand the number of students these programs accept. This funding must be flexible enough to be used to fund laboratory preceptorships as that is a clear chokepoint for the laboratory workforce pipeline. As you are aware, there has been a long-standing shortage of training opportunities for qualified candidates to receive the clinical experience required by law to fulfill the requirements necessary to become a CLS/MLT. There are estimated to be over 1,200 vacant (CLS/MLT) positions currently and the number is expanding every year, compounded by the aging demographics of the profession and an increase in retirements. Our

healthcare system is built on the foundation of clinical laboratory testing and diagnostics, and the COVID-19 crisis has clearly revealed the cracks in that foundation. Millions of diagnostic tests are performed each year in California, influencing approximately 70 percent of medical decisions."

The *San Francisco State University Clinical Lab Science Program* writes in support:

> At hospitals all over California, lab staff are experiencing burn-out from working overtime or having a second job. Understaffing means poor turn-around-times for lab results or an increase in errors. Automation has not sufficiently alleviated this need since people are still required to run and troubleshoot the instruments. In addition, many tests are still done manually since it takes time to develop an automated method.
>
> The most obvious solution would be to recruit and train more Clinical Lab Scientists and Medical Technicians to fulfill the need. However, schools are running on tight budgets. The SFSU Clinical Lab Science program has difficulty recruiting instructors due to salaries that are far below the market rate for lab scientists. To teach students lab skills, we must modify our lessons to only need the most inexpensive equipment, and we must accept donations from hospitals for lab items that are old or expired. Despite our struggles, we continue to fight to keep the program open, however we would like to do better for our students.

ARGUMENTS IN OPPOSITION:

None on file

IMPLEMENTATION ISSUES:

Proper Entity. The CDPH does not currently administer training grant programs. If this bill passes this committee, the author may wish to determine if there is a more appropriate entity to administer the program.

REGISTERED SUPPORT:

California Association for Medical Laboratory Technology (sponsor)
San Francisco State University Clinical Laboratory Science Program

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2860 (Garcia) – As Introduced February 15, 2024

SUBJECT: Licensed Physicians and Dentists from Mexico programs.

SUMMARY: Reestablishes the Licensed Physicians and Dentists from Mexico Pilot Program as the distinct Licensed Physicians from Mexico Program and Licensed Dentists from Mexico Pilot Program and revises various requirements contained within the existing pilot program relating to the temporary state licensure of medical professionals from Mexico.

EXISTING LAW:

1) Establishes the Medical Board of California (MBC) to administer the Medical Practice Act. (Business and Professions Code (BPC) §§ 2000 *et seq.*)

2) Establishes the Dental Board of California (DBC) to administer the Dental Practice Act. (BPC §§ 1600 *et seq.*)

3) Requires all continuing medical education courses to contain curriculum that includes cultural and linguistic competency in the practice of medicine and the understanding of implicit bias. (BPC § 2190.1)

4) Establishes a voluntary cultural and linguistic physician competency program operated by local medical societies of the California Medical Association and monitored by the MBC's Division of Licensing. (BPC § 2198)

5) Defines "cultural and linguistic competency" as cultural and linguistic abilities that can be incorporated into therapeutic and medical evaluation and treatment, including direct communication in the patient-client primary language, understanding and applying the roles of culture in health care, and awareness of how health care providers and patients attitudes, values, and beliefs influence and impact professional and patient relations. (BPC § 2198.1)

6) Establishes the Licensed Physicians and Dentists from Mexico Pilot Program, which allows up to 30 physicians from Mexico specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology to practice medicine in California. (BPC § 853(a))

7) Provides that the MBC shall issue three-year nonrenewable licenses to practice medicine to physicians from Mexico who are eligible to participate in the pilot program. (BPC § 853(b))

8) Requires physicians from Mexico to comply with various requirements to participate in the pilot program, including medical education and practice requirements and enrollment in adult English-as-a-second-language (ESL) classes. (BPC § 853(c))

9) Requires dentists from Mexico to comply with various requirements to participate in the pilot program, including dental education and practice requirements. (BPC § 853(d))

10) Provides that nonprofit community health centers that employ pilot program participants are responsible for ensuring that participants are taking courses in the English language and obtain a specified level of English fluency. (BPC § 853(e))

11) Authorizes the MBC to extend the three-year nonrenewable license period for a physician from Mexico if, prior to January 30, 2024, the licensee was unable to practice more than 30 consecutive business days due to specified circumstances. (BPC § 853(j))

12) Provides that an evaluation of the pilot program shall be undertaken with funds provided from philanthropic foundations beginning 12 months after the pilot program has commenced. (BPC § 853(l))

13) Requires that all costs for administering the pilot program be secured from philanthropic entities. (BPC § 853(m))

14) Provides that the criteria for issuing three-year nonrenewable medical licenses and dental permits under the Licensed Physicians and Dentists from Mexico Pilot Program shall not be utilized at any time as the standard for issuing a license to practice medicine or a permit to practice dentistry in California on a permanent basis. (BPC § 854)

THIS BILL:

1) Repeals the current law establishing the Licensed Physicians and Dentists from Mexico Pilot Program and replaces it with two new statutes: one establishing a Licensed Physicians from Mexico Program and the other establishing a Licensed Dentists from Mexico Pilot Program.

2) Removes the requirement that physicians and dentists from Mexico complete a six-month externship at their place of employment after receiving a three-year nonrenewable license.

3) Changes the existing requirement that physicians under the current program complete a six-month orientation before leaving Mexico with a more general requirement that those physicians complete an approved orientation program of unspecified length, and adds training on electronic medical records systems and medical record documentation standards to the list of subjects that must be included in that orientation.

4) Repeals the requirement that physicians from Mexico must enroll in adult English-as-a-second-language (ESL) classes and instead requires that participants complete the Test of English as a Foreign Language by scoring a minimum of 85 percent or the Occupational English Test with a minimum score of 350, and provide written documentation of their completion to the MBC.

5) Replaces the current fee amount that must be paid to the MBC for a three-year license with a placeholder where the fee amount will be set through future amendments.

6) Prohibits a health plan from denying credentials to a physician from Mexico because the physician is a participant in the program and did not receive their medical education and training in the United States.

7) Provides that the three-year license issued to a physician under the program shall not include any additional notations beyond the current numerical identifiers that the MBC applies.

8) Beginning January 1, 2025, provides that the MBC shall permit each of the no more than 30 licensed physicians who were issued a three-year license to practice medicine pursuant to the existing pilot program to extend their license for three years on a one-time basis.

9) Gradually increases the number of physicians from Mexico eligible to receive a nonrenewable three-year license from the MBC to practice under the program, with increases occurring every four years until 2041 pursuant to the following schedule:

   a) Commencing January 1, 2025, no more than an additional 95 physicians from Mexico in the program, including up to 30 psychiatrists (or 125 total physicians from Mexico, including renewed participants).

   b) Commencing January 1, 2029, no more than 145 physicians from Mexico in the program, including up to 40 psychiatrists.

   c) Commencing January 1, 2033, no more than 175 physicians from Mexico in the program, including up to 40 psychiatrists.

   d) Commencing January 1, 2037, no more than 210 physicians from Mexico in the program, including up to 40 psychiatrists.

   e) Commencing January 1, 2041, no more than 220 physicians from Mexico in the program, including up to 40 psychiatrists.

10) Requires the federally qualified health centers (FQHCs) that employ physicians from Mexico to continue the peer review protocols and procedures as required by the federal government and to work with the University of California at San Francisco School of Medicine conduct 10 secondary reviews of randomly selected visit encounters per quarter.

11) Requires the MBC to work with the community health centers that assisted in recruiting, vetting, and securing all required documents from primary sources in Mexico to participate in the former Licensed Physicians and Dentists from Mexico Pilot Program and worked in the placement of physicians in FQHCs that participated in the pilot program.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Council.

COMMENTS:

Purpose. This bill is sponsored by **Clinicas de Salud del Valle de Salinas** and the **California Primary Care Association**. According to the author:

> "Perhaps the most urgent matter confronting the health care of our state and nation is ensuring that we have an adequate supply of doctors available to serve the diversity of our state and nation's population. The shortage of physicians has only increased since 2000. AB 2860 addresses this serious structural and institutional problem by increasing the number of doctors from Mexico; the previous pilot program, in 2002, allowed them to practice in California. AB 2860 increases physicians from Mexico from 30 to 125 beginning in 2025 and increases medical providers by 30 to 40 every three years until 2041. We will have substantially more culturally, and linguistically competent doctors create access and serve patients in California. This program is the only program of its type and purpose in the nation.

UC Davis School of Medicine's 2nd annual evaluation of this program, issued in October 2023, found that the program had '…strong feedback from all, health care is more accessible, patient trust has increased, and Mexican physicians demonstrate a solid understanding of California Medical Standards.'"

Background.

Health Care Workforce Inequities. There has long been an acknowledged decline in the number of accessible primary care physicians, which has disproportionately impacted communities with concentrated populations of immigrant families and people of color. A recent study found that between 2010 and 2019, the number of primary care physicians in proportion to population remained largely unchanged nationally, and that counties with a high proportion of minorities saw a decline during that period.[1] Additionally, physicians who are accessible to immigrant communities often do not possess the linguistic or cultural competence to appropriately treat all patients. A 2018 study published by the Latino Policy & Politics Initiative at the University of California, Los Angeles found that while nearly 44 percent of the California population speaks a language other than English at home, many of the state's most commonly spoken languages are underrepresented by the physician workforce.[2]

Research cited by the California Health Care Foundation (CHCF) in its 2021 report "Health Workforce Strategies for California: A Review of the Evidence" found that while 39 percent of Californians identified as Latino/x in 2019, only 14 percent of medical school matriculants and 6 percent of active patient care physicians in California were Latino/x.[3] In February 2024, the Assembly Committee on Health held an informational hearing on diversity in California's health care workforce. The background paper for the hearing concluded that "it is well-documented that physicians from minority backgrounds are more likely to practice in Health Profession Shortage Areas and to care for minority, Medicaid, and uninsured people than their counterparts."[4]

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[7] Quintanilla, Esther. "In California, doctors from Mexico help fill the need for some patients. 'As good as any doctor.'" *Valley Public Radio*, September 28, 2023.

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Early in the implementation of the pilot program, some barriers were identified in the process through which physicians from Mexico receive approval to participate in the pilot program. As noncitizens, applicants typically would not have an individual taxpayer identification number (ITIN) or social security number (SSN), which is required by all regulatory boards, including the MBC, as a condition of receiving a license. However, applicants typically cannot apply to receive a visa and accompanying SSN without proof that they may legally work in California, which they cannot demonstrate without a license from the MBC. To resolve this issue, Assembly Bill 1395 (Garcia) was signed into law in 2023 to resolve this issue for physicians who had been unable to finalize their participation in the pilot program.

Another issue that was identified was that some physicians from Mexico were unable to practice for significant portions of the three-year period to which their license was limited due to factors outside their control. To address this issue, language was included in Senate Bill 815 (Roth), the MBC's sunset bill, to authorize an extension of a license when the physician was unable to work due to a delay in the visa application process beyond the established time line by the federal Customs and Immigration Services. The MBC was also authorized to extend a license if the physician was unable to treat patients for more than 30 days due to an ongoing condition, including pregnancy, serious illness, credentialing by health plans, or serious injury. These extensions allowed those physicians from Mexico more time to serve patients under the pilot program.

The first annual progress report on the pilot program, submitted to the Legislature by the University of California, Davis in August of 2022, found that many patients had positive experiences with physicians practicing through the pilot program. In particular, patients reportedly had substantially positive experiences communicating with their doctor, and frequently felt welcome. While the overall efficacy of the pilot program was still under review, initial reports appeared positive.

UC Davis submitted its second annual progress report on the pilot program to the Legislature in October of 2023. As stated in the report summary, the goal of the evaluation was to provide recommendations on the pilot program and opine on "whether it should be continued, expanded, altered, or terminated." The report summary concluded with a finding that the pilot program "has strong positive feedback from all. Physicians integrated seamlessly, making healthcare more accessible, and increasing patient trust. Staff reported excellent patient care processes and a supportive environment." The report further concluded that physicians in the program "demonstrated a solid understanding of California Medical Standards."

With early assessments of the pilot program producing undeniably positive findings, the original supporters of AB 1045 now believe it is appropriate to revise and expand the program from the version that was negotiated back in 2001. To begin with, the bill would extend the licenses of physicians currently participating in the pilot program by an additional three years. This will allow those physicians who have been successfully evaluated to continue serving patients and compensate for opportunities to serve patients that were lost due to the COVID-19 pandemic.

Next, this bill would revise the requirements that physicians from Mexico must meet both prior to coming to California and upon arrival. First, this bill would remove the requirement that participants in the pilot program complete a six-month externship after receiving their license. Additionally, this bill replaces the requirement that the orientation program for physicians be six months with a more general requirement that does not specify a length of time. The bill also adds training on electronic medical records systems and medical record documentation standards to the list of subjects that must be included in that orientation.

Current law also requires physicians from Mexico to enroll in adult English-as-a-second-language (ESL) classes. This bill would remove that requirement and instead require that participants complete the Test of English as a Foreign Language by scoring a minimum of 85 percent or the Occupational English Test with a minimum score of 350, and provided written documentation of their completion to the MBC.

This bill would then statutorily reestablish the program for physicians from Mexico and change its title to no longer refer to a "pilot program." The newly codified Licensed Physicians from Mexico Program would then gradually expand over the next fifteen years, with increases every four years pursuant to the following schedule:

- Commencing January 1, 2025, no more than an additional 95 physicians from Mexico in the program, including up to 30 psychiatrists (or 125 total physicians from Mexico, including renewed participants).

- Commencing January 1, 2029, no more than 145 physicians from Mexico in the program, including up to 40 psychiatrists.

- Commencing January 1, 2033, no more than 175 physicians from Mexico in the program, including up to 40 psychiatrists.

- Commencing January 1, 2037, no more than 210 physicians from Mexico in the program, including up to 40 psychiatrists.

- Commencing January 1, 2041, no more than 220 physicians from Mexico in the program, including up to 40 psychiatrists.

This bill would then reestablish the component of the prior pilot program relating to dentists from Mexico as the Licensed Dentists from Mexico Pilot Program. To date, no dentists from Mexico have been able to participate in the pilot program, with supporters of the program prioritizing physicians in the early stages of implementation. The intent of the author and sponsors of this bill is to begin the process of allowing dentists to participate in a recodified pilot program within the Dental Practice Act.

With the above provisions, among other less significant changes, the pilot program will be significantly expanded from its inceptive form under AB 1045. The primary care access crisis has only grown more apparent over the past two decades, with even greater attention afforded to the stark health care inequities in California communities. It can also be argued that there is now less instinctive skepticism of immigrant professionals than there was when AB 1045 was negotiated, particularly given the cultural and linguistic competence that providers from Mexico inherently offer. The Legislature may therefore consider it to now be the appropriate time to expand the pilot program and allow it to fulfill the vision originally conceived by its creators.

Current Related Legislation.

Assembly Bill 2864 (Garcia) would require the MBC to extend the licenses of physicians participating in the Licensed Physicians and Dentists from Mexico Pilot Program by an additional three years. *This bill is pending in this committee.*

Prior Related Legislation.

AB 1395 (Garcia, Chapter 205, Statutes of 2023) requires the MBC to issue a license to applicants for participation in the Licensed Physicians and Dentists from Mexico Pilot Program who do not currently possess federal documentation but otherwise meet the pilot program's requirements, and authorizes the MBC to extend a pilot program participant's license under certain conditions.

AB 1396 (Garcia) from 2023 was substantially similar to AB 1395. *This bill died in the Assembly Committee on Appropriations.*

AB 1045 (Firebaugh, Chapter 1157, Statutes of 2002) established the Licensed Physicians and Dentists from Mexico Pilot Program.

AB 2394 (Firebaugh, Chapter 802, Statutes of 2000) created the Task Force on Culturally and Linguistically Competent Physicians and Dentists and required its subcommittee to examine the feasibility of establishing a pilot program that would allow Mexican and Caribbean licensed physicians and dentists to practice in nonprofit community health centers in California's medically underserved areas.

ARGUMENTS IN SUPPORT:

Clinica de Salud del Valle de Salinas (CSVS) is co-sponsoring this bill. CSVS writes: "Through our active participation in the Doctors from Mexico Pilot Program, we have witnessed firsthand the profound impact that these dedicated professionals have made in our service areas. From their arrival in CY 2022 to December 2023, our physicians had a total of 81,587 patient visits. In addition to this increase in patient visits, all eleven physicians have proven to be culturally responsive to the needs of our patients. They have made our patients feel comfortable with familiar linguistic flourishes, adapting to incorporate traditional healing practices into the patient's treatment plan, and understanding their culturally specific words or beliefs about illness."

The advocacy affiliate of the **California Primary Care Association** (CPCA) is also co-sponsoring this bill, writing: "Many health centers are interested in participating and hosting eligible physicians to bring culturally and linguistically competent physicians to provide care to communities in need. As the committee well knows, the physician shortage, particularly in rural and underserved communities, is at a critical point; efforts to bring in highly trained physicians from Mexico to provide care in disenfranchised communities must be prioritized."

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:

As the program allowing for physicians from Mexico to serve patients in California clinics is intended to expand, there is a consensus that additional revenue will be needed to sustain the MBC's oversight and enforcement functions in regards to those temporarily licensed physicians. Stakeholders have therefore agreed that language should be added to the bill establishing fees that would be charged in association with the issuance of the temporary license. While the precise dollar amount needed for this fee has not yet been determined, the author has expressed a commitment to amend the bill to reflect the eventual inclusion of a specific license fee.

AMENDMENTS:

At the request of the author, amend paragraphs 4, 6, and 7 of subdivision (e) in Section 4 of the bill as follows:

(4) The federally qualified health centers employing physicians from Mexico shall continue the peer review protocols and procedures as required by the federal government. The federally qualified health centers shall work with the University of California at San Francisco (UCSF) School of Medicine to have UCSF conduct 10 secondary reviews of randomly selected visit encounters ~~per quarter~~ six-month period, and the reviews shall be transmitted to UCSF in PDF format. The secondary reviews shall be undertaken the ~~fourth, eighth, and twelfth month~~ every six months of each year for the three years that the physicians from Mexico are employed by federally qualified health centers. UCSF faculty reviewers in family medicine, pediatrics, internal medicine, and obstetrics and gynecology shall provide feedback to the federally qualified health centers of the findings of their secondary reviews. UCSF faculty and federally qualified health center chief medical officers shall jointly develop no less than two quality assurance (QA) seminars for all physicians from Mexico to attend during the ~~three~~ six months of secondary reviews conducted. The purpose of UCSF secondary peer reviews shall be to provide feedback on compliance with medical standards, protocols, and procedures required by the federal government and assessed by the monthly or quarterly peer reviews conducted by federally qualified health centers. The associated costs for the UCSF secondary reviews and QA seminars shall be the responsibility of the federally qualified health centers on a pro-rata basis.

...

(6) Participating hospitals shall have the authority to establish criteria necessary to allow individuals participating in this three-year pilot program to be granted hospital privileges in their facilities, taking into consideration the need and concerns for access to patient populations served by federally qualified health centers and attending doctors from Mexico, especially in rural areas that do not have hospitals staffed to provide deliveries of newborns.

(7) Any funding necessary for the implementation of the program and oversight functions shall be secured from donations or nonprofit ~~philanthropic entities~~ organizations. Implementation of this program shall not proceed unless appropriate funding is secured from donations or nonprofit ~~philanthropic entities~~ organizations. Notwithstanding Section 11005 of the Government Code, the board may accept funds from donations and nonprofit ~~philanthropic entities~~ organizations. The board shall, upon appropriation in the annual Budget Act, expend funds received from donations and nonprofit ~~philanthropic entities~~ organizations for this program.

REGISTERED SUPPORT:

California Primary Care Association *(Co-Sponsor)*
Clinica De Salud Del Valle De Salinas *(Co-Sponsor)*
Alameda Health Consortium - San Leandro, CA
AltaMed Health Services
Altura Centers for Health
Arroyo Vista Family Health Center
CaliforniaHealth+ Advocates
CommuniCare+OLE
Community Health Partnership
Comprehensive Community Health Centers
Dientes Community Dental
Eisner Health
El Proyecto Del Barrio
Family Health Centers of San Diego
Golden Valley Health Centers
Gracelight Community Health
Health Alliance of Northern California
Health and Life Organization (Sacramento Community Clinics)
Health Center Partners of Southern California
Lifelong Medical Care
Medical Board of California *(If Amended)*
North Coast Clinics Network
Petaluma Health Center
Redwoods Rural Health Center
Sac Health
San Benito Health Foundation
San Francisco Community Clinic Consortium
Share Our Selves
Shasta Community Health Center
South Central Family Health Center
The Children's Clinic (TCC Family Health)
West County Health Centers

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2864 (Garcia) – As Introduced February 15, 2024

SUBJECT: Licensed Physicians and Dentists from Mexico Pilot Program: extension of licenses.

SUMMARY: Requires the Medical Board of California (MBC) to extend the licenses of physicians participating in the Licensed Physicians and Dentists from Mexico Pilot Program by an additional three years.

EXISTING LAW:

1) Establishes the Medical Practice Act, which provides for the licensure and regulation of physicians and surgeons. (Business and Professions Code (BPC) §§ 2000 *et seq.*)

2) Establishes the MBC, a regulatory board within the Department of Consumer Affairs comprised of 15 appointed members. (BPC § 2001)

3) Requires all continuing medical education courses to contain curriculum that includes cultural and linguistic competency in the practice of medicine and the understanding of implicit bias. (BPC § 2190.1)

4) Establishes the Licensed Physicians and Dentists from Mexico Pilot Program, which allows up to 30 physicians from Mexico specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology to practice medicine in California. (BPC § 853(a))

5) Provides that the MBC shall issue three-year nonrenewable licenses to practice medicine to licensed Mexican physicians who are eligible to participate in the pilot program. (BPC § 853(b))

6) Requires physicians from Mexico to comply with various requirements to participate in the pilot program, including education and practice requirements. (BPC § 853(c))

7) Authorizes the MBC to extend the three-year nonrenewable license period for a physician from Mexico if, prior to January 30, 2024, the licensee was unable to practice more than 30 consecutive business days due to specified circumstances. (BPC § 853(j))

THIS BILL:

1) Requires the MBC to extend the license of a physician from Mexico issued under the Licensed Physicians and Dentists from Mexico Pilot for three years.

2) Provides that an extension of a license shall be effective when the license expires and that any licenses that have expired between January 1, 2024 and the effective date of the bill shall be extended retroactively, effective of the date the license expired.

3) Declares that it is necessary for the bill to take effect immediately in order to allow licensed physicians from Mexico to provide and maintain continuity of care of vital medical services.

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

COMMENTS:

Purpose. This bill is sponsored by **Clinicas de Salud del Valle de Salinas** and the **California Primary Care Association**. According to the author:

> "Perhaps the most urgent matter confronting the health care of our state and nation is ensuring that we have an adequate supply of doctors available to serve the diversity of our state and nation's population. The shortage of physicians has only increased since 2000. AB 2864 ensures that the doctors that are already working in clinics and are serving patients are able to remain in their positions."

Background.

Health Care Workforce Inequities. There has long been an acknowledged decline in the number of accessible primary care physicians, which has disproportionately impacted communities with concentrated populations of immigrant families and people of color. A recent study found that between 2010 and 2019, the number of primary care physicians in proportion to population remained largely unchanged nationally, and that counties with a high proportion of minorities saw a decline during that period.[1] Additionally, physicians who are accessible to immigrant communities often do not possess the linguistic or cultural competence to appropriately treat all patients. A 2018 study published by the Latino Policy & Politics Initiative at the University of California, Los Angeles found that while nearly 44 percent of the California population speaks a language other than English at home, many of the state's most commonly spoken languages are underrepresented by the physician workforce.[2]

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Physicians from Mexico finally started serving patients under the pilot program in August 2021, beginning with physicians working at San Benito Health Foundation in August 2021. Additional physicians subsequently began serving patients at CSVS in Monterey County, Altura Centers for Health in Tulare County. From January to November 2023, additional physicians from Mexico began serving patients in the Alta Med Health Corporation in Los Angeles and Orange Counties.

Early in the implementation of the pilot program, some barriers were identified in the process through which physicians from Mexico receive approval to participate in the pilot program. As noncitizens, applicants typically would not have an individual taxpayer identification number (ITIN) or social security number (SSN), which is required by all regulatory boards, including the MBC, as a condition of receiving a license. However, applicants typically cannot apply to receive a visa and accompanying SSN without proof that they may legally work in California, which they cannot demonstrate without a license from the MBC. To resolve this issue, Assembly Bill 1395 (Garcia) was signed into law in 2023 to resolve this issue for physicians who had been unable to finalize their participation in the pilot program.

Another issue that was identified was that some physicians from Mexico were unable to practice for significant portions of the three-year period to which their license was limited due to factors outside their control. To address this issue, language was included in Senate Bill 815 (Roth), the MBC's sunset bill, to authorize an extension of a license when the physician was unable to work due to a delay in the visa application process beyond the established time line by the federal Customs and Immigration Services. The MBC was also authorized to extend a license if the physician was unable to treat patients for more than 30 days due to an ongoing condition, including pregnancy, serious illness, credentialing by health plans, or serious injury. These extensions allowed those physicians from Mexico more time to serve patients under the pilot program.

The first annual progress report on the pilot program, submitted to the Legislature by the University of California, Davis in August of 2022, found that many patients had positive experiences with physicians practicing through the pilot program. In particular, patients reportedly had substantially positive experiences communicating with their doctor, and frequently felt welcome. While the overall efficacy of the pilot program was still under review, initial reports appeared positive.

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[7] Quintanilla, Esther. "In California, doctors from Mexico help fill the need for some patients. 'As good as any doctor.'" *Valley Public Radio*, September 28, 2023.

UC Davis submitted its second annual progress report on the pilot program to the Legislature in October of 2023. As stated in the report summary, the goal of the evaluation was to provide recommendations on the pilot program and opine on "whether it should be continued, expanded, altered, or terminated." The report summary concluded with a finding that the pilot program "has strong positive feedback from all. Physicians integrated seamlessly, making healthcare more accessible, and increasing patient trust. Staff reported excellent patient care processes and a supportive environment." The report further concluded that physicians in the program "demonstrated a solid understanding of California Medical Standards."

According to the author, there are currently 30 physicians from Mexico employed by federally qualified health centers (FQHCs) through the pilot program. As the three-year licenses of these physicians approach their expiration dates, doctors in the program will be unable to file for a visa extension or continue providing services. This bill would require the MBC to issue three-year extensions for all doctors under the program so that the current cohort may continue practicing.

Current Related Legislation.

AB 2860 (Garcia) would bifurcate the Licensed Physicians and Dentists from Mexico Pilot Program into the Licensed Physicians from Mexico Program and the Licensed Dentists from Mexico Pilot Program and revise and recast provisions of prior law relating to that program. *This bill is pending in this committee.*

Prior Related Legislation.

AB 1395 (Garcia, Chapter 205, Statutes of 2023) requires the MBC to issue a license to applicants for participation in the Licensed Physicians and Dentists from Mexico Pilot Program who do not currently possess federal documentation but otherwise meet the pilot program's requirements, and authorizes the MBC to extend a pilot program participant's license under certain conditions.

AB 1396 (Garcia) of 2023 was substantially similar to AB 1395. *This bill died in the Assembly Committee on Appropriations.*

AB 1045 (Firebaugh, Chapter 1157, Statutes of 2002) established the Licensed Physicians and Dentists from Mexico Pilot Program.

ARGUMENTS IN SUPPORT:

AltaMed Health Services supports this bill, writing: "By the end of the pilot, once all 30 physicians have practiced for three years each, we can anticipate the total number of encounters to be closer to 370,000, addressing a gap in care. As you can see, this innovative model has shown to be successful to date and needs to continue with AB 2864 allowing a one-time extension of the California medical license for all thirty doctors from Mexico should the employing FQHC offer another three years of employment and doctors continue to meet the required criteria."

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:

As the program allowing for physicians from Mexico to serve patients in California clinics is intended to expand through additional legislation being proposed this year, there is a consensus that additional revenue will be needed to sustain the MBC's oversight and enforcement functions in regards to those temporarily licensed physicians. Stakeholders have therefore agreed that language should be enacted establishing fees that would be charged in association with the issuance of the temporary license. While the precise dollar amount needed for this fee has not yet been determined, the author has expressed a commitment to amend the bill to reflect the eventual inclusion of a specific license fee. This bill should therefore be amended to reflect the ongoing discussion about the establishment of a fee associated with the extension of current licenses under the pilot program.

AMENDMENTS:

To provide a framework for the ultimate adoption of a fee charged by the MBC to extend the temporary licenses of participants in the pilot program, a new subdivision (d) should be added to Section 2 of the bill to read as follows:

> *(d) The fee for a three-year license extension pursuant to this section shall be ____ dollars ($____).*

REGISTERED SUPPORT:

Clinicas de Salud del Valle de Salinas *(Co-Sponsor)*
California Primary Care Association *(Co-Sponsor)*
Alameda Health Consortium - San Leandro, CA
AltaMed Health Services
Altura Centers for Health
Arroyo Vista Family Health Center
CommuniCare+OLE
Community Health Partnership
Comprehensive Community Health Centers
Dientes Community Dental
Eisner Health
El Proyecto Del Barrio
Family Health Centers of San Diego
Golden Valley Health Centers
Gracelight Community Health
Health Alliance of Northern California
Health and Life Organization (Sacramento Community Clinics)
Health Center Partners of Southern California
Lifelong Medical Care
Medical Board of California *(If Amended)*
North Coast Clinics Network
Petaluma Health Center
Redwoods Rural Health Center
Sac Health
San Benito Health Foundation
San Francisco Community Clinic Consortium

Santa Rosa Community Health
Share Our Selves
Shasta Community Health Center
South Central Family Health Center
Valley Community Healthcare
West County Health Centers

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2888 (Chen) – As Introduced February 15, 2024

SUBJECT: Cannabis: invoices: payment.

SUMMARY: Requires a commercial cannabis licensee to pay for goods and services sold or transferred by another licensee no later than 15 days after the date set in the invoice, as specified.

EXISTING LAW:

1) Regulates the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis under the Medicinal and Adult-Use Cannabis Regulation and Safety Act and establishes the Department of Cannabis Control (DCC) to administer and enforce the act. (Business and Professions Code (BPC) §§ 26000-26260)

2) Establishes 20 types of cannabis licenses, including subtypes, for cultivation, manufacturing, testing, retail, distribution, and microbusiness and requires each licensee except for testing laboratories to clearly designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)

3) Requires every sale or transport of cannabis or cannabis products from one licensee to another licensee to be recorded on a sales invoice or receipt, establishes the procedures for maintaining the invoices and transcripts, and specifies the information required in each invoice or receipt. (BPC § 26161)

4) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements and local laws and ordinances. (BPC § 26030)

5) Regulates the manufacturing, distribution, and sale of alcoholic beverages under the Alcoholic Beverage Control Act. (BPC §§ 23000-23047)

6) Requires an alcoholic beverage manufacturer who sold and delivered alcoholic beverages to a retailer and who did not receive payment for the delivery to, after 42 days from the date of delivery to charge the retailer 1 percent of the unpaid balance for the delivery on the 43rd day from date of delivery and an additional 1 percent for every 30 days thereafter. (BPC § 25509(a))

7) Requires an alcoholic beverage manufacturer who sold and delivered alcoholic beverages to a retailer and who did not receive payment in full after 30 days of the date of delivery to only sell alcoholic beverages to the retailer for cash or by advance payment until all payments are received for the delivery. (BPC § 25509(b))

8) Regulates the business of contract work relating to the modification of land and structures under the Contractors States License Law and establishes the Contractors State License Board to administer and enforce the law. (BPC § 7000–7191)

9) Requires a prime contractor or subcontractor to pay to any subcontractor, no later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the

amount owed to the subcontractor, unless there is a good faith dispute over the amount. (BPC § 7108.5(a))

10) Makes a violation of the timing requirement on the prime contractor a cause for disciplinary action and subjects the licensee to a penalty, payable to the subcontractor, of 2% of the amount due per month for every month that payment is not made. (BPC § 7108.5(b))

THIS BILL:

1) Requires a licensee to pay for goods and services sold or transferred by another licensee no later than 15 days following the final date set forth in the invoice for the cannabis products.

2) Specifies that the 15-day period commences with the day immediately following the due date of the invoice and includes all successive days, including Sundays and holidays. When the 15th day from the due date of the invoice falls on Saturday, Sunday, or a legal holiday, the expiration day is the next business day.

3) Requires a licensee who sold or transferred goods to another licensee and who has not received payment in full 15 days after the final date set forth in the invoice to report the unpaid invoice to the DCC.

4) Requires the report to include all of the following:

   a) The sale or transfer date of the cannabis products.

   b) The invoice due date.

   c) The invoice amount.

   d) The name, address, and license number of the licensee who failed to pay.

5) Requires the DCC to notify a licensee who has been reported.

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

COMMENTS:

Purpose. This bill is sponsored by the *California Cannabis Industry Association*, the *California Cannabis Manufacturers Association*, and the *Cannabis Distribution Association*. According to the author, this bill "is about fairness, both for the licensees who have played by the rules, and for Californians who agreed to a certain framework when cannabis was first legalized. This measure restores trust in an industry that has suffered because of bad-faith actors who have not held up their end of the bargain. Without ensuring timely payment, California's legal cannabis industry may never recover, this is a step towards building a marketplace that was envisioned when the Medicinal and Adult Use Cannabis Regulation and Safety Act which was passed in 2016."

Background. The Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which incorporates prior cannabis laws, authorizes a person who obtains a state license under MAUCRSA to engage in commercial adult-use cannabis activity under that license and applicable local ordinances. It is unlawful to operate a cannabis business without a license.

The Department of Cannabis Control (DCC) is the California state agency that licenses and regulates cannabis businesses. DCC regulates the:

- Growing of cannabis plants.
- Manufacture of cannabis products.
- Transportation and tracking of cannabis goods throughout the state.
- Sale of cannabis goods.
- Events where cannabis is sold or used.
- Labeling of goods sold at retail.

Retail Cannabis Credit. While commercial cannabis activity is legal at the state level, it is still not at the federal level. As a result, the legal cannabis industry does not have access to the same banking, credit, or financing options available to other industries. Instead, the cannabis industry is mostly cash-based.

According to the sponsors, cannabis businesses will instead offer goods on credit to make up for the lack of normal financing options. They also note the credit terms may be extended to 60, 90, 120, or more days for payment. However, because there is no way to verify the creditworthiness of any other cannabis licensee, licensees are at risk of becoming overleveraged, owing more debt than they can pay back.

The sponsors state that the current system has led to a "debt bubble," which may lead to a destabilization of the industry. The sponsors also note that there are "bad actors" who choose not to pay for good provided on credit.

This bill is aimed at preventing further overleveraging and non-payment by requiring licensees to pay within 15 days of the date on the invoice of cannabis products and establishing reporting and disciplinary requirements for licensees who fail to pay. The requirements are loosely based on California "tied-house" restrictions on alcohol manufacturers and the payment timelines between prime contractors and subcontractors.

Prior Related Legislation. AB 766 (Ting) of 2023, which died pending a hearing on the Assembly Appropriations Committee suspense file, was substantially similar to this bill.

ARGUMENTS IN SUPPORT:

The *California Cannabis Industry Association*, the *California Cannabis Manufacturers Association*, and the *Cannabis Distribution Association* (cosponsors) write in support:

> Unfortunately, due to the restrictive status of cannabis at the federal level, this massive consumer industry is largely cash-based and extremely capital-limited. As a result of this financial strain, cannabis sales across the supply chain are largely made on credit terms, with licensees agreeing to pay for goods and/or services at a specified later date.

However, California's cannabis industry does not have the same oversight of sales made on terms that is afforded to other, similar consumer industries. As a result, terms of sale are not honored by some cannabis businesses, with late payment of invoices being commonplace across the supply chain. In some rare instances, licensees refuse to pay invoices altogether. This "culture of nonpayment" that has emerged in California's cannabis market leaves businesses across the entire industry and supply chain – as well as ancillary businesses that support legal cannabis operators - with outstanding balances and unpaid invoices sometimes totaling hundreds of thousands of dollars. This ballooning debt bubble in the cannabis industry will only continue to grow without proper oversight, putting the entirety of the state's supply chain at risk of collapse.

Similar to other regulated industries in California, such as construction and alcohol, which have established credit laws to ensure timely payments, AB 2888 seeks to provide similar protections for California's cannabis industry. By setting maximum terms for payment and empowering the Department of Cannabis Control (DCC) to enforce compliance, this bill aims to facilitate a more secure and transparent flow of good and payment across the supply chain. Other regulated cannabis markets have begun to address the issue of outstanding debts and timely payment, including New York's Office of Cannabis Management (OCM) and Colorado's Marijuana Enforcement Division (MED). California's cannabis licensees deserve similar oversight and protection to ensure a timely flow of goods and payment across the supply chain.

Without such protections, the state's cannabis industry faces continued financial uncertainty as the debt burden escalates.

ARGUMENTS IN OPPOSITION:

None on file

POLICY ISSUES FOR CONSIDERATION:

Tied-House Restrictions. This bill is loosely based on alcohol tied-house restrictions. A tied-house is an alcohol retailer or drinking establishment that has an exclusive contract with a brewery. However, tied-house restrictions were not designed to protect the market from overleveraged retailers but to segregate the market and make it more difficult to sell alcohol.

AMENDMENTS:

To clarify that minor or first-time violations do not necessarily lead to formal disciplinary action against a license, amend the bill as follows:

On page 3, after line 4:

(2) The department shall ~~commence a~~ *issue a notice of warning or, in its discretion, issue a citation or take* disciplinary action in accordance with Chapter 3 (commencing with Section 26030) against a licensee reported pursuant to subdivision (b) if the licensee fails to pay the outstanding invoice in full by 30 days after the department notified the licensee pursuant to paragraph (1).

REGISTERED SUPPORT:

California Cannabis Industry Association (cosponsor)
California Cannabis Manufacturers Association (cosponsor)
Cannabis Distribution Association (cosponsor)
Kiva Confections

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3063 (McKinnor) – As Introduced February 16, 2024

SUBJECT: Pharmacies: compounding.

SUMMARY: Exempts the addition of flavoring agents to a drug from the state's requirement that such actions comply with pharmacy compounding standards set under the United States Pharmacopeia-National Formulary (USP), until January 1, 2030.

EXISTING LAW:

1) Establishes the Pharmacy Law. (Business and Professions Code (BPC) §§ 4000 *et seq.*)

2) Establishes the California State Board of Pharmacy (BOP) to administer and enforce the Pharmacy Law, comprised of seven pharmacists and six public members. (BPC § 4002)

3) Provides that protection of the public shall be the highest priority for the BOP in exercising its licensing, regulatory, and disciplinary functions. (BPC § 4001.1)

4) Authorizes the BOP to adopt rules and regulations as may be necessary for the protection of the public. (BPC § 4005)

5) Defines "outsourcing facility" as a facility that is engaged in the compounding of sterile drugs and nonsterile drugs in California and is both registered with the Food and Drug Administration (FDA) and licensed by the BOP. (BPC § 4034)

6) Defines "pharmacy" as an area, place, or premises licensed by the BOP in which the profession of pharmacy is practiced and where prescriptions are compounded. (BPC § 4037)

7) Defines "pharmacist" as a natural person to whom a license has been issued by the BOP which is required for any person to manufacture, compound, furnish, sell, or dispense a dangerous drug or dangerous device, or to dispense or compound a prescription. (BPC § 4036; BPC § 4051)

8) Requires persons seeking to conduct a pharmacy in California to obtain a license from the BOP and requires applications for renewal of a pharmacy license to include notification to the BOP regarding compounding practices, including compounded human drug preparations distributed outside of the state. (BPC § 4110)

9) Requires each pharmacy to designate a pharmacist-in-charge, subject to approval by the BOP, who is responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy. (BPC § 4113)

10) Requires pharmacies that contract to compound a drug for parenteral therapy to report that contractual arrangement to the BOP within 30 days of commencing the compounding. (BPC § 4123)

11) Requires every pharmacy to establish a quality assurance program that documents medication errors attributable to the pharmacy or its personnel. (BPC § 4125)

12) Provides that the compounding of drug preparations by a pharmacy for furnishing, distribution, or use in California shall be consistent with standards established in the pharmacy compounding chapters of the current version of the USP National Formulary, including relevant testing and quality assurance; authorizes the BOP to adopt regulations to impose additional standards for compounding drug preparations. (BPC § 4126.8)

13) Requires a pharmacy that issues a recall notice regarding a nonsterile compounded drug product to contact the recipient pharmacy, prescriber, or patient of the recalled drug and the board within 12 hours of the recall notice under specified circumstances. (BPC § 4126.9)

14) Authorizes a pharmacy to distribute compounded human drug preparations interstate if specified conditions are met. (BPC § 4126.10)

15) Requires clinics to retain a consulting pharmacist to approve policies and procedures and to certify in writing quarterly that the clinic is, or is not, operating in compliance with the requirements of the Pharmacy Law. (BPC § 4192)

16) Provides that the BOP shall take action against any licensee who is guilty of unprofessional conduct, with various specific examples provided. (BPC § 4301)

17) Subjects a licensed pharmacist to formal discipline for unprofessional conduct that includes acts or omissions that involve the following:

    a) Inappropriate exercise of their education, training, or experience as a pharmacist.

    b) The failure to exercise or implement their best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or the provision of services.

    c) The failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

    d) The failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

    (BPC § 4306.5)

THIS BILL:

1) Exempts reconstitution of a drug pursuant to a manufacturer's directions, the sole act of tablet splitting or crushing, capsule opening, or the addition of a flavoring agent to enhance palatability from the definition of "compounding."

2) Requires a pharmacy to retain documentation that a flavoring agent was added to a prescription and to make that documentation available to the BOP, or an agent of the board, upon request.

3) Repeals these changes and reverts to prior law on January 1, 2030.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author:

> "Flavoring for children's medications has been available in pharmacies across California for decades. It's one of the most effective tools available to reduce stress around medicine-time and increase medication adherence. It is estimated that over 6 million medications have been flavored in California and 200 million across the country over the past 25 years, without incident. However, because of an unforeseen consequence of AB 973 (Irwin, 2019), the Board of Pharmacy adopted regulations requiring community pharmacies to adopt over 80 new rules and regulations just to continue adding flavor to kid's medicine. As a result, over 3,000 pharmacies ceased to offer flavoring overnight. Now, only approximately 30 pharmacies in the entire state provide this critical service. AB 3063 rectifies this deficiency by clarifying that adding flavoring to medications does not constitute compounding, thus ensuring continued access to flavored medications and promoting better medication adherence and health outcomes."

Background.

According to the FDA, drug compounding is generally described as the process of combining, mixing, or altering ingredients to create a medication tailored to the needs of an individual patient. Combining two or more drugs is a form of compounding, as is the reconstitution of a drug into another ingestible form. Compounded drugs are not approved by the FDA for safety or effectiveness.

Pharmacy professionals who engage in the practice of drug compounding are required to obtain a license from the BOP. However, prior to 2020, there were no state laws that specifically outline requirements for the compounding of prescription drugs. Partially in response to a multistate outbreak of fungal meningitis for which the unsafe compounding of a preservative-free steroid injection resulted in numerous deaths, the BOP sponsored legislation in 2019 to provide that compounding in California must be performed consistent with consistent with standards established in the pharmacy compounding chapters of the current version of the USP.

The United States Pharmacopeia-National Formulary is a combination of two compendia published by two longstanding nonprofits: the USP, published by the United States Pharmacopeial Convention; and the National Formulary, published by the American Pharmaceutical Association. As the FDA's officially designated compendium, the USP sets numerous standards for drug ingredients and manufacturing processes, including testing and quality assurance. Generally speaking, drug products and ingredients sold in the United States must conform to the USP to be considered unadulterated and of minimum quality.

Several years after the enactment of the 2019 legislation, concerns emerged that USP standards for compounding would apply to the addition of flavoring to medication. USP General Chapter 795 sets minimum standards for preparing compounded nonsterile preparations. These standards include minimum personnel qualifications, personal hygiene and garbing requirements, and cleaning and sanitizing protocols.

For purposes of its General Chapter 795, the USP defines nonsterile compounding as "combining, admixing, diluting, pooling, reconstituting other than as provided in the manufacturer's labeling, or otherwise altering a drug product or bulk drug substance to create a nonsterile preparation." The USP has published a position statement affirming that it has considered the flavoring of conventionally manufactured medications to be within the scope of General Chapter 795 since 2004. In formal commentary published in November 2022, the USP responded to a comment indicating that the addition of flavoring agents should not be required to meet nonsterile compounding requirements with the following statement:

> "Flavorings are organic chemicals with reactive functional groups including acids, alcohols, aldehydes, amides, amines, esters, ketones, and lactams. Flavorings are not always labeled with their full ingredients and may contain solvents. Minor components in a flavoring system can impact the stability of a CNSP. Impacts on stability can lead to degradation, production of harmful impurities, and/or reduced bioavailability. Flavorings can impact levels of impurities while having no impact on assay values."

The FDA has not officially issued guidance relating to the question of whether adding flavoring constitutes compounding. However, correspondence between the FDA and the BOP confirmed that "the addition of a flavoring by a pharmacy to a drug generally would be considered compounding" but that "if the labeling for an FDA-approved drug includes directions to do so, adding flavoring to the drug in accordance with these directions would not be considered compounding." This would indicate that the addition of flavoring does *not* need to comply with General Chapter 795 if directions for flavoring were included on an FDA-approved drug label.

While the USP and the FDA have considered the most cases of adding flavoring to constitute compounding since years before the enactment of the 2019 legislation, the BOP's regulations previously exempted addition of flavors. Specifically, the BOP's regulations have stated:

> "'Compounding' does not include reconstitution of a drug pursuant to a manufacturer's direction(s), nor does it include the sole act of tablet splitting or crushing, capsule opening, or the addition of flavoring agent(s) to enhance palatability."[1]

Because the BOP's regulations would seemingly be out of compliance with the USP, the BOP has taken steps to reconcile its regulations and remove the above exemptions. This has caused concerns amongst stakeholders that many pharmacies who do not wish to comply with the USP General Chapter 795 standards will cease to engage in the addition of flavoring. As a result, this bill has been introduced to statutorily restore the exemption for flavoring for purposes of California, notwithstanding the provisions of the USP. The bill would codify the language currently contained in regulations and effectively authorize specified noncompliance with the USP in state compounding requirements.

The author and supporters believe that this bill will ensure that children and other vulnerable patients are able to take needed medication that would not otherwise be palatable. This is due to a perception that many pharmacies would be reluctant to engage in flavoring if they were required to comply with stricter compounding requirements. The author contends that this exemption will not pose any increased risk to patients but would merely preserve a status quo that existed prior to 2019.

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[1] Cal. Code Regs. Tit. 16, § 1735

The author of this measure introduced a substantially similar bill in 2023 that was passed by the Legislature but subsequently vetoed by the Governor. In his veto message, the Governor stated that while he "appreciate[d] the author's intention to maintain the current availability of flavored medication, this bill would create standards for California that do not meet the United States Pharmacopeia-National Formulary's guidelines regarding compounding that have been put in place to minimize patients' risk of harm." The Governor's veto message raised the concern that making exceptions to federal guidelines "would pose a risk to consumers."

The Governor's veto message was consistent with arguments made against the prior bill by the BOP, which had previously sponsored the 2019 legislation that set baseline standards in California for nonsterile compounding to align with what federal agencies require under the USP. Because the BOP regularly enforces both state as well as federal laws as part of its public protection mission, concerns were raised that deliberately creating a misalignment for flavoring would cause confusion amongst pharmacy professionals and frustrate the BOP's efforts to enforce clearly delineated requirements.

Notwithstanding the BOP's concerns, there has not been strong evidence that patients were harmed at a higher rate prior to 2019 when flavoring was exempted from the definition of compounding. Similarly, no evidence has been presented of harm in other states, where the overwhelming majority of jurisdictions allow a full or limited exemption for flavoring in their laws governing pharmacy compounding. The current proposal includes a sunset date for the exemption, which would allow the Legislature to reevaluate its appropriateness if evidence of harm does arise. However, given the Governor's veto of similar legislation, the author and supporters should continue to engage in dialogue with the administration to ensure that any outstanding policy issues have been resolved prior to its ultimate passage by the Legislature.

Prior Related Legislation.

AB 782 (McKinnor) of 2023 was substantially similar to this measure. *This bill was vetoed by the Governor.*

AB 973 (Irwin, Chapter 184, Statutes of 2020) requires compounding to comply with the USP.

ARGUMENTS IN SUPPORT:

The **California Community Pharmacy Coalition** (CPPC) writes in support of this bill: "California's community pharmacies provide a simple and safe service to flavor medications for their patients who may otherwise not be able to take the medication they need, especially for parents with small children. Without this bill, this new regulation by the California State Board of Pharmacy will remove this essential service that pharmacists all over the state—including in rural, hard to reach and underserved areas—can offer sick children and worried parents alike."

ARGUMENTS IN OPPOSITION:

The **California State Board of Pharmacy** opposes this bill, writing: "As a consumer protection agency, the Board is concerned that the measure places patients and licensees at risk, as the measure would create conflicts between state and federal law and runs contrary to national standards established by United States Pharmacopeia (USP)." The Board argues that "the approach taken in Assembly Bill 3063 places consumers at risk and runs afoul of national standards and state and federal law."

REGISTERED SUPPORT:

Association of California Healthcare Districts
Association of Regional Center Agencies
California Coalition for Children's Safety and Health
California Community Pharmacy Coalition
Children's Specialty Care Coalition
Jordan's Guardian Angels
Maxim Healthcare Services
The Arc & United Cerebral Palsy California Collaboration

REGISTERED OPPOSITION:

California State Board of Pharmacy

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301