California State Assembly

BUSINESS AND PROFESSIONS

AGENDA

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

BILLS HEARD IN FILE ORDER

1.	AB 1902*	Alanis	Prescription drug labels: accessibility.
2.	AB 1988*	Muratsuchi	Stray animals: availability for adoption or release.
3.	AB 2133	Kalra	Veterinary medicine: registered veterinary technicians.
4.	AB 2166*	Weber	Barbering and cosmetology: hair types and textures.
5.	AB 2223	Aguiar-Curry	Cannabis: industrial hemp.
6.	AB 2228	Villapudua	Collateral recovery: notice and disclosure.
7.	AB 2270	Maienschein	Healing arts: continuing education: menopausal mental or physical health.
8.	AB 2581	Maienschein	Healing arts: continuing education: maternal mental health.
9.	AB 2442	Zbur	Healing arts: expedited licensure process: gender-affirming health care and gender-affirming mental health care.
10.	AB 2444	Lee	Barbering and cosmetology: licensees: manicurists.
11.	AB 2496*	Low	Dentistry: oral conscious sedation.
12.	AB 3119*	Low	Physicians and surgeons: continuing medical education: Long COVID.
~~13.~~	~~AB 2862~~	~~Gipson~~	~~Licenses: African American applicants.~~
14.	AB 3097	Chen	Radiologist assistants.

*Proposed for Consent

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1902 (Alanis) – As Amended March 12, 2024

SUBJECT: Prescription drug labels: accessibility.

SUMMARY: Requires pharmacies to, upon being informed that a patient identifies as being blind, having low-vision, or being otherwise print-disabled, provide the person, at no additional cost, an appropriately accessible prescription label.

EXISTING LAW:

1) Regulates the practice of pharmacy under the Pharmacy Law. (Business and Professions Code §§ 4000-4427.8)

2) Establishes the Board of Pharmacy (BOP) until January 1, 2026, to administer and enforce the Pharmacy Law. (BPC § 4001)

3) Defines "dispense" as the furnishing of drugs or devices (1) upon a prescription or upon an order to furnish drugs or transmit a prescription or (2) directly to a patient. (BPC § 4024)

4) Requires a dispenser to, upon the request of a patient or patient's representative, provide translated directions for use, which must be printed on the prescription container, label, or a supplemental document. If translated directions for use appear on a prescription container or label, the English-language version of the directions for use must also appear on the container or label, whenever possible, and may appear on other areas of the label outside the patient-centered area. When it is not possible for the English-language directions for use to appear on the container or label, it must be provided on a supplemental document. (BPC § 4076.6(a))

5) Authorizes a dispenser to use translations made available by the BOP to comply with the translation requirement. (BPC § 4076.6(b))

6) Specifies that a dispenser is not required to provide translated directions for use beyond the languages that the BOP has made available or beyond the directions that the BOP has made available in translated form. (BPC § 4076.6(c))

7) Authorizes a dispenser to provide their own translated directions to comply with the translation requirement and specifies that nothing prohibits a dispenser from providing translated directions for use in languages beyond those that the BOP has made available or beyond the directions that the BOP has made available in translated form. (BPC § 4076.6(d))

8) Makes a dispenser responsible for the accuracy of the English-language directions for use provided to the patient. (BPC § 4076.6(e))

9) Exempts veterinarian dispensers from the translation requirement. (BPC § 4076.6(f))

THIS BILL:

1) Clarifies that a dispenser must at a minimum provide translated directions in the languages the BOP has made available.

2) Requires a dispenser to, if a person informs a pharmacy that the person identifies as a person who is blind, has low-vision, or is otherwise print disabled, provide to the person, at no additional cost, an accessible prescription label affixed to the container that is all of the following:

    a) Available to the person comparable to other patients and lasting for at least the duration of the prescription.

    b) Appropriate to the disability and language of the requesting person through the use of audible, large print, Braille, or the translated directions required under existing law.

    c) Conforms to the format-specific best practices established by the United States Access Board and the National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care, also referred to as the National CLAS Standards.

3) Requires a dispenser to ensure that the prescription label is compatible with the prescription reader if a reader is provided.

4) Exempts prescription drugs dispensed and administered by an institutional pharmacy or correctional institution except when providing prescription drugs to a person with a disability for use by the individual upon their release from the health care facility.

5) Exempts veterinarians from this bill.

6) Requires the BOP to promulgate regulations necessary to implement this bill.

7) Defines "institutional pharmacy" as a pharmacy that is part of, or is operated in conjunction with, a health care facility, as defined under existing law.

8) Defines "prescription reader" as a device that is designed to audibly convey the information contained on the label of a prescription drug.

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

COMMENTS:

Purpose. This bill is sponsored by the *California Council of the Blind*. According to the author, this bill "is a long overdue bill that would make a significant impact on those who are blind or have low vision. This bill improves accessibility and equity within the healthcare space by improving blind and low-vision patients' ability to take medications independently and access instructions that can prevent severe medical emergencies from unplanned drug interactions."

Background. Patients who cannot read the labels or directions for their medications risk taking the wrong ones, taking the wrong amounts, or taking them under the wrong circumstances. As a result, existing law requires all dispensers, who may be a licensed pharmacist or other healing arts licensees who dispense medication, to provide translations upon request.

Specifically, dispensers are required to provide the translations made available by the BOP or may provide their own translations, although they are not required to provide translations in languages that are not made available by the BOP. The BOP has translated directions into Spanish, Vietnamese, Korean, Russian, and Chinese.

This bill would expand the requirements to also include patients who are blind, have low vision, or are otherwise print-disabled. It would also include the prescription label itself, in addition to the directions. Without being able to read the label, patients are exposed to additional risks, including taking expired medications, being unable to refill their medications on time, or being unable to detect pharmacy errors.

California Vision Loss Statistics. The Centers for Disease Control and Prevention maintains a Vision and Eye Health Surveillance System (VEHSS), which tracks vision loss, eye disorders, and eye care services in the United States. The most recent VEHSS estimates (accessed April 3, 2024) suggest that in California in 2017, about 948,880 residents were experiencing some form of vision loss (a crude prevalence rate of 2.04% among 39,536,653 total residents), while 106,749 residents were experiencing legal blindness (a crude prevalence rate of 0.27%).

Federal Recommendations. In 2012, the Food and Drug Administration Safety and Innovation Act required the United States Access Board, an independent federal agency that promotes accessibility for people with disabilities, to convene a stakeholder working group to develop best practices for making information on prescription drug container labels accessible to people who are blind or visually impaired. As a result, the Access Board formed the Working Group on Accessible Prescription Drug Container Labels. In 2013, the group submitted its best practice recommendations for pharmacies to provide accessible prescription drug container labels.

The following are the best pharmacy practices the group recommended for access to prescription drug container label information in all formats, including audible, braille, and large print labels:

1) Encourage patients and patient representatives to communicate their needs to pharmacists, including: advertising a local or a toll-free telephone number to promote communication between patients and pharmacists; if available, pharmacy websites and applications are made available to patients, ensure website and app accessibility; and when a pharmacist observes a patient or patient representative having reading difficulty, offer education and counseling in a setting that maintains patient privacy.

2) Follow universal patient-centered prescription drug container label standards.

3) Make available options for accessible prescription drug container labels in audible, braille, and large print formats via methods using, for example, hard copy, dedicated devices, and computers or smart devices.

4) Explain to the patient the available accessible format options, and provide the prescription drug container label in the format option selected by the patient.

5) Ensure that duplicate accessible labels preserve the integrity of the print prescription drug container label.

6) Subject accessible prescription drug container labels to the same quality control processes used for print labels to ensure accuracy and patient safety.

7) Maintain patient privacy in accordance with the Health Insurance Portability and Accountability Act (HIPAA) rules when preparing accessible prescription drug container labels, e.g., record audible labels in a location where patient information cannot be overheard by unauthorized persons.

8) In advance, make arrangements to provide accessible prescription drug container labels. For example, maintain a sufficient inventory of supplies necessary to support the timely provision of prescription drug container labels in accessible label formats.

9) Provide prescription medication with an accessible prescription drug label within the time frame the same prescription would be provided to patients without visual impairments.

10) Do not impose a surcharge or extra fee to an individual to cover the cost of providing an accessible drug container label and equipment dedicated for prescription drug container label access.

11) Ensure the durability of accessible label format options until the expiration date specified on the prescription drug container label.

12) Select a container that best supports the type of accessible label provided.

13) Ensure that all required information contained on the print prescription drug container label is provided on the accessible label in the same sequence as the print label.

14) Include the information on warning labels that is added at the pharmacist's discretion in the accessible labels.

This bill specifically codifies recommendations 3), 4), 9), 10), and 11). It also includes all of the format-specific recommendations, as well as the format-specific recommendations established by the National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care, which "are a set of 15 action steps intended to advance health equity, improve quality, and help eliminate health care disparities by providing a blueprint for individuals and health and health care organizations to implement culturally and linguistically appropriate services."

Barriers to Adoption of Best Practices. The Food and Drug Administration Safety and Innovation Act also required the Government Accountability Office (GAO) to conduct a review to assess the extent to which pharmacies are implementing the best practices and to determine whether barriers to prescription drug labels remain. The report was completed in 2016, noting among other things that, "Stakeholders GAO contacted identified four key challenges that pharmacies faced in providing accessible labels or implementing the best practices: (1) lack of awareness of the best practices; (2) low demand and high costs for providing accessible labels; (3) technical challenges for providing these labels; and (4) an absence of requirements to implement the best practices. Many stakeholders identified greater dissemination of the best practices as a step, among others, that could help address some of these challenges."

Prior Related Legislation. AB 1073 (Ting), Chapter 784, Statutes of 2015, established the requirement that a dispenser provide translated prescription directions to patients.

ARGUMENTS IN SUPPORT:

The *California Council for the Blind* (sponsor) writes in support:

> As a long-time leader in promoting accessible healthcare, it is urgent that California implement this legislation. Nevada and Oregon, pursuant to legislation, and Washington, pursuant to administrative action, are already implementing similar requirements.
>
> Medical dosage errors have become a serious issue for people with print disabilities and those who are not proficient in English. This is especially true of persons with vision or cognitive disabilities, large numbers of whom are over the age of 60. Based on the California Department of Finance (DOF) population projections, the numbers of Californians in this age group are growing. According to the Centers for Disease Control (CDC). People with print disabilities are more likely to be low-income and be in underserved minority populations, as are those who are not English proficient. Thus, [this bill] would significantly impact the problem of medical dosing errors.
>
> Moreover, there are several means to deliver accessible prescription drug directions, including hard copy braille and large print, Digital Voice and Text-to-Speech Recorder, Radio Frequency Identification Device (RFID), and other dedicated equipment like smart devices and computers. Access to drug labeling information can mean the difference between moving to, or remaining in, an institutionalized setting, as opposed to remaining in one's own home or community. [This bill] will save lives, prevent serious illness, and further the goal of enabling people to live independently.

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

California Council of the Blind (sponsor)
AARP
California Academy of Child and Adolescent Psychiatry
California Alliance for Retired Americans
Californians for SSI
Disability Rights California
Educate. Advocate.
LeadingAge California
Western Center on Law & Poverty

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1988 (Muratsuchi) – As Introduced January 30, 2024

SUBJECT: Stray animals: availability for adoption or release.

SUMMARY: Authorizes 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.

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 et. seq.; §§ 31751 et seq.; §§ 32000 et seq.)

2) Mandates that no public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall sell or give away to a new owner any dog or cat that has not been spayed or neutered, subject to certain exceptions. (FAC § 30503(a)); FAC § 31751.3).

3) Clarifies that each member of a litter of puppies or kittens, weaned or unweaned, shall be treated as an individual animal. (FAC § 30504; FAC § 31751)

4) Mandates that an animal shelter shall not charge an adoption fee to an individual with a veteran's status on their current and valid identification, and allows shelters to limit these no-cost adoptions to one dog and one cat every six months. (FAC § 30505; FAC § 31751.4)

5) Authorizes animal shelters within counties that have a population of less than 100,000 people to transfer a dog that has not been spayed or neutered to a new owner, only if the shelter:

   a) Requires a written agreement, executed by the recipient, acknowledging the dog is not spayed or neutered and the recipient agrees to be responsible for ensuring the dog will be spayed or neutered within 30 business days after signing.

   b) Receives a sterilization deposit of not less than forty dollars ($40) and not more than seventy-five dollars ($75), the terms of which are part of the written agreement executed by the recipient.

   (FAC § 30520(d))

6) Authorizes county boards of supervisors to provide for the issuance of serially numbered metallic dog licenses, which shall be stamped with the name of the county and year of issue, among other things. (FAC § 30801)

7) Establishes various fines imposed against the owner of a nonspayed or unneutered dog or cat that is impounded by a local animal shelter, society for the prevention of cruelty to animals,

or humane society, and authorizes animal control officers, peace officers, or any other agency authorized to enforce the penal code to write citations with outlined civil penalties. (FAC § 30804.7; FAC § 31751.7)

8) Makes it unlawful for any person to own, harbor, or keep any dog older than four months unless the dog has a collar attached to it fastened with either:

   a) A metallic tag which gives the name and post office address of the owner, or

   b) A serially numbered metallic license tag issued by the local authority.

   (FAC § 30951)

9) Establishes that dog found running at large without an identification or dog license tag may be seized and impounded by any peace officer. (FAC § 31101)

10) Mandates that county boards of supervisors shall provide for:

   a) The taking up and impounding of all dogs which are found running at large in violation of any provision of this division.

   b) The killing in some humane manner or other disposition of any dog which is impounded.

   (FAC § 31105)

11) Authorizes county boards of supervisors to contract with any humane society or other organization or association for purposes of carrying out the requirement to take up, impound, and humanely euthanizing stray dogs. (FAC § 31106)

12) Establishes a holding period of six days for stray dogs or cats impounded by county shelters, with certain exceptions, and provides that the first three days shall be for purposes of owner redemption. (FAC § 31108(a); FAC § 31752(a)(b))

13) Mandates that a public shelter shall release any stray dog or cat to a nonprofit, animal rescue, or adoption organization prior to euthanasia if requested by the organization. (FAC § 31108(b)(1); FAC § 31752(c)(1))

14) Clarifies that unowned puppies or kittens aged 8 weeks or younger may be made immediately available for adoption or release to a nonprofit, animal rescue, or adoption organization. (FAC §31108(b)(2); 31752(c)(2))

15) Clarifies that puppies or kittens relinquished to public or private shelters by their purported owner may be made immediately available for adoption. (FAC § 31754)

THIS BILL:

1) Clarifies that puppies or kittens relinquished by their owner to a public or private animal shelter may be immediately released to a nonprofit, animal rescue or animal adoption organization.

2) Makes other technical, nonsubstantive changes to current statute.

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

COMMENTS:

Purpose. This bill is sponsored by the **American Society for the Prevention of Cruelty to Animals (ASPCA)**. According to the author:

> "As Californians, we must continue to work with our animal rescue and adoption partners to ensure that kittens and puppies get out of shelters as quickly as possible and have a better chance at finding their forever homes and families."

Background.

In 1966, the United States Congress enacted the Animal Welfare Act (AWA) to provide standards on the humane handling, care, and treatment of animals. Enforced by the United States Department of Agriculture (USDA), the AWA regulates animal rights in various settings, including scientific research, public exhibitions, or transportation. In addition, California is home to a number of animal protection laws intended to further safeguard the wellbeing and life of animals in various settings. These include the Polanco-Lockyer Pet Breeder Warranty Act, which outlines requirements for dog breeders to raise dogs and puppies in humane conditions, and provides purchasers with refund or reimbursement remedies should an animal be sick or ill due to improper breeding practices. Similarly, laws like the Lockyer-Polanco-Farr Pet Protection Act establishes animal welfare and consumer protection requirements on pet dealers and the animals they sell.

As it pertains to adoptable animals in shelters, rescues, and other nonprofit organizations, California has made efforts to reduce the amount of animals euthanized and streamline administrative overhead in order to aid shelters in getting more animals into new homes. In 1998, the Legislature enacted Senate Bill 1785 by Senator Tom Hayden – often dubbed the "Hayden Act" or "Hayden's Law" - which formally 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" and "that no treatable animal should be euthanized." The Hayden Law required shelters to hold animals for a minimum of four to six days before euthanizing them, giving owners a chance to reclaim their pets or allowing animals to be adopted. In addition, the Hayden Law required shelters to surrender any stray dog or cat to a rescue or IRS 501(c)3 nonprofit organization prior to their euthanasia should such an organization request the animal.

Subsequent legal and fiscal challenges in the years following its passage have made the Hayden Law difficult to implement effectively. A decision from the Commission on State Mandates in 2000 clarified that certain provisions in Hayden's Law, such as the requirement to hold stray animals for upwards of six days before euthanasia, resulted in mandates costs incurred by local jurisdictions and were thus reimbursable by the state. Since 2009, the state has not provided funding for Hayden's Law-related reimbursements in the budget, and as a result many provisions contained in Hayden's Law have not been in effect.

In light of this legal status quo, the Legislature has made efforts in recent years to reduce barriers to adoption and lower euthanasia rates in shelters. Legislation passed in 2000 (AB 2754, House, Ch. 567, Sec. 7.5, Stats. of 2000) further refined requirements around holding periods and impoundment of stray animals, including making clear that any puppy or kitten surrendered to a shelter by the owner could be made immediately available for adoption without the need of a

holding period. AB 2791 (Muratsuchi, Ch. 194, Stats. of 2018) further clarified that stray puppies and kittens – specifically as those aged 8 weeks or younger - could be immediately surrendered to nonprofit rescue groups. The following year, Assemblymember Quirk further clarified that stray puppies and kittens may also be made immediately available for adoption with the passage of AB 1565 (Ch. 8, Stats. of 2019).

Nevertheless, gaps in current law exist that make it difficult for shelters and rescue organizations to facilitate the surrender of animals in need. Specifically, the sponsors note that lack of clarity in current law surrounding whether puppies and kittens *surrendered by their owner* can be immediately *transferred to a rescue* (rather than made available for adoption). This confusion led to delays in facilitating transfers from county shelters. As such, this bill seeks to grant public shelters the clear, express authority to transfer puppies and kittens surrendered by their owner to animal rescue organizations and nonprofits.

Current Related Legislation.

AB 2012 (Lee) would require the 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. *This bill was unanimously supported in this committee.*

AB 2133 (Kalra) would authorize registered veterinary technicians to perform cat neuter surgery, subject to specified conditions. *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 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 in this committee.*

AB 2954 (Wendy Carrillo) would prohibit a person from performing a surgical claw removal, declawing, or a tendonectomy on any cat, or otherwise altering the cat's paws to impair functionality, except for therapeutic purposes. *This bill is pending in this committee.*

SB 1358 (Nguyen) 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 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 in the Senate Business, Professions and Economic Development 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 in the Senate Business, Professions and Economic Development Committee.*

Prior Related Legislation.

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 1565 (Quirk) Chapter 8, Statutes of 2019, permitted a puppy or kitten that is reasonably believed to be unowned and is impounded in a shelter to be immediately made available for adoption.

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, Statutes of 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 the **American Society for the Prevention of Cruelty to Animals (ASPCA).** According to ASPCA: "[This bill] is a straightforward bill that fixes this discrepancy, clarifying that, as with puppies and kittens turned in as strays under eight weeks of age, puppies and kittens surrendered by their owner may be immediately released to a trusted rescue partner to be adopted."

This bill is supported by the **California Animal Welfare Association (CalAnimals)**. According to CalAnimals: "Any barrier to moving adoptable animals through the shelter process and, as appropriate, to available rescue partners as quickly as possible has the potential for harm, no matter how small that barrier may appear… This bill will help, even if in a small way, ensure that precious shelter space is available when needed."

REGISTERED SUPPORT:

American Society for the Prevention of Cruelty to Animals (ASPCA) *(sponsor)*
California Animal Welfare Association
San Diego Humane Society and SPCA
San Francisco SPCA
Social Compassion in Legislation

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2133 (Kalra) – As Introduced February 6, 2024

SUBJECT: Veterinary medicine: registered veterinary technicians.

SUMMARY: This bill would authorize a registered veterinary technician (RVT) to perform cat neuter surgery, subject to certain conditions.

EXISTING LAW:

1) Provides for the regulation of veterinary medicine under the Veterinary Medicine Practice Act (Act) and prohibits the practice unlicensed of veterinary medicine. (Business and Professions Code (BPC) §§ 4800-4917)

2) Establishes the Veterinary Medical Board (VMB) within the Department of Consumer Affairs (DCA) to license and regulate the veterinary medicine profession. (BPC § 4800)

3) Declares it is unlawful to practice veterinary medicine in California unless the individual holds a valid, unexpired, and unrevoked license issued by the VMB. (BPC § 4825)

4) Provides that an individual practices veterinary medicine, surgery, and dentistry, and the various branches thereof, when the practitioner does any one of the following:

    a. Represents oneself as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry in any of its branches.

    b. Diagnoses or prescribes a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals.

    c. Administers a drug, medicine, appliance, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals, as specified.

    d. Performs a surgical or dental operation upon an animal.

    e. Performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock or Equidae.

    f. Collects blood from an animal for the purpose of transferring or selling that blood and blood component products to a licensed veterinarian at a registered premise, as specified.

    g. Uses any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry, as specified.

    (BPC § 4826)

5) Permits a veterinarian to authorize an RVT to act as an agent of the veterinarian for the purpose of establishing the veterinarian-client-patient relationship to administer preventive or prophylactic vaccines or medications for the control or eradication of apparent or anticipated internal or external parasites, subject to certain conditions, including:

    a. Vaccines must be administered in a registered veterinary premises at which the veterinarian is physically present.

    b. If working at a location other than a registered veterinary premises, the veterinarian is in the general vicinity or available by telephone and is quickly and easily available. The RVT shall have necessary equipment and drugs to provide immediate emergency care.

    c. The RVT examines the animal patient and administers vaccines in accordance with written protocols and procedures established by the veterinarian.

    d. The veterinarian and RVT sign and date a statement containing an assumption of risk by the veterinarian for all acts of the RVT related to patient examination and administration of vaccines, short of willful acts of animal cruelty, gross negligence, or gross unprofessional conduct on behalf of the RVT.

    e. The veterinarian and RVT sign and date a statement containing authorization for the RVT to act as an agent of the veterinarian until such date as the veterinarian terminates authorization.

    f. Before the RVT examines or administers vaccines to the animal patient, the RVT informs the client orally or in writing that they are acting as an agent of the veterinarian.

    g. Signed statements between the veterinarian and RVT must be retained by the veterinarian for the duration of the RVT's work as an authorized agent and until three years from the date of termination of their relationship with the veterinarian.

    (BPC § 4826.7(b))

6) Requires all veterinarians engaged and employed as veterinarians by the state, or a county, city, corporation, firm, or individual to secure a license issued by the VMB. (BPC § 4828)

7) Requires the VMB to adopt regulations delineating animal health care tasks and an appropriate degree of supervision required for those tasks that may be performed solely by an RVT or licensed veterinarian. (BPC § 4836(a))

8) Permits the VMB to additionally adopt regulations establishing animal health care tasks that may be performed by a veterinary assistant, an RVT or a licensed veterinarian. (BPC § 4836(b))

9) Requires the VMB to establish an appropriate degree of supervision by an RVT or a licensed veterinarian over a veterinary assistant for any authorized tasks and provides that the degree of supervision for any of those tasks shall be higher than, or equal to, the degree of supervision required when an RVT performs the task. (BPC § 4836(b))

10) Authorizes the VMB to revoke or suspend the certificate of registration of an RVT, as specified. (BPC § 4837)

11) Prohibits an individual from using the title "RVT," "veterinary technician," or using the initials "RVT" without meeting the requirements of an RVT. (BPC § 4839.5)

12) Defines "direct supervision" as the supervisor physically present at the location where animal healthcare professionals provide care and tasks which are expected to be conducted quickly and are easily available. (California Code of Regulations (CCR), tit. 16, § 2034(e))

13) Defines "indirect supervision" as the supervisor not being physically present at the location where animal healthcare tasks, treatments, procedures, etc. are to be performed, but has given either written or oral instructions ("direct orders") for treatment of the animal and the animal has been examined by a veterinarian in a manner consistent with appropriate delegated animal health care task and that the animal is not anesthetized, as defined. (CCR, tit. 16, § 2034(f))

14) Authorizes RVTs and veterinary assistants to perform those animal health care services prescribed by law under the supervision of a veterinarian licensed or authorized to practice. (BPC § 4840(a))

15) Specifies that an RVT may perform animal health care services on impounded animals by a state, county, city, or city and county agency pursuant to the direct order, written order, or telephonic order of a veterinarian licensed or authorized to practice in California. (BPC § 4840(b))

16) Permits an RVT to apply for registration from the federal Drug Enforcement Administration to allow the direct purchase of sodium pentobarbital for the performance of euthanasia, without the supervision or authorization of a licensed veterinarian. (BPC § 4840(c))

17) Prohibits an RVT from performing the following functions or activities that represent the practice of veterinary medicine, requires the knowledge, skill, and training of a licensed veterinarian:

    a. Surgery,

    b. Diagnosis and prognosis of animal diseases, and

    c. Prescribing drugs, medications, or appliances.

    (BPC § 4840.2)

18) Allows an RVT to perform the following procedures under the direct supervision of a licensed veterinarian:

    a. Induce anesthesia,

    b. Perform dental extractions,

    c. Suture cutaneous and subcutaneous tissues, gingiva, and oral mucous membranes,

d. Create a relief hole in the skin to facilitate placement of an intravascular catheter, and

e. Drug compounding from bulk substances.

(CCR, tit. 16 § 2036(b))

19) Authorizes an RVT to perform the following procedures under indirect supervision of a licensed veterinarian:

a. Administer controlled substances,

b. Apply casts and splints,

c. Provide drug compounding from non-bulk substances.

(CCR, tit. 16 § 2036(b))

THIS BILL:

1) Authorizes a registered veterinary technician (RVT) to perform cat neuter surgery under the direct supervision of a veterinarian so long as:

a) The RVT reviews the animal patient's history in order to reasonably ensure that the neuter surgery is appropriate.

b) The RVT performs the neuter surgery in accordance with written protocols and procedures established by the veterinarian.

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

COMMENTS:

Purpose.

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

> "California's animal shelters struggle under a constant influx of unwanted animals, an influx that could be almost entirely prevented by robust spay and neuter practices. However, there are currently not enough veterinarians to meet the growing demand for accessible and affordable pet sterilization surgeries. AB 2133 tackles this issue by allowing registered veterinary technicians to perform cat neuters under the direct supervision of a veterinarian, thereby safely expanding the pool of professionals who can carry out this standard, low-risk procedure."

Background.

Efforts to Encourage Pet Sterilization. Over the past several years, California has made efforts to humanely reduce animal overpopulation and encourage the spay and neuter of dogs and cats across the state. In 1998, the Legislature enacted Senate Bill 1785 by Senator Tom Hayden, which formally 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" and "that no treatable animal

should be euthanized." As part of these goals, and overall effort to reduce pet overpopulation that leads to euthanasia, this bill and subsequent legislation established a mandate that no public or private animal shelter, humane society, rescue group or other nonprofit shall adopt out any dog or cat that has not been sterilized, subject to very limited exceptions.

More recent, after a successful campaign by the sponsor of this bill and the VMB, a Pet Lover's License Plate program was established in 2012, and in 2014, SB 1323 (Lieu) was enacted to allocate the proceeds from purchases of this specialty license plate to fund a grant program to eligible veterinary facilities that offer low-cost or no-cost animal sterilization services under the VMB. The most recent distribution of grand funding in 2023 allocated approximately $488,000. This consisted of an estimated amount of $25,000 – $50,000 per award.

The Legislature enacted AB 485 (Williams) in 2015 to create a voluntary tax return checkoff to provide revenue to a Prevention of Animal Homelessness and Cruelty Fund. This checkoff allocates money to local animal control agencies and shelters to support spay and neuter activities and to prevent and eliminate dog and cat homelessness. In 2022, a total of $308,449 was contributed through the checkoff, and approximately $250,000 was awarded that year to eligible agencies, with an estimated amount of $7,500 – $22,500 per award.

In February of 2022, the California for All Animals program was launched to advance marketing and outreach efforts designed to engage shelters in every region of the state that met the goals outlined in the Animal Shelter Assistance Act. $15.5 million in grant awards has since been awarded, along with $12.5 million for in-person visits, trainings, outreach, and program expenses. Grant funding is prioritized for programs to increase low-cost and free spay/neuter services, access to low cost and free veterinary care to prevent owner relinquishment to animal shelters, and programs that reunite lost pets with their owners and incentivize making adoption accessible for all communities.

Finally, last year the Assembly and Senate passed ACR 86, also authored by Assemblymember Kalra and sponsored by SCIL, which is currently pending final concurrence in the Assembly. This resolution puts a spotlight on the national and statewide pet overpopulation crisis, noting the increase in pet adoptions and purchases throughout the COVID-19 pandemic which exacerbated these issues. This resolution also notes the lack of low-cost and free spay and neuter options, as well as disparities in access to veterinary care. This resolution made a commitment to pursue policies that increase the availability of low-cost, high volume spay and neuter and encourage more out-of-state veterinarians and RVTs to perform and assist with sterilization. In the spirit of this resolution, the author and sponsors have put forward this bill as a first step toward achieving its stated goals.

Cat neuter procedures. A cat neuter surgery is a sterilization procedure performed on a male domestic cat that involves the removal of their testicles via a small incision through the cat's scrotum. Due to the anatomy of cats, the incision must be specific as to not accidentally cut into the cat's urethra or otherwise disturb the urinary tract. The veterinarian then removes the cat's testicles, and uses a method called "autoligation" to tie off the cat's blood vessel, rather than using sutures. This removal is delicate, as a cut too far down the vessel can cause internal bleeding. If the incision is done in the right method on the exterior of the scrotum, sutures or staples are not needed and the incision will heal on its own. Typically, cat neuters can be performed in a matter of minutes, but are nonetheless an involved and invasive surgical procedure.

Currently, veterinarians are the only licensed professional with the ability to perform sterilization surgery on animals. However, RVTs are deeply involved in the overall process, as well. They are typically responsible for preparing an animal for sterilization surgery, checking vitals and ensuring the animal is properly sedated. RVTs monitor fluids and vitals during the procedure, and are responsible for most of the post-procedure care following the sterilization, including monitoring the patient for potential adverse reactions or bleeding. Often, the RVT will be responsible for a bulk of the overall intake of the cat, with the veterinarian stepping in to perform the actual surgery itself.

Veterinarians and RVTs. Veterinarians (Doctors of Veterinary Medicine, or "DVM"s) and registered veterinary technicians (RVTs) each play a distinct, vital role in an animal hospital or veterinary clinic, one not dissimilar to the relationship between a Doctor of Medicine (MD) and a registered nurse (RN) in an emergency room or medical clinic. In order to practice veterinary medicine and provide healthcare to a variety of animals, veterinarians must secure a license through the VMB. A licensed California veterinarian is authorized to engage in the practice of veterinary medicine, surgery, veterinary dentistry, and related health procedures for the benefit of an animal's general health and wellbeing. Veterinarians are trained and licensed to diagnose, prescribe medication and provide treatment for the animal's health and improvement to the animal's quality of life. Veterinarians are extensively trained, satisfied academic requirements, and provide health care for various animals. Veterinarians receive specific healthcare training as it applies to animals and understanding the nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals. In order to practice veterinary medicine in California, an applicant must graduate from a degree program offered by an accredited postsecondary institution or institutions approved by the VMB, pass a national veterinarian examination, and pass an examination provided by the VMB to test the knowledge of the laws and regulations related to the practice of veterinary medicine in California.

RVTs serve a crucial role in the veterinary workforce by providing vital supportive health-related tasks. These health tasks involve drawing blood and conducting laboratory tests, operating radiographic equipment, administering medication, as well as countless other health related procedures. In the surgical process, the RVT is typically responsible for pre- and post-operation tasks under the direct supervision of a veterinarian, such as the induction of anesthesia, creation a relief hole in the skin to facilitate placement of an intravascular catheter, application casts and splints, performance of dental extractions, suturing of cutaneous and subcutaneous tissues, and more. The VMB's regulations have also stipulated that an RVT may perform a variety of procedures under indirect supervision of a licensed veterinarian. These procedures include the act of administering controlled substances and performing certain routine animal health care tasks.

In recent years, there have been efforts to expand the role that RVTs play in the veterinary field, not only to address disparities in veterinary care but to offer further career advancement for experienced RVTs that may not have the desire or ability to pursue a full DVM career. Last year the Legislature permitted veterinarians to authorize RVTs to act as an agent of the veterinarian for purposes of establishing a client relationship or administering certain vaccines with the passage of Senator Cortese's SB 669. The State of Florida is currently considering legislation to recognize a midlevel "veterinary professional associate", and an initiative will be in front of Colorado voters this fall seeking to establish a similar role. Additionally, the EU's European School for Advanced Veterinary Studies recognizes a midlevel "Certificate of Advanced Studies" in veterinary medicine, which among other tasks, offer certification in soft tissue surgery.

Sponsors and supporters note that this bill will serve to retain experienced RVTs by providing a career advancement opportunity for RVTs while also driving toward California's goals around animal overpopulation.

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 can be made immediately available for release to a nonprofit organization, animal rescue organization, or adoption organization. *This bill is pending in this committee.*

AB 2012 (Lee) would require the 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. *This bill was unanimously supported 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 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 in this committee.*

AB 2954 (Wendy Carrillo) would prohibit a person from performing a surgical claw removal, declawing, or a tendonectomy on any cat, or otherwise altering the cat's paws to impair functionality, except for therapeutic purposes. *This bill is pending in this committee.*

ACR 86 (Kalra) encourages the state and local municipalities to develop and fund high-volume spay and neuter clinics across the state to provide sterilization services, and also urges other actions relating to pets, including actions to control animal breeding and encourage spaying and neutering. *This resolution is pending concurrence in Senate amendments on the Assembly floor.*

SB 1233 (Wilk) would require the Regents of the University of California and the governing body of Western University of Health Sciences to develop high-quality, high-volume spay and neuter certification programs to be offered as elective coursework to students enrolled in the respective veterinary schools, among other things. *This bill is pending in the Senate Education 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 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 in the Senate Business, Professions, and Economic Development 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 in the Senate Business, Professions, and Economic Development Committee.*

Prior Related Legislation.

AB 595 (Essayli) from 2023 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.*

SB 669 (Cortese) Chapter 882, Statutes of 2023 authorized a veterinarian to allow an RVT to act as an agent of the veterinarian for the purpose of establishing the veterinarian-client-patient relationship to administer preventive or prophylactic vaccines or medications for the control or eradication of apparent or anticipated internal or external parasites by satisfying specified criteria.

AB 1535 (Committee on Business and Professions) Chapter 631, Statutes of 2021, enacted various changes to the regulation of veterinarians, RVTs, Veterinary Assistant Controlled Substances Permit (VACSP) holders, veterinary schools, and veterinary premises, stemming from the joint sunset review oversight of the Veterinary Medical Board (Board) by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development.

SB 1347 (Galgiani) from 2020 would have expanded exemptions to the practice of veterinary medicine to include specified functions performed at a shelter, as defined, by an employee or volunteer who has obtained specified training. *At the request of the author, this bill's hearing in Assembly Appropriations Committee was canceled and the bill did not move.*

AB 485 (Williams) Chapter 557, Statutes of 2015, created a voluntary tax return checkoff to provide revenue to a Prevention of Animal Homelessness and Cruelty Fund, which allocates money to local animal shelters to support spay and neuter activities and eliminate dog and cat homelessness.

SB 1323 (Lieu) Chapter 375, Statutes of 2014 appropriated money collected from the Pet Lover's License Plate Program to the Veterinary Medical Board for the sole and exclusive purpose of funding grants to providers of no-cost or low-cost animal sterilization services.

SB 1785 (Hayden) Chapter 752, Statutes of 1998 established, among other things, that the State of California's policy is that no adoptable animal should be euthanized if it can be adopted into a suitable home, and policies promoting the spay and neuter of dogs and cats in the state.

ARGUMENTS IN SUPPORT:

This bill is sponsored by **Social Compassion in Legislation (SCIL).** According to SCIL: "A 2021 national survey shows that 14 California counties ranked in the bottom 25% on the Veterinary Care Accessibility Score, which means there is extremely limited or no ability to see a veterinarian... This modest proposal will not singlehandedly fix the pet overpopulation crisis, but it will give another tool to help alleviate the problem, particularly in shelter settings or high volume spay and neuter clinics."

This bill is supported by the **California Registered Veterinary Technicians Association (CaRVTA).** According to CaRVTA: "We are optimistic that [this bill] will help the veterinary profession by freeing veterinarians to use their time more productively and by giving RVTs the opportunity to advance their careers. Both of these will ultimately lead to better retention of veterinary personnel."

ARGUMENTS IN OPPOSITION:

This bill is opposed by the **California Veterinary Medical Association (CVMA)**, representing "over 7,800 veterinary medical professionals in the state". According to CVMA: "Surgery is an advanced skill that requires extensive education beyond the procedure itself for it to be performed safely. To perform it safely, one must have significant education in subjects including anatomy and physiology, neurology, pharmacology, anesthesia, emergency and critical care, hematology, not to mention the surgical procedure itself. These topics and others needed to perform surgery in a safe and competent manner are not taught as part of the RVT licensing curriculum to an extent needed for them to be able to perform surgery."

This bill is opposed by the **American Veterinary Medical Association (AVMA),** representing "more than 105,000 veterinarians" nationwide. According to AVMA: "While an important member of the veterinary team, a registered veterinary technician is not trained in the same way a veterinarian is trained. The veterinary technician's training focuses on technical skills, while the veterinarian is trained as a medical decision maker…Feline neuters, and surgeries for animals in general, should continue to be carried out by a licensed veterinarian, the only health professional uniquely educated, trained, qualified, and licensed for veterinary surgery."

POLICY ISSUE(S) FOR CONSIDERATION:

Scope of Practice. As written, this bill significantly expands the scope of practice for registered veterinary technicians in the state. While the author and sponsors note that current law already authorizes certain expanded responsibilities for RVTs, such as anesthesia administration and dental extractions, this bill would mark the first time RVTs are specifically allowed to perform an animal surgery as defined under state law, a role which is currently expressly prohibited (BPC § 4840.2). Veterinarians licensed by the VMB are required to receive several years of education from a recognized veterinary college, which covers a wide array of medical topics, surgical procedures, diseases, and conditions, including creating appropriate care and treatment plans. Specific to surgery, licensed veterinarians are trained to quickly respond to issues or complications that may arise during medical procedures, such as excessive bleeding or adverse reaction to anesthesia.

Comparatively, RVTs registered under the VMB are required to pass a board-approved examination, and provide proof of either completion of a two-year curriculum specializing in

veterinary technology, or equivalent experience as approved by the American Association of Veterinary State Boards. While this education and equivalent experience requirements are rigorous, including training in diagnostic procedures, monitoring of vitals, and other critical tasks involved in animal care, they are not specifically trained in animal surgery nor the relevant steps necessary should surgery go wrong.

As such, there is valid concern that this bill in its current form erodes the responsibility of the state and the VMB to protect the public from inadequate or unprofessional practices of veterinary medicine, and ensure that certain specialized roles are only carried out by licensed professionals who are certifiably educated to fulfill their responsibilities.

Liability Concerns. According to data provided in an opposition letter by the American Veterinary Medical Association (AVMA), which sponsors the AVMA Professional Liability Insurance Trust, sterilization surgeries rank among the top drivers of veterinary insurance claims, including incidents of neuters. In context of this bill, there is a lack of clarity regarding how liability would apply in cases of a neuter surgery performed by an RVT that results in a claim, or whether existing insurers will extend liability coverage to this expanded scope. Considering that veterinarians are liable for actions of employees under their direction, this would be likely to increase claims and costs against veterinary practices and animal hospitals.

As a result, there is question as to the efficacy of this bill in increasing the availability of low-cost neuter surgeries, as many practices are likely to not permit this expanded responsibility to their RVTs due to liability concerns, and for those who do, concern that neuter costs will potentially be driven up due to the increased liability costs.

Veterinarian vs. RVT Disparity. The author and sponsors argue that this bill is intended to drive at the ongoing deficit of veterinarians, an issue highlighted in the author's resolution passed by the Legislature last year. However, California is facing an even greater disparity of RVTs in the state than veterinarians. According to statistics provided by the VMB and public licensing data on the DCA's website, there are approximately 13,500 licensed veterinarians in California, but only 8,600 RVTs. Considering the many responsibilities under the purview of RVTs already, including routine animal exams, pre- and post-procedure patient care and monitoring, administration of medicine and more, it is unclear what the provisions of this bill will do to meaningfully increase the availability of cat neuters in veterinary clinics.

Direct vs indirect supervision. This bill mandates that any cat neuter performed by an RVT must be performed "under the direct supervision of a veterinarian". This is intended to ensure a veterinarian is available to address any complications that may arise during, or as a result of, the procedure. Notably, though, "direct supervision" under law merely means the veterinarian is on the same premises as the procedure being performed, and has a prior established relationship with the client. This means, in practice, a veterinarian can be in another room of a clinic and performing another task when the RVT is performing a neuter surgery, and the standard of direct supervision would still be met.

As such, the author may wish to consider further provisions specifically clarifying that a supervising veterinarian must be readily available to address complications that arise during a neuter surgery performed by an RVT, or otherwise ensure that greater veterinary oversight is provided for in the procedure.

AMENDMENTS:

To provide for greater assurance that RVTs are adequately qualified to perform cat neuter surgery, and ensure that the VMB has insight into, and authority over, cat neuter procedures performed by RVTs, amend the bill as follows:

On page 2, after line 13:

(b) Notwithstanding any other law, a registered veterinary technician may perform neuter surgery on a male domestic cat under the direct supervision of a veterinarian only if ~~both~~ *all* of the following conditions are met:

(1) The registered veterinary technician is approved by the board to perform cat neuter surgery.

~~(1)~~ *(2)* The registered veterinary technician reviews the animal patient's history in order to reasonably ensure that the neuter surgery is appropriate.

~~(2)~~ *(3)* The registered veterinary technician performs the neuter surgery in accordance with written protocols and procedures established by the veterinarian.

(c)(1) A registered veterinary technician authorized to perform neuter surgery under this section shall obtain training in cat neuter surgery procedures before receiving board approval.

(2) "Training" means completion of a board-approved curriculum in techniques and procedures related to cat neuter surgery.

REGISTERED SUPPORT:

Social Compassion in Legislation (sponsor)
A Passion for Paws - Akita Rescue
All God's Creatures Teaching Hospital and Surgery Center
Animal Solutions
Animal Wellness Action
Barks of Love Animal Rescue
Better Together Forever
Buddy's Angels
California Registered Veterinary Technicians Association
Catmosphere Laguna Foundation
Cultivate Empathy for All
Foods by Jude
Gurrs and Purrs Rescue
Hanaeleh
Humboldt Humane
Kesar and Cardi LLC
Kindred Spirits Care Farm
Latino Alliance for Animal Care Foundation
Little Hill Sanctuary
Los Angeles Democrats for The Protection of Animals

Love Leo Rescue
Motherlode Feral Cat Alliance
NY 4 Whales
Outta the Cage
Paaw- People Advocating for Animal Welfare
Poison Free Malibu
Preetirang Sanctuary
Saving Imperial Rescue
Start Rescue
Take Me Home
Terra Advocati
The Animal Coalition Group
The Canine Condition
The German Shepherd Rescue of Orange County
TippedEars
UnchainedTV
Westside German Shepherd Rescue
Women United for Animal Welfare (WUFAW)
1,237 individuals

REGISTERED OPPOSITION:

American Veterinary Medical Association
California Veterinary Medical Association
2 individuals

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2166 (Weber) – As Introduced February 6, 2024

SUBJECT: Barbering and cosmetology: hair types and textures.

SUMMARY: Updates existing prelicensure education and examination requirements for license applicants under the State Board of Barbering and Cosmetology (BBC) to include instruction and testing on the provision of services to individuals with all hair types and textures.

EXISTING LAW:

1) Establishes the BBC within the Department of Consumer Affairs to license and regulate barbers, cosmetologists, hairstylists, electrologists, estheticians, and manicurists pursuant to the Barbering and Cosmetology Act. (Business and Professions Code (BPC) §§ 7301 *et seq.*)

2) Defines the practice of barbering as all or any combination of the following:

   a) Shaving or trimming the beard or cutting the hair.

   b) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.

   c) Singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.

   d) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.

   e) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.

   (BPC § 7316(a))

3) Defines the practice of cosmetology as all or any combination of the following:

   a) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means the hair of any person.

   b) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

   c) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

d) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

e) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.

f) Massaging, cleansing, treating, or beautifying the hands or feet of any person.

g) Tinting and perming of the eyelashes and brows, or applying eyelashes to any person.

(BPC § 7316(b))

4) Defines the practice of hairstyling as all or any combination of the following:

a) Styling of all textures of hair by standard methods that are current at the time of the hairstyling.

b) Arranging, blow drying, cleansing, curling, cutting, dressing, extending, shampooing, waving, or nonchemically straightening the hair of any person using both electrical and nonelectrical devices.

(BPC § 7316(h))

5) Exempts from the definitions of barbering, cosmetology, and hairstyling the practices of wig-fitting, natural hair braiding, and threading. (BPC § 7316(d))

6) Requires that a person who engages in natural hairstyling, which is defined as the provision of natural hair braiding services together with any of the services or procedures within the regulated practices of barbering or cosmetology, must obtain and maintain a barbering or cosmetology license as applicable to the services. (BPC § 7316(f))

7) Defines "establishment" as including any premises in which natural hair styling is practiced for compensation. (BPC § 7346)

8) Provides that the examination of applicants for a license under the BBC shall include written tests to determine the applicant's skill in, and knowledge of, the practice of the occupation for which a license is sought. (BPC § 7338)

9) Requires courses in barbering and courses in cosmetology to consist of not less than 1,000 hours of practical and technical instruction, with specific numbers of hours required for various areas of instruction. (BPC § 7362.5)

10) Requires courses in hairstyling to consist of not less than 600 hours of practical and technical instruction, with specific numbers of hours required for various areas of instruction. (BPC § 7363)

11) Defines "race" within various anti-discrimination laws as inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles such as braids, locks, and twists. (Education Code § 212.21; Government Code § 12926)

THIS BILL:

1) Requires, for courses in barbering, cosmetology, and hairstyling, that instruction in chemical hair services and hairstyling services include the provision of services to individuals with all hair types and textures, including, but not limited to, various curl or wave patterns, hair strand thicknesses, and volumes of hair.

2) Provides that the written tests within examinations for licensure under the BBC shall determine the applicant's skill in, and knowledge of, providing services to individuals with varying hair types and textures, as applicable to the practice for which the applicant has applied for licensure.

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

COMMENTS:

Purpose. This bill is sponsored by the **Professional Beauty Association**. According to the author:

> "AB 2066 ensures that beauty professionals in California receive training and testing for coiled, curly, and wavy hair. This policy would apply to cosmetologists, including hairstylists, beauticians, barbers, and hair braiders. Including textured hair in the cosmetology curriculum and state board exams in California will further inclusivity and empower hair professionals with the knowledge and skills needed to serve all consumers, regardless of hair type."

Background.

State Board of Barbering and Cosmetology. The BBC is responsible for licensing and regulating barbers, cosmetologists, hairstylists, estheticians, electrologists, manicurists, apprentices, and establishments. The BBC is one of the largest boards in the country, with over 615,000 licensees. As of the board's most recent sunset review, the BBC annually issues approximately 261,000 licenses (initial and renewal licenses) and administers approximately 28,000 written examinations (initial and retake examinees). Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in areas. In addition to licensing individuals, the BBC approves schools.

Prior Recognition of Ethnic and Cultural Hairstyling. California has historically led in discussions around the significance of hair textures and styles in efforts to support equity and inclusion. In 2019, the Legislature enacted Senate Bill 188, authored by Senator Holly Mitchell. This landmark legislation is formally titled the CROWN Act—an acronym for "Creating a Respectful and Open World for Natural Hair." The CROWN Act was the catalyst of a national movement to establish clear legal protections against discrimination based on traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

Research supporting the passage of CROWN Acts across the country highlights the significant prejudices that people of color face based on their hairstyle. The 2023 CROWN Workplace Research Study detailed "the systemic social and economic impact of hair bias and discrimination against Black women in the workplace." The study found that Black women's hair is 2.5x more likely to be perceived as unprofessional, among other substantial findings.

The role that the practices of barbering and cosmetology plays in cultivating societal respect and acceptance of diverse hair textures and styles has been a topic of discussion for some time. In 1997, a public interest law firm filed suit in federal district court on behalf of practitioners of African hair braiding and other forms of natural hairstyling. The plaintiffs contended that the cosmetology licensing requirements were unconstitutionally applied to hair braiding services. In 1999, the court ruled in favor of the plaintiff in *Cornwell v. Hamilton*, finding that the BBC's cosmetology course requirements for licensure in California, as well as the subsequent licensing examination, were not rationally related to the plaintiff's hair braiding activities. It was determined that the state's mandated curriculum did not teach braiding and required braiders to learn irrelevant and even potentially harmful tasks in order to perform culturally traditional hairstyling services.

Assemblymember Marguerite Archie-Hudson had introduced Assembly Bill 2476 in 1996, which unsuccessfully attempted to lower the regulatory requirements for natural hair braiding. In 2000, two bills were introduced to exempt hair braiding from the practice of cosmetology. Assembly Bill 132 by Assemblymember Carole Migden was subsequently amended to deal with a different topic. Senate Bill 235 by Senator Ray Haynes, sponsored by the American Hairbraiders and Natural Haircare Association, was signed into law by Governor Gray Davis.

Senate Bill 235 exempted the practices of wig-fitting and natural hair braiding, as defined, from the practice of cosmetology. However, the bill additionally established a definition for "natural hair styling"— the provision of natural hair braiding services together with any services or procedures regulated within the practices of barbering or cosmetology. The bill then expressly provided that a state license was still required for persons seeking to offer or perform natural hair styling. Subsequent legislation—Assembly Bill 282 (Bermudez) of 2003—added to the exemptions from licensure under the BBC to include hair removal by threading, a longstanding tradition in Asian and Middle Eastern cultures.

In 2014, the BBC convened a Natural Hair Care Task Force to discuss what role, if any, natural hair care providers have with the BBC. Participants discussed the upsurge of traction alopecia cases, caused by improper braiding, and the possibility of the spread of infectious disease by improper disinfection or lack of knowledge. The panel provided the BBC with a recommendation that natural hair braiding again be regulated; this recommendation was ultimately rejected by the Legislature, and the exemption remains in place.

During the BBC's 2021 sunset review, the Legislature considered adding further exemptions to the practices of barbering and cosmetology. Senate Bill 803 (Roth) ultimately did not carve out any additional services from existing license requirements. However, the bill did create a new hairstylist license, which requires fewer hours of education and training in exchange for a narrower scope of practice.

Instruction in Diverse Hair Types and Textures. The author of this bill cites research published as part of the Hair Bias Report, an initiative sponsored by TRESemmé. In the same spirit as research efforts in support of the CROWN Act, the Hair Bias Report's stated goal to "to better understand the specific challenges Black women face in the salon and the current industry gaps that exist." The survey found that "65% of stylists surveyed said that they wish they had more training when it comes to styling and caring for textured, coiled, and/or kinky hair types." The report additionally found that "the lack of training with these hair textures may also translate to higher costs for Black women seeking haircare services – impacting their time and their wallets."

The need for more diverse instruction in the practice of styling hair is not limited to Black women. According to research provided by the author that was published by NaturallyCurly in 2019, an estimated 65% of the US population have coiled, curly, or wavy hair. These consumers appear to be challenged with a lack of access to professionals who are competent to provide them with services designed to accommodate their hair types, and are faced with higher costs for those services when they are obtained.

This bill would amend existing law requiring courses in barbering, cosmetology, and hairstyling to provide that components relating to chemical hair services and hairstyling services must include instruction regarding the provision of services to individuals with all hair types and textures. This would include, but would not be limited to, various curl or wave patterns, hair strand thicknesses, and volumes of hair. Then, when applicants are examined to determine their competency prior to initial licensure, those written tests would be required to determine the applicant's skill in, and knowledge of, providing services to individuals with varying hair types and textures, as applicable to the practice for which the applicant has applied for licensure.

It is important to note that this bill does not require any new coursework or educational curricula. Instead, the bill would simply require that existing instruction must incorporate methods of teaching how to apply the services being taught to all types and textures of hair, ensuring that students are not simply being taught how to work with one model of hair and are equipped to provide services to customers with diverse hair types and textures. This enhanced pedagogy will hopefully improve access to hair-related services for Californians of all backgrounds and contribute to ongoing efforts to reduce hair bias nationwide.

Current Related Legislation.

AB 2444 (Lee) would require the BBC to disseminate informational materials on basic labor laws to its licensees. *This bill is pending in this committee.*

SB 1084 (Nguyen) would abolish the hairstylist license and remove various services from the scopes of practice of barbering and cosmetology. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

SB 803 (Roth, Chapter 648, Statutes of 2021) extended the operation of the BBC and, among other things, reduced the required number of hours for courses in barbering and cosmetology to 1,000 hours and established a hairstylist license.

SB 188 (Mitchell, Chapter 58, Statutes of 2019), the CROWN Act, provided that the definition of race for the purpose of anti-discrimination laws includes traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

AB 282 (Bermudez, Chapter 66, Statutes of 2003) exempted threading from the practices of barbering and cosmetology.

SB 235 (Haynes, Chapter 37, Statutes of 2000) exempted wig-fitting and natural hair braiding from the practices of barbering and cosmetology.

ARGUMENTS IN SUPPORT:

The sponsor of this bill, the **Professional Beauty Association**, writes in support of this bill alongside the **Texture Education Collective** and several companies that provide hair care products: "Our organizations and brands are on the leading edge of the inclusive hair movement, and we believe that California's current cosmetology curriculum needs updating to ensure students are prepared to address clients' diverse needs with varying hair textures and types. By advocating for inclusivity in cosmetology education, the Legislature can bring about positive change that not only benefits aspiring beauty professionals, but also ensures that all Californians can receive comparable hair services at salons, regardless of their hair type."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Professional Beauty Association *(Sponsor)*
Aveda Arts and Sciences Institute
Conference of California Bar Associations
Henkel
L'Oréal USA
Personal Care Products Council
State Board of Barbering and Cosmetology
Texture Education Collective
Two individuals

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2223 (Aguiar-Curry) – As Introduced February 7, 2024

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

SUBJECT: Cannabis: industrial hemp.

SUMMARY: Allows for cannabis licensees to manufacture, distribute, or sell products that contain industrial hemp and places additional restrictions on industrial hemp products containing tetrahydrocannabinol (THC) or comparable cannabinoids.

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) Excludes industrial hemp from the definition of cannabis under MAUCRSA. (BPC § 26001)

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

4) Required the DCC to prepare a report to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain on or before July 1, 2022, so that the Legislature may consider whether and how to take legislative action concerning the incorporation of hemp into the cannabis supply chain no later than the 2023–24 legislative session. (BPC § 26013.2)

5) 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)

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

7) Prohibits the sale of cannabis products that are alcoholic beverages, including through an infusion of cannabis or cannabinoids derived from industrial hemp into alcoholic beverages. (BPC § 26070.2)

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)

9) Defines "industrial hemp" as a crop that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of 1 percent THC contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom. (Health and Safety Code (HSC) § 11018.5(a))

10) Exempts industrial hemp from MAUCRSA. (HSC § 11018.5(b))

11) Prohibits industrial hemp products from being labeled or advertised with any health-related statement that is untrue in any particular manner as to the health effects of consuming products containing industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp. (HSC § 110407)

12) Provides that a cosmetic is not adulterated because it includes industrial hemp in compliance with the law. (HSC § 111691)

13) Establishes a regulatory framework for industrial hemp under the Sherman Food, Drug, and Cosmetic Law administered by the California Department of Public Health (CDPH), under which manufacturers of products containing industrial hemp are required to obtain a process food registration and comply with good manufacturing practices. (HSC §§ 111920 *et seq.*)

14) Requires the distribution or sale of industrial hemp products to include documentation of a certificate of analysis from an independent testing laboratory that confirms that the industrial hemp raw extract, in its final form, does not exceed THC concentration of an amount determined allowable by the CDPH in regulation, or that the mass of the industrial hemp extract used in the final form product does not exceed a THC concentration of 0.3 percent. (HSC § 111921)

15) Authorizes the CDPH to exclude from the definition of "THC or comparable cannabinoid" isomers that do not cause intoxication, but that the CDPH may include any other cannabinoids that the CDPH determines do cause intoxication. (HSC § 111921.7)

16) Authorizes the CDPH to adopt regulations to determine maximum serving sizes for hemp-derived cannabinoids, hemp extract, and products derived therefrom, active cannabinoid concentration per serving size, the number of servings per container, and any other requirements for foods and beverages. (HSC § 111922)

17) Exempts initial regulations regarding industrial hemp adopted by the CDPH from the Administrative Procedure Act, with the exception of regulations to set maximum serving sizes for hemp-derived cannabinoids, hemp extract, and products derived from industrial hemp. (HSC § 110065)

18) Requires hemp manufacturers to register with the CDPH. (HSC § 111923.3)

19) Requires industrial hemp products to meet specified packaging and labeling requirements, including a label that includes the concentration of cannabinoids present in the product batch, including, at minimum, total THC and any marketed cannabinoids. (HSC § 111926.3)

20) Prohibits inhalable hemp products from being sold to consumers under 21 years of age. (HSC § 111929)

21) Authorizes a peace officer to inspect any place at which cannabis or cannabis products are sold and to take enforcement action and seize any products found not to be in compliance with the law. (Revenue and Taxation Code § 34016)

22) Provides the California Department of Food and Agriculture (CDFA) with responsibility for administering and enforcing laws governing the growing, cultivating, and distributing of industrial hemp. (Food and Agricultural Code §§ (FAC) 81000 *et seq.*)

23) Establishes an Industrial Hemp Advisory Board with members appointed by the Secretary of Food and Agriculture to advise the secretary and make recommendations on all matters pertaining to industrial hemp seed law and regulations, enforcement, related annual budgets, and the setting of an appropriate assessment rate necessary for the administration of the law. (FAC § 81001)

24) Allows only approved cultivars to grow industrial hemp. (FAC § 81002)

25) Requires growers of industrial hemp, hemp breeders, and established agricultural research institutions to register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation. (FAC §§ 81003 – 81005)

26) Requires each registered established agricultural research institution, registered grower of industrial hemp, and registered hemp breeder to report on its hemp production in the state and any changes to the location where it will produce hemp to the Farm Service Agency of the United States Department of Agriculture. (FAC § 81004.6)

27) Imposes limitations and prohibitions on the growth of industrial hemp and requires each crop of industrial hemp to be tested by a laboratory to determine the THC levels of a random sampling of its dried flowering tops. (FAC § 81006)

THIS BILL:

1) States that it is the intent of the Legislature to enhance the viability of cannabis licensees in the marketplace by pursuing measures to relieve tax and regulatory requirements, and to authorize licensees to manufacture, distribute, and sell hemp and cannabidiol (CBD) products in compliance with current law.

2) Provides that MAUCRSA does not prohibit a licensee from manufacturing, processing, distributing, or selling products that contain industrial hemp, or cannabinoids, extracts, or derivatives from industrial hemp, in compliance with state law.

3) Allows for a licensed manufacturer or microbusiness to obtain industrial hemp from a person registered with the CDPH.

4) Requires industrial hemp purchased by a cannabis licensee to be tracked as a separate batch throughout the manufacturing process in order to document the disposition of that hemp or hemp product.

5) Requires a cannabis licensee that manufactures, distributes, or sells products that contain industrial hemp to record all transactions and relevant data, as prescribed by the department, in the state track and trace system.

6) Requires manufactured cannabis products containing industrial hemp to comply with MAUCRSA and any regulations adopted by the DCC.

7) Prohibits a licensed cannabis manufacturer from incorporating delta-9 THC that has been converted from a hemp-derived cannabinoid, and prohibits a licensed cannabis retailer or distributor from selling or distributing cannabis, a cannabis product, or an industrial hemp product that contains converted delta-9 THC.

8) Requires the DCC to implement a process by which a licensee that is also a registered hemp manufacturer may use the same premises.

9) Provides that the DCC shall adopt and readopt emergency regulations to implement hemp integration into the cannabis supply chain and provides for a limited exemption from the Administrative Procedure Act for those regulations.

10) Exempts regulations adopted by the CDPH to set maximum serving sizes for hemp-derived cannabinoids, hemp extract, and products derived from industrial hemp from the existing exemption from the Administrative Procedure Act.

11) Adds inhalable products to the definition of "industrial hemp product."

12) Defines "limit of detection" as the lowest quantity of a substance or analyte that can be distinguished from the absence of that substance within a stated confidence limit.

13) Defines "synthetically derived cannabinoid" as a substance that is derived from a chemical reaction that changes the molecular structure of any substance separated or extracted from the cannabis plant, but exempts certain naturally occurring chemical substances and any other chemical substances approved by the CDPH in regulation.

14) Prohibits the manufacturing, distribution, or sale of an industrial hemp product that contains synthetically derived cannabinoid unless explicitly approved by the CDPH in regulation.

15) Prohibits a person from manufacturing, distributing, or selling any of the following:

    a) Industrial hemp raw extract derived from, or an industrial hemp product containing, industrial hemp that was not grown in compliance with the law.

    b) Industrial hemp raw extract with a total THC concentration that exceeds 0.3 percent, or a lower amount determined allowable by the CDPH in regulation.

    c) Industrial hemp products containing industrial hemp raw extract with a total THC concentration that exceeds 0.3 percent, or a lower amount determined allowable by the CDPH in regulation.

16) Requires industrial hemp products to be manufactured, distributed, or sold with a certificate of analysis from an independent testing laboratory that confirms that the raw extract used in the product does not exceed a total THC concentration of 0.3 percent, or a lower amount determined allowable by the CDPH.

17) Repeals the requirement that any initial determination regarding an exclusion from the definition of "THC or comparable cannabinoid" shall be confirmed through rulemaking in compliance with the Administrative Procedure Act within 18 months.

18) Requires industrial hemp human food and beverage final form products to meet all of the following requirements:

    a) A single serving of an industrial hemp product shall be based on the amount of food or beverage customarily consumed in one eating occasion for that food or beverage.

    b) A single serving of an industrial hemp dietary supplement in pill, tablet, or capsule form shall be one unit.

    c) A product shall not exceed five servings per package.

19) Prohibits an industrial hemp final form product from having a level of THC that exceeds a currently undetermined amount, and requires a qualified testing laboratory to establish a limit of detection of that amount or lower for total THC.

20) Requires out-of-state hemp manufacturers who produce industrial hemp pet food for importation into California or for sale in California to obtain a license from the CDPH.

21) Authorizes the CDPH to deny, suspend, forfeit, revoke, or order to surrender an industrial hemp enrollment and oversight authorization when a peace officer, state official, or local official has notified the CDPH that a manufacturer within its jurisdiction is in violation of state law and regulations relating to industrial hemp, and the CDPH, through an investigation, has determined that the violation is grounds for or contributes to other factors for denial, suspension, forfeiture, revocation, or surrender of the industrial hemp enrollment and oversight authorization.

22) Requires an investigation to include reasonable notice to the manufacturer and an opportunity for the manufacturer to defend any allegations of a violation.

23) Allows for the CDPH to take disciplinary action against a manufacturer for a violation of this part when the violation was committed by the manufacturer's officers, directors, owners, agents, or employees while acting on behalf of the manufacturer or engaged in industrial hemp activity.

24) Repeals outdated language providing safe harbor for hemp manufacturers and retailers within three months of the effective date of prior legislation.

25) Authorizes peace officers and state officials to seize or embargo an industrial hemp products under specified circumstances.

26) Requires peace officers or state officials who seize or embargo industrial hemp products to take specified procedural actions.

27) Provides that violations of laws regarding the retail sale of industrial hemp shall be subject to civil penalties of up to $2,500 per violation but requires a court to give due consideration to the appropriateness of the amount of the civil penalty with respect to factors the court determines to be relevant, including the gravity of violation and the good faith of the person.

28) Additionally provides that violations of laws regarding the retail sale of industrial hemp is a misdemeanor.

29) Provides that the above remedies are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

30) Expressly provides that the provisions of the bill do not preempt or otherwise prohibit the adoption or enforcement of any local ordinance or regulation that imposes greater restrictions on the retail sale of industrial hemp products and that to the extent that there is an inconsistency, the greater restriction on the retail sale of industrial hemp products shall be enforceable by the local jurisdiction.

31) Creates a statutory presumption that a product containing or purporting to contain a cannabinoid is a cannabis product, regardless of the nature or source of the cannabinoid, if there is reasonable cause to believe that the product is not a lawful industrial hemp product.

32) Provides that amendments to the Revenue and Taxation Code are not to be construed to establish a tax on inhalable hemp products.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Cannabis Industry Association**. According to the author:

> "Since the federal "Farm Bill" legalized of industrial hemp in 2018, hemp-derived products containing cannabidiol (CBD) and other cannabinoids have been widely produced and sold to consumers at grocery stores, fitness centers, and other retail locations. In 2021, I authored AB 45 (Aguiar-Curry, Chapter 457, Statutes of 2021) to create the most protective testing standards and regulations for the hemp industry in the nation while maintaining access to CBD, a non-intoxicating product that is used to treat epilepsy, anxiety, chronic pain and other health concerns. However, a lack of enforcement and evolving industry practices have led to a proliferation of intoxicating hemp products that are easily accessible in our communities, including to youth, threaten public health, and undercut the legal hemp and cannabis markets. This bill aims to protect public health by eliminating access to intoxicating cannabinoids outside permitted dispensaries, while providing a pathway for well-regulated hemp and cannabis industries to participate in the federally- and state-legal hemp market. Specifically, this bill: 1) increases enforcement against illegal hemp products, including further empowering state and local public health agencies 2) ensures that all intoxicating products are treated, regulated and taxed as cannabis, and 3) allows California to join 17 other states to integrate hemp into the cannabis supply chain."

Background.

Cannabis versus Hemp. Botanically speaking, both industrial hemp and what has historically been referred to as marijuana are members of the same plant species, *Cannabis sativa*. Under California law, the term "cannabis" typically refers to varieties of the species that contain sufficient levels of the cannabinoid THC to produce an intoxicating psychoactive effect, or "high"; this plant and its associated products are regulated by the DCC under MAUCRSA.

Hemp, meanwhile, is commonly regarded more as an agricultural plant and has historically been used for products such as paper, textiles, cosmetics, and fabric. California law requires industrial hemp to contain less than 0.3 percent THC, which is considered trace amounts compared to psychoactive cannabis (which frequently contains between 15-40 percent THC). Hemp is regulated by the CDFA for agricultural purposes and by the CDPH when it is used in food, beverage, and cosmetic products.

While industrial hemp does not share the same psychoactive properties as cannabis due to its significantly lower amount of THC, both hemp and cannabis contain another cannabinoid known as cannabidiol (CBD). According to the National Institute of Health, CBD has pain relieving, anti-inflammatory, anti-psychotic, and tumor-inhibiting properties. Two products, dronabinol and nabilone, are federal Food and Drug Administration (FDA)-approved drugs used for the prevention or treatment of chemotherapy-related nausea and vomiting. There are currently over 100 clinical trials of CBD listed on the National Library of Medicine's website. These trials are testing CBD's utility in treating epilepsy, substance use disorders, pain, psychosis, and anxiety, among other disorders and conditions.

Regulation of Cannabis. 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 significant apprehension within California's medical 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.

Regulation of Hemp. SB 566 (Leno, Chapter 398, Statutes of 2013) established the Industrial Hemp Farming Act, which provided a regulatory scheme for the cultivation and processing of industrial hemp in California that would go into effect upon approval by the federal government. SB 566 required growers of industrial hemp for commercial purposes to register with the county agricultural commissioner of the county in which the grower intends to engage in industrial hemp cultivation among various provisions. Established agricultural research institutions were exempted from these requirements.

The U.S. Agriculture Improvement Act of 2018 (known as the Farm Bill) federally legalized the growing, cultivating, and the transporting of industrial hemp between states. However, the Farm Bill resulted in CBD containing products that have been approved by the FDA to be removed from the list of Schedule I substances under the CSA and reclassified as a Schedule V drug. This policy was enacted because of the findings that it does not contain any psychoactive or addictive properties and has a very low abuse potential. This separates industrial hemp from marijuana specific cannabis products, which remains a Schedule I drug on the federal level. The Farm Bill also classifies CBD as a food product.

Importantly, the Farm Bill also requires states to devise their own sale restrictions and regulations, of which the U.S. Department of Agriculture (USDA) is responsible for overseeing. SB 153 (Wilk, Chapter 838, Statutes of 2019) revised provisions in SB 566 regulating the cultivation and testing of industrial hemp to conform to the requirements for a state plan under the 2018 Farm Bill. SB 292 (Wilk, Chapter 485, Statutes of 2021) additionally conformed state law to the USDA Interim Final Rule regarding reporting and testing of industrial hemp in the United States.

In 2021, AB 45 (Aguiar-Curry, Chapter 576, Statutes of 2021) was enacted to significantly expand and clarify the framework under which CBD derived from industrial hemp can be used in food, beverages and dietary supplements. The bill revised or added various definitions relating to hemp products and placed new requirements on hemp manufacturers in exchange for more explicit authority to produce manufactured goods containing CBD derived from hemp. In doing so, the bill expressly specified that foods, beverages, dietary supplements, cosmetics, and pet food are not adulterated by the inclusion of industrial hemp cannabinoids.

Integration of Cannabis and Hemp. Notwithstanding the biological and chemical similarities of cannabis and hemp, hemp products are widely considered "non-cannabis goods" for purpose of MAUCRSA. Under § 15407 of the DCC's regulations, licensed cannabis retailers are prohibited from selling any non-cannabis goods besides cannabis accessories and branded merchandise. (Proposed regulations recently announced by the DCC would further allow for the sale of prepackaged non-cannabis infused and food and beverages, subject to local authorization.) While presumably an individual or entity could both engage in a licensed cannabis business and in a business involving hemp, it is understood that the two supply chains must remain fully distinct.

Whether hemp and cannabis products should be allowed to coexist in a regulatory context has been debated consistently over the past several years. Because both plants contain the same cannabinoids, it is often the case that two essentially identical products—CBD gummies, for example—are regulated and sold differently based on whether the CBD was derived from cannabis or industrial hemp. Many cannabis retailers may wish to also sell products derived from hemp. However, some in the cannabis industry may see hemp as an unwelcomed competitor, and concerns have been expressed that the difference in regulatory systems and consumer safety requirements should keep the two products separated.

AB 45 included language requiring the DCC to prepare a report to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain. The report is required to include, but is not be limited to, the incorporation of hemp cannabinoids into manufactured cannabis products and the sale of hemp products at cannabis retailers. Language in AB 45 also stated the intent of the Legislature to consider, in light of the DCC's report, "whether and how to take legislative action concerning the incorporation of hemp into the cannabis supply chain."

The DCC published *The Hemp Report: Steps and Considerations for Incorporating Hemp Into the Commercial Cannabis Supply Chain* and submitted it to the Legislature in January of 2023. The report submitted by the DCC stated that "incorporating hemp into the regulated commercial cannabis supply chain presents both policy and implementation challenges. From the policy perspective, several determinations would need to be made to move forward with the inclusion of hemp." In the report's conclusion, the DCC summarized its determinations and conclusions as follows:

> "As detailed in this report, the inclusion of hemp into the commercial cannabis supply chain is complex and requires careful consideration of significant policy questions to arrive at an approach that is in the best interests of California. The approach utilized to accomplish this end would directly impact the cannabis industry, hemp industry, standard commercial market, medicinal and adult-use consumers, and the Department and other responsible California state agencies. While this report raises significant policy considerations to inspire and support deliberations between policy makers and stakeholders, it should not be interpreted as containing every single issue that may need to be considered and addressed by policy makers to determine when or if to incorporate hemp into the cannabis supply chain. If California chooses to allow hemp into the commercial cannabis supply chain, irrespective of which approach California adopts, implementation will likely require significant time and resources."

In 2023, AB 420 was introduced to as a vehicle for continued discussions around how California might integrate industrial hemp into the supply chain for cannabis. Initially, the bill contained a simplistic statement that nothing in MAUCRSA prohibits integration. Subsequent amendments to the bill that were made in the Senate provided for greater details regarding how integration would be achieved. The amendments also expanded prohibitions against industrial hemp containing synthetic THC or similar cannabinoids. However, the bill was ultimately held under submission on the suspense file in the Senate Committee on Appropriations.

This bill now represents the author's fifth year of leading efforts to strengthen California laws governing the cultivation, manufacturing, and sale of hemp products. Language in the bill would expressly allow for the integration of industrial hemp into the licensed cannabis supply chain. The bill then imposes a number of requirements to ensure that integration occurs safely.

This bill would only allow cannabis licensees to obtain industrial hemp from individuals registered with the CDPH, and that hemp would be tracked as a separate batch throughout the manufacturing process in order to document the disposition of that hemp or hemp product. Manufactured cannabis products incorporating hemp would be required to comply with MAUCRSA. The DCC would be required to implement a process by which a licensee that is also a registered hemp manufacturer may use the same premises.

Intoxicating Hemp. A significant portion of the bill is then aimed at addressing growing concerns regarding the perceived proliferation of intoxicating hemp products. The California Cannabis Industry Association (CCIA), this bill's sponsor, issued a white paper in October of 2022 titled *Pandora's Box: The Dangers of a National, Unregulated, Hemp-Derived Intoxicating Cannabinoid Market*. The CCIA report argued that loopholes in the 2018 Farm Bill, which defined industrial hemp as having no more than 0.3 percent delta-9 THC content by dry weight, inadvertently created led to the proliferation of intoxicating hemp products. Specifically, the white paper points to a Ninth Circuit decision that the CCIA says "unleashed a Wild West of intoxicants when it ruled that products containing delta-8 THC meet the statutory definition of industrial hemp."

According to the FDA, delta-8 THC is a cannabinoid typically synthetically manufactured from hemp-derived CBD that has significant psychoactive and intoxicating effects. The FDA has expressed concern that delta-8 THC products "likely expose consumers to much higher levels of the substance than are naturally occurring in hemp cannabis raw extracts." There were reportedly 104 reports made to the FDA of adverse events in patients who consumed delta-8 THC products between December 1, 2020, and February 28, 2022, over half of which resulted in medical intervention or hospital admission.

In April of 2023, the Cannabis Regulators Association (CANNRA), a coalition of regulatory agencies overseeing cannabis and hemp industries in more than 40 states and territories in the United States, wrote a letter to congressional leadership requesting action at the federal level provide a regulatory framework for products containing THC derived from hemp. CANNRA specifically called attention to the fact that a 0.3 percent threshold of delta-9 THC by weight is a relatively small amount of THC in a hemp plant, but is significantly more when included as an ingredient in edible products and beverages. A 50-gram chocolate bar, for example, would have around 150 milligrams of THC at the 0.3 percent THC limit – 30 times the standard 5 milligram THC dose established by the National Institute on Drug Abuse.

This bill seeks to close loopholes created in federal law by explicitly prohibiting intoxicating hemp products from being manufactured and sold in California. Under the bill, cannabis manufacturers would be prohibited from incorporating delta-9 THC derived from hemp in their products. The bill would then further prohibit the manufacturing, distribution, or sale of industrial hemp products containing synthetically derived cannabinoids unless explicitly approved by the CDPH.

Additionally, this bill would prohibit any person from manufacturing, distributing, or selling food and beverage final form products that exceed five servings per package. The total level of THC per final form product would then be capped, with the specific number still subject to determination; testing laboratories would be required to establish a limit of detection to ensure that this maximum THC content is not exceeded. The author intends to provide for the specific limits on THC for industrial hemp final form products following further discussion with stakeholders.

Enforcement of Illicit Hemp Products. A number of additional provisions in this bill would provide for greater enforcement tools and penalty options for illicitly produced and sold hemp products, which will be discussed more thoroughly when the bill is heard in the Assembly Committee on Judiciary.

Prior Related Legislation.

AB 420 (Aguiar-Curry) of 2023 would have authorized the integration of industrial hemp into the licensed cannabis supply chain and strengthened prohibitions against industrial hemp containing synthesized cannabinoids. *This bill was held on suspense in the Senate Committee on Appropriations.*

AB 1656 (Aguiar-Curry) of 2022 would have authorized the integration of industrial hemp into the licensed cannabis supply chain. *This bill died on the Senate inactive file.*

AB 45 (Aguiar-Curry, Chapter 576, Statutes of 2021) established a regulatory framework for industrial hemp under the Sherman Food, Drug, and Cosmetic Law.

SB 292 (Wilk, Chapter 485, Statutes of 2021) conformed current state law to the United States Department of Agriculture's Interim Final Rule regarding reporting and testing of industrial hemp.

SB 153 (Wilk, Chapter 838, Statutes of 2019) revised provisions regulating the cultivation and testing of industrial hemp to conform to the requirements for a state plan under the 2018 Farm Bill.

AB 228 (Aguiar-Curry) of 2019 would have established a regulatory framework for industrial hemp under the Sherman Food, Drug, and Cosmetic Law. *This bill was held on suspense in the Senate Committee on Appropriations.*

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.

SB 566 (Leno, Chapter 398, Statutes of 2013) allowed hemp to be grown in California, upon federal approval, by defining "industrial hemp" to be excluded from the definition of "marijuana," a Schedule I controlled substance.

ARGUMENTS IN SUPPORT:

The **California Cannabis Industry Association** (CCIA) is sponsoring this bill. The CCIA writes: "AB 2223 seeks to enhance the enforcement provisions in existing law by addressing the critical and urgent public health issue of unregulated, high-potency intoxicating hemp products that are showing up in gas stations, smoke shops, and even prominent retail outlets, blatantly subverting the state's rigorous cannabis laws and taxation framework. AB 2223 also offers a compelling solution to the industry's cost challenges by permitting the integration of certain hemp cannabinoids into cannabis products." The CCIA argues that "AB 2223 will help address the immediate public health, youth access, and exposure issues generated by the widespread availability of unregulated, intoxicating hemp products and pave the way for a robust, transparent, economically viable and socially equitable cannabis industry in California."

ARGUMENTS IN OPPOSITION:

Public Health Institute (PHI) opposes this bill unless current placeholder language is amended to cap THC content for hemp food and beverage products, as the author clearly intends. According to PHI: "AB 2223 fails to fulfill the most critical challenge which is to end the sale of intoxicating hemp products once and for all. While it has language in 111922 (c) which sets the stage for so doing, the critical THC level is left blank." PHI recommends "capping THC content to nonintoxicating levels," specifically amending the bill to prohibit industrial hemp final form products from exceeding 0.5 milligrams per package, or a lower amount determined by the CDPH. PHI further opposes language in the bill relating to inhalable products as well as provisions allowing hemp products to be sold by cannabis licensees.

POLICY ISSUE(S) FOR CONSIDERATION:

As currently constructed, this bill would effectively ban hemp products that contain levels of THC that are substantial enough to produce a psychoactive effect. However, in the interest of ensuring that compliance with the law is technically achievable by manufacturers, this bill would permit a relatively low level of THC to be permissible within the limit of detection when the products are tested. While this small degree of flexibility is arguably appropriate when considering the naturally occurring variances in cannabinoid content contained in hemp, it could unintentionally lead to the advertisement of "microdosing" hemp products, or products labeled with an implication that the purchaser should consume multiple products to achieve a high. The author may wish to prohibit these forms of marketing to ensure that this loophole is not created.

IMPLEMENTATION ISSUES:

The intent of this bill is clearly to cap the level of THC content that may be contained in industrial hemp products; however, the specific maximum amount in the bill currently remains blank. This placeholder language was initially introduced as a vehicle to facilitate ongoing discussions with stakeholders to determine what numbers are appropriate for inclusion in those provisions. As the bill leaves this committee, these blanks should be filled in with reasonable limits on total THC content so that the Legislature may consider a substantively implementable proposal. It is likely that stakeholder negotiations will remain ongoing as the bill continues to move through the legislative process, and that the author may subsequently choose to further amend the bill. In the meantime, amendments to provide for specific maximum levels of THC in hemp products would aid the Legislature in its deliberation of how best to safeguard consumers.

AMENDMENTS:

1) To provide for a specific maximum level of THC that may be contained in industrial hemp products, subdivision (c) in Section 7 of the bill should be amended as follows:

   (c) An industrial hemp final form product shall not have a level of total THC that exceeds one milligram. Each serving per package shall not exceed .25 milligrams of THC. A qualified testing laboratory shall establish a limit of detection of one milligram or lower for total THC and a sample shall pass if total THC does not exceed the limit of detection.

2) To prohibit manufacturers and retailers from marketing industrial hemp products as psychoactive, a new section of the bill should be added to add a new subdivision (c) to Section 111926.2 of the Health and Safety Code as follows:

   (c) An industrial hemp human food and beverage product shall not be labeled, marketed, or advertised as a product intended to produce an intoxicating effect.

REGISTERED SUPPORT:

California Cannabis Industry Association *(Sponsor)*
Angeles Emeralds
California Minority Alliance
California NORML
Coachella Valley Cannabis Alliance Network
Kiva Confections
Long Beach Collective Association
San Diego & Imperial Counties Cannabis Industry Labor Management
San Francisco Cannabis Retailers Alliance
Silicon Valley Cannabis Alliance
Social Equity LA
UFCW – Western States Council
United Cannabis Business Association

REGISTERED OPPOSITION:

Be the Influence
Big Sur Farmers Association
Humboldt County Growers Alliance
Marin Residents for Public Health Cannabis Policies
Mendocino Cannabis Alliance
Nevada County Cannabis Alliance
Origins Council
Public Health Institute
Trinity County Agriculture Alliance
Four individuals

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2228 (Villapudua) – As Introduced February 7, 2024

SUBJECT: Collateral recovery: notice and disclosure.

SUMMARY: This bill would clarify that a repossession agency may send a notice of seizure to the debtor's current address or by email, and prohibits any entity other than the repossession agency from determining charges payable by the debtor for the storage of collateral and personal effects.

EXISTING LAW:

1) Provides for the licensure and regulation of repossessors by the Bureau of Security and Investigative Services (BSIS) within the Department of Consumer Affairs (DCA) under the Collateral Recovery Act ("the Act"). (Business and Professions Code (BPC) §§ 7500 *et. seq*)

2) Defines "assignment" as any written authorization by the legal owner, lienholder, lessor, lessee, registered owner, or the agent of any of them, to repossess any collateral, including, but not limited to, collateral registered under the Vehicle Code that is subject to a security agreement that contains a repossession clause. "Assignment" also means any written authorization by an employer to recover any collateral entrusted to an employee or former employee in possession of the collateral. (BPC § 7500.1(a))

3) Defines "collateral" as any specific vehicle, trailer, boat, recreational vehicle, motor home, appliance, or other property that is subject to a security agreement. (BPC § 7500.1(e))

4) Defines "debtor" as any person obligated under a security agreement. (BPC § 7500.1(i))

5) Defines "legal owner" as a person holding a security interest in any collateral that is subject to a security agreement, a lien against any collateral, or an interest in any collateral that is subject to a lease agreement. (BPC § 7500.1(n))

6) Defines "licensee" as an individual, partnership, limited liability company, or corporation licensed under this chapter as a repossession agency. (BPC § 7500.1(o))

7) Defines "personal effects" as any property that is not the property of the legal owner and is not listed on the repossession assignment. (BPC § 7500.1(r))

8) Defines "repossession" as the locating or recovering of collateral by means of an assignment. (BPC § 7500.1(w))

9) Prohibits a licensed repossession agency or its registrants from demanding a payment in lieu of repossession, nor sell any recovered collateral. (BPC § 7507.4)

10) Requires a licensed repossessor to remove and inventory personal effects from the collateral after repossession. The inventory of the personal effects must be complete and accurate, and the personal effects must be labeled and stored by the licensee for a minimum of 60 days in a

secure manner, except those personal effects removed by or in the presence of the debtor or the party in possession of the collateral at the time of the repossession. (BPC § 7507.9)

11) Requires that the date and time the inventory is made shall be recorded, and that the permanent records of the licensee shall indicate the name of the employee or registrant who performed the inventory. (BPC § 7507.9(a))

12) Allows licensees to dispose of personal effects after being held for a minimum of 60 days, so long as the inventory and other relevant information regarding disposal are filed in the permanent records of the licensee and retained for four years. (BPC § 7507.9(c))

13) Requires that the inventory shall be provided to the debtor no later than 48 hours after the recovery of the collateral, with certain exceptions to account for weekends, holidays, and additional time for certain collateral. (BPC § 7507.9(e))

14) Authorizes a debtor, with the consent of the licensee, to waive the preparation and presentation of an inventory if the debtor redeems the personal effects or other personal property not covered by a security interest within the time period for the notices required by the Act and signs a statement that the debtor has received all the property. (BPC § 7507.9(h))

15) Requires a repossession agency to obtain written authorization from the debtor before releasing personal effects or other personal property not covered by a security agreement to a person other than the debtor. (BPC § 7507.9(i))

16) Requires that the inventory shall be a confidential document, and that the licensee shall only disclose the contents of the inventory:

    a) In response to the order of a court having jurisdiction to issue the order.

    b) In compliance with a lawful subpoena issued by a court of competent jurisdiction.

    c) When the debtor has consented in writing to the release and the written consent is signed and dated by the debtor subsequent to the repossession and states the entity or entities to whom the contents of the inventory may be disclosed.

    d) To the debtor.

    (BPC § 7507.9(k))

17) Requires that a licensee shall serve a debtor with a notice of seizure as soon as possible after the recovery of collateral with specified information, to be served no later than 48 hours after seizure, and that the notice may be sent via mail addressed to the last known address of the debtor or by personal service. (BPC § 7505.10)

18) Requires that the notice of seizure must include a disclosure of the charges payable by the debtor to the repossession agency for the storage of the collateral and personal effects from the date of repossession until release of the property from storage. (BPC § 7507.10(f))

19) Authorizes the Director of Consumer Affairs to assess fines against licensees that use recovered collateral or personal effects for their own personal benefit. (BPC § 7508.2(b))

20) Authorizes the Director of Consumer Affairs to assess fines against licensees that fail to maintain a debtor's personal effects for at least 60 days, or that fail to provide a personal effects list or notice of seizure within the established time limits. (BPC § 7508.4(h)(i))

THIS BILL:

1) Authorizes that, upon repossession of collateral, the notice of seizure may be sent to the current address of the debtor, if known, or by email, if known.

2) Requires that any charges payable by the debtor to the repossession agency for the storage of collateral and personal effects shall not be determined by any entity other than the repossession agency.

3) Requires that any charges payable by the debtor to the repossession agency for the storage of collateral and personal effects shall be confidential.

4) Restates that a licensee shall only disclose the contents of the inventory:

    a) In response to the order of a court having jurisdiction to issue the order.

    b) In compliance with a lawful subpoena issued by a court of competent jurisdiction.

    c) When the debtor has consented in writing to the release and the written consent is signed and dated by the debtor subsequent to the repossession and states the entity or entities to whom the contents of the inventory may be disclosed.

    d) To the debtor.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Association of Licensed Repossessors.** According to the author:

> "[This bill] will provide important efficiency and consumer protection improvements to the Collateral Recovery Act by addressing two main issues. First, by allowing the notice of repossession and storage of personal effects to be sent to the 'current address, if known' rather than the 'last known address,' we are preventing the sending of personal, sensitive information to an address that the debtor may not have been living at for many years. Second, maintaining confidentiality of the charged price of storage for personal effects will prevent collections agencies from requiring a debtor to divert their funds away from receiving their valuable property back, and toward paying down their deficiency balance. These are necessary steps to take in order to provide more equitable practices and help debtors retrieve their items of value."

Background. In California, the repossessing profession is largely regulated by the Collateral Recovery Act (formerly known as the Repossessors Act), which places the licensure, regulation, and enforcement of repossessors and repossession agencies under the DCA's Bureau of Security and Investigative Services. Repossession agencies contract with legal owners – that is, persons with a security interest in any collateral, a lien against collateral, or interest in such that is subject

to a lease agreement – to locate and recover personal property that has been sold under a security agreement. Often in this process, repossessors come into possession of a debtor's personal effects, property that is not part of the repossession assignment but may be included in the repossessed collateral (for example, personal items contained within a repossessed vehicle).

Under existing law, repossession agencies must inventory all personal effects that come into their possession, store the items for no less than 60 days, and notify the debtor that they are in possession of their personal effects so that the debtor may be able to recover them. Additionally, current law mandates that, as part of the notice of seizure that is sent to a debtor, a repossession agency must disclose any charges payable by the debtor in relation to the storage of collateral and any personal effects. These notifications currently can be serviced personally or mailed to the last known address of the debtor.

However, according to the sponsors, there is concern that these notices are not actually going to the debtor. The "last known address" is often outdated, sometimes for years. As a result, not only are some debtors not receiving a notice that collateral has been seized nor a list of their personal items in possession of the repossession agency, but these confidential notices are potentially being obtained by parties not lawfully privy to the information.

The author and sponsors have noted that this potential for notices and inventory lists to be shared with parties beyond the debtor is especially concerning in context of recent tactics used by lending institutions and collection agencies. Some collectors have sent unlawful notices to debtors claiming that they must pay a fee prior to collecting their personal effects from a repossession agency, and others have contacted repossession agencies themselves, insisting that the agency sell the debtor's personal items and remit the money to the lender. This has created confusion and unfair practices amongst repossession agencies.

This bill seeks to address these issues by clarifying that repossession agencies can send a seizure notice to either the current address of the debtor, if it is known, or to the email of the debtor, if it is known. In addition, this bill adds new provisions to the Collateral Recovery Act making clear that charges payable by the debtor to the repossession agency for storage are only to be determined by the repossession agency itself, and reiterates that these charges are strictly confidential.

Prior Related Legislation.

AB 913 (Smith) Chapter 416, Statutes of 2021, clarified and updated definitions used under the Act, including "deadly weapon" as it pertains to a debtor's personal effects.

AB 2759 (Obernolte) Chapter 354, Statutes of 2020, increased the time that an expired repossession agency license may be renewed from three years to ten years and allowed a family member of a qualified manager who has died to reinstate and retain the repossession agency license number.

AB 1859 (Gallagher) Chapter 509, Statutes of 2016, clarified and updated terminology throughout the Act, and amended the experience requirements necessary for a repossessor's license.

AB 2503 (Hagman) Chapter 390, Statutes of 2014, revised the Act to prohibit knowing submissions of false reports, among other reforms, and exempted repossessed vehicles from certain registration requirements.

AB 791 (Hagman) Chapter 340, Statutes of 2013, prohibited a repossessor from selling repossessed collateral or accepting payment from a debtor in lieu of repossession, prohibited a repossession agency from disclosing personal employee information, and authorized a repossessor to wear certain identification.

AB 1883 (Kelley) Chapter 402, Statutes of 2002, provided that certain licensees who misrepresent or provide false information on an application for licensure are guilty of a misdemeanor and subject to discipline by the Director of Consumer Affairs.

SB 1456 (Kelley, Chapter 624, Statutes of 1996) authorized repossession agencies to request written permission to release personal property to someone other than the debtor, as well as other technical changes.

AB 1541 (Lee) Chapter 505, Statutes of 1995, made various changes to repossession law, including but not limited to renaming the Repossessors Act to the Collateral Recovery Act, and establishing laws around the handling of the personal effects of debtors.

ARGUMENTS IN SUPPORT:

This bill is sponsored by the **California Association of Licensed Repossessors (CALR).** According to CALR: "[This bill] will go far to ensure that the consumer's personal information is not disclosed to third parties. It will also ensure that repossession agencies are not violating state and federal laws by disclosing confidential information."

POLICY ISSUE(S) FOR CONSIDERATION:

Unknown Destination. The author and sponsors note that, at present, repossession agencies are compelled to knowingly send seizure notices and inventory lists to an address that is no longer in use by the debtor, even when they are aware of a more current address the debtor may reside at or have the debtor's email address. As such, the revised and expanded language in this bill allowing additional forms of contact, if known, is sensible to give repossessors more ways to notify debtors. However, it is unclear what happens when a repossession agency does not have a current address or known email on-hand, as law still mandates that this notice must be sent within 48 hours of collateral seizure. As this bill progresses, the author and sponsors may wish to consider additional language clarifying what steps a repossession agency must take if no form of contact is known for a debtor.

IMPLEMENTATION ISSUES:

Consistency across BPC subdivisions. In order to give repossessors more ways to notify debtors, this bill amends current law contained under BPC § 7507.10, which is the subdivision pertaining to notices of seizure, replacing the term "last known address" with "current address, if known", and adding "email, if known". However, language contained in BPC § 7507.9(g), which is the preceding subdivision pertaining to sending inventory lists to debtors, remains unchanged and still reads "last known address".

Unnecessary and Excessive Code. In order to ensure charges disclosed to debtors related to storage of collateral and personal effects are solely determined by the repossession agency, and to ensure confidentiality of these charges, this bill establishes a new section under the Collateral Recovery Act, BPC § 7507.105. However, it is unclear why an entirely new section of code is necessary when there are existing sections under the Act already germane to these topics. Additionally, the proposed subdivision (b) of this new section copies verbatim language already contained in BPC § 7507.9.

AMENDMENTS:

In order to address implementation issues noted in the analysis, amend the bill as follows:

On page 2, before line 1:

SECTION 1.
Section 7507.09 of the Business and Professions Code, as amended by Section 3 of Chapter 416 of the Statutes of 2021, is amended to read:

(g) The notice may be given by regular mail addressed to the ~~last known~~ *current* address of the debtor, *if known,* ~~or~~ by personal service*, or by email, if known,* at the option of the repossession agency.

SEC. 2. *Section 7507.10 of the Business and Professions Code, as amended by Section 4 of Chapter 322 of the Statutes of 2009, is amended to read:* ~~Section 7507.105 is added to the Business and Professions Code, immediately following Section 7507.10, to read:~~

7507.10. *(a)* A licensee shall serve a debtor with a notice of seizure as soon as possible after the recovery of collateral and not later than 48 hours, except that if the 48-hour period encompasses a Saturday, Sunday, or postal holiday, the notice of seizure shall be provided not later than 72 hours or, if the 48-hour period encompasses a Saturday or Sunday and a postal holiday, the notice of seizure shall be provided not later than 96 hours, after the repossession of collateral. The notice shall include all of the following:

(1)~~(a)~~ The name, address, and telephone number of the legal owner to be contacted regarding the repossession.

(2)~~(b)~~ The name, address, and telephone number of the repossession agency to be contacted regarding the repossession.

(3)~~(c)~~ A statement printed on the notice containing the following: "Repossessors are regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA. Repossessors are required to provide you, not later than 48 hours after the recovery of collateral, with an inventory of personal effects or other personal property recovered during repossession unless the 48-hour period encompasses a Saturday, Sunday, or a postal holiday, then the inventory shall be provided no later than 96 hours after the recovery of collateral."

(4)~~(d)~~ A disclosure that "Damage to a vehicle during or subsequent to a repossession and only while the vehicle is in possession of the repossession agency and which is caused by the repossession agency is the liability of the repossession agency. A mechanical, electrical, or

tire failure, or the loss of, or any damage to, or as a result of, or caused by, any aftermarket parts and accessories not in compliance with Section 24008 of the Vehicle Code shall not be the responsibility of the repossession agency unless the failure, damage, or loss is due to the negligence of the repossession agency."

(5)~~(e)~~ If applicable, a disclosure that "Environmental, Olympic, special interest, or other license plates issued pursuant to Article 8 (commencing with Section 5000), Article 8.4 (commencing with Section 5060) or Article 8.5 (commencing with Section 5100) of Chapter 1 of Division 3 of the Vehicle Code that remain the personal effects of the debtor will be removed from the collateral and inventoried, and that if the plates are not claimed by the debtor within 60 days, they will be destroyed."

(6)~~(f)~~ A disclosure of the charges payable by the debtor to the repossession agency for the storage of the collateral and personal effects from the date of repossession until release of the property from storage.

(b) Any charges payable by the debtor to the repossession agency for the storage of the collateral and personal effects from the date of repossession until release of the property from storage, as disclosed in subdivision (a)(6), shall not be determined by any entity other than the repossession agency.

(c) The notice, and any disclosure of charges payable by the debtor to the repossession agency for the storage of the collateral and personal effects from the date of repossession until release of the property from storage, shall be confidential.

(d) The notice may be given by regular mail addressed to the ~~last known~~ *current* address of the ~~debtor or~~ *debtor, if known,* by personal ~~service~~ *service, or by email, if known*, at the option of the repossession agency.

~~7507.105.~~

~~(a) Any charges payable by the debtor to the repossession agency for the storage of the collateral and personal effects from the date of repossession until release of the property from storage, as disclosed in subdivision (f) of Section 7507.10, shall not be determined by any entity other than the repossession agency.~~

~~(b) Any charges payable by the debtor to the repossession agency for the storage of the collateral and personal effects from the date of repossession until release of the property from storage, and the disclosure provided pursuant to subdivision (f) of Section 7507.10, shall be confidential. A licensee shall only disclose the contents of the inventory under the following circumstances:~~

~~(1) In response to the order of a court having jurisdiction to issue the order.~~

~~(2) In compliance with a lawful subpoena issued by a court of competent jurisdiction.~~

~~(3) When the debtor has consented in writing to the release and the written consent is signed and dated by the debtor subsequent to the repossession and states the entity or entities to whom the charges may be disclosed.~~

~~(4) To the debtor.~~

REGISTERED SUPPORT:

California Association of Licensed Repossessors *(sponsor)*

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2270 (Maienschein) – As Amended April 1, 2024

SUBJECT: Healing arts: continuing education: menopausal mental and physical health.

SUMMARY: Requires licensees of the Medical Board of California (MBC), the Osteopathic Medical Board of California (OMBC), the Board of Registered Nursing (BRN), the Physician Assistants Board (PAB), the Board of Psychology (BOP), and the Board of Behavioral Sciences (BSS) to have the option to take coursework on menopausal mental or physical health within the scope of their practice to satisfy continuing education (CE) requirements.

EXISTING LAW:

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

2) Establishes the MBC within the Department of Consumer Affairs for purposes of implementing and enforcing the Medical Practice Act. (BPC § 2001)

3) Establishes the OMBC for purposes of implementing and enforcing the Osteopathic Act and the Medical Practice Act, when applicable. (BPC § 2701)

4) Specifies that references to the MBC in the Medical Practice Act also refer to the OMBC, as specified. (BPC § 2451)

5) Requires the MBC to adopt and administer standards for the CE of its licensees; authorizes the MBC to set content standards for any education regarding the prevention and treatment of a chronic disease; and mandates that the MBC require each licensed physician and surgeon to demonstrate satisfaction of CE requirements at intervals of not less than four nor more than six years. (BPC § 2190)

6) Authorizes the MBC's Division of Licensing to establish continuing medical education standards for courses that serve to maintain, develop, or increase the knowledge, skills, and professional performance that a physician and surgeon uses to provide care, or to improve the quality of care provided to patients. (BPC § 2190.1)

7) Requires a physician and surgeon to complete not less than 50 hours of approved CE during every two years as a condition of license renewal. (California Code of Regulations, Title 16, § 1336)

8) In determining its CE requirements, requires the MBC to consider including courses related to numerous specified subjects. (BPC §§ 2191, 2191.4, 2191.5, 2196.9)

9) Requires most physicians and surgeons to complete a one-time CE course in pain management and the treatment of terminally ill and dying patients, which must include the subject of the risks associated with the use of Schedule II drugs. (BPC § 2190.5)

10) Authorizes a physician and surgeon to complete a one-time CE course on the treatment and management of opiate-dependent patients as an alternative to the required course in pain management. (BPC § 2190.6)

11) Requires the OMBC to adopt and administer standards for CE of osteopathic physician and surgeons. (BPC § 2454.5)

12) Mandates that the OMBC require each licensed osteopathic physician and surgeon to complete a minimum of 50 hours of American Osteopathic Association CE hours, as specified, and demonstrate satisfaction of CE requirements every two years as a condition of license renewal. (BPC § 2454.5)

13) Requires osteopathic physician and surgeons to complete a course on the risks of addiction associated with the use of Schedule II drugs. (BPC § 2454.5)

14) Establishes the Nursing Practice Act, which provides for the state's licensure and regulation of registered nurses. (BPC §§ 2700-2838.4)

15) Establishes the BRN, within DCA, for purposes of implementing and enforcing the Nursing Practice Act. (BPC § 2701)

16) Requires the BRN to, by regulation, establish standards for CE, as specified. (BPC § 2811.5(c))

17) Requires registered nurses to complete 30 hours of CE approved by the BRN every two years as a condition of license renewal. (California Code of Regulations. Title 16 § 1451)

18) In establishing standards for CE, requires the BRN to consider including a course in the special needs care of individuals and their families, including, but not limited to: pain and symptom management; the psychosocial dynamics of death; dying and bereavement; and hospice care. (BPD § 2811.5(f)

19) Requires the BRN to adopt regulations requiring all CE courses to contain curriculum related to implicit bias. (BPC § 2736.5)

20) Requires the BRN to encourage CE in spousal or partner abuse detection and treatment. (BPC § 2811.5(e))

21) Establishes the Psychology Licensing Law, which provides for the state's licensure and regulation of psychologists. (BPC § 2901)

22) Establishes the BOP within DCA for purposes of implementing and enforcing the Psychology Licensing Law. (BPC § 2920)

23) Requires licensed psychologists to complete 36 hours of approved continuing professional development (CPD), as specified, every two years as a condition of license renewal. (BPC § 2915(a))

24) Requires the BOP to encourage every licensed psychologist to take CPD in geriatric pharmacology. (BPC § 2914.1)

25) Requires the BOP to encourage licensed psychologists to take CPD in psychopharmacology and biological basis of behavior. (BPC § 2914.2)

26) Establishes the Physician Assistant Practice Act, which provides for the state's licensure and regulation of PAs. (BPC §§ 3500.5-3545)

27) Authorizes the PAB to require a licensee to complete CE as a condition of license renewal, but not more than 50 hours every two years. (BPC § 3524.5(a))

28) Requires the PAB to adopt regulations that require all CE courses to contain curriculum related to implicit bias. (BPC § 3524.5(b))

29) Requires specified PAs to complete, as part of their CE requirements, a course that covers Schedule II controlled substances and the risks of addiction associated with their use. (BPC § 3502.1(e)(3))

30) Establishes the Licensed Marriage and Family Therapist Act, which provides for the state's licensure and regulation of licensed marriage and family therapists (LMFT), the Educational Psychologist Practice Act, which provides for the state's licensure and regulation of licensed educational psychologists (LEP), the Licensed Professional Clinical Counselor Act, which provides for the licensure and regulation of licensed professional clinical counselors (LPCC), and the Clinical Social Worker Practice Act, which provides for the state's licensure and regulation of licensed clinical social workers (LCSW). (BPC §§ 4980-4989; 4989.10-4989.18; 4991-4998.5, 4999.10-4999.129)

31) Establishes the BBS for purposes of implementing and enforcing the Licensed Marriage and Family Therapist Act, the Educational Psychologist Practice Act, the Licensed Professional Clinical Counselor Act, and the Clinical Social Worker Practice Act. (BPC § 4989.12)

32) Requires licensees, as a condition of license renewal, to certify to the BBS that they have completed 36 hours of approved CE in or relevant to their field of practice in the past two years. (BPC § 4980.54(c), 4989.34(a), 4996.22(a), 4996.6(b)(3), 4999.76(a)(1))

33) Requires that 6 hours of the required 36 hours of CE taken in a renewal period be in the subject of law and ethics. (California Code of Regulations, Title 16, § 1887.3(c))

34) Requires continuing training, education, and coursework to be from approved providers and must incorporate one or more of the following: aspects of the discipline that are fundamental to the understanding or the practice of the profession for which the individual is licensed; aspects of the discipline in which significant recent developments have occurred; or aspects of other disciplines that enhance the understanding or the practice of the profession for which the individual is licensed. (BPC § 4980.54(h), 4989.34(c), 4996.22(f), and 4999.76(f))

35) Requires the BBS to establish, by regulation, a procedure for identifying acceptable providers of CE courses for LMFTs, LPCCs, and LCSWs, and requires all CE providers to adhere to procedures established by the BBS. (BPC §§ 4980.54(g), 4996.22(e), 4999.76(e))

THIS BILL:

1) Requires a licensee of the MBC, OMBC, BRN, BOP, PAB, or the BBS to have the option of taking coursework on menopausal mental or physical health within the scope of their practice to satisfy continuing education requirements, notwithstanding any law to the contrary.

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

COMMENTS:

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

> It is imperative to address the misconceptions and lack of understanding surrounding menopause. It is crucial for both women experiencing menopause and healthcare professionals to comprehend the perimenopause transition, as it affects almost every woman. Lack of knowledge perpetuates anxiety and delays in care, potentially impacting the health-related quality of life. This bill aims to add an educational course on menopausal mental and physical health for healthcare providers, including physicians, nurses, psychologists, and others, to improve patient care during this significant life transition.

Background.

Continuing Medical Education for Physicians. Physicians and surgeons licensed by the MBC and the OMBC are required to complete 50 hours of approved CE every two years as a condition of license renewal. Though existing law also requires the MBC to consider requiring CE related to various topics (e.g. nutrition), there are only two subject-specific CE requirements in statute. Most physicians and surgeons are required to complete a one-time, 12-hour training in either the pain management and treatment of terminally ill and dying patients or the treatment and management of opiate-dependent patients.[1] Additionally, general internists and family physicians who have a patient population of which over 25 percent are 65 years of age or older must complete at least 20 percent of their mandatory CE in the field of geriatric medicine. Physicians are otherwise afforded great latitude in choosing which CE courses to take to satisfy their 50 hours. Both the MBC and the OMBC require CE courses to be accredited or approved by specified organizations such as the American Medical Association and the Accreditation Council for Continuing Medical Education. Osteopathic physician and surgeons specifically are required to complete a minimum of 20 CE hours certified by the American Osteopathic Association.[2]

Continuing Education for Registered Nurses. All nurses under the BRN are required by statute to complete 30 hours of CE during each two-year renewal cycle to ensure continued competence. Courses must be related to either the scientific knowledge or technical skills required for the practice of nursing, or to direct or indirect patient care.[3] Courses approved by appropriate state, regional and national health professional associations as well as other professional health and licensing boards in and out of California can be acceptable, so long as the content meets the BRN's requirements.

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[1] Pathologists and radiologists are exempt from this requirement.
[2] Osteopathic Medical Board of California Continuing Medical Education
[3] Board of Registered Nursing Continuing Education for License Renewal

Continuing Professional Development for Psychologists. Psychologists under the BOP are required to complete at least 36 hours of approved CDP every two years as a condition of license renewal. Acceptable CDP activities include professional activities (e.g. peer consultation, exam development, and attendance at a BOP meeting), academic activities (e.g. graduate-level coursework and authoring publications), board certification by the American Board of Professional Psychology, and sponsored CE.[4] The BOP accepts up to 27 hours of sponsored CE each renewal period and requires courses to be approved by the American Psychological Association, California Psychological Association, Association of Black Psychologists, California Medical Association, or the Accreditation Council for Continuing Medical Education.

Continuing Medical Education for Physician Assistants. Physician assistants are required to complete 50 hours of CME every two years as a condition of license renewal.[5] Continuing education requirements may be deemed satisfied if the physician assistant is certified by the National Commission on Certification of Physician Assistants at the time of renewal. CME courses must be Category I (Preapproved) by the American Academy of Physician Assistants, the American Medical Association, the American Osteopathic Association Council on Continuing Medical Education, the American Academy of Family Physicians, the Accreditation Council for Continuing Medical Education (ACCME), or a state medical society recognized by the ACCME.[6]

Continuing Education for Social Workers, Marriage and Family Therapists, Educational Psychologists, and Professional Clinical Counselors. The BBS requires licensees to complete 36 hours of CE, including 6 hours of Law and Ethics[7], every two-year license renewal period. LMFTs, LCSWs, LPCCs, and LEPs are also required to take one-time courses on suicide risk assessment and intervention, and telehealth as a condition of license renewal. Newly licensed LMFTs, LCSWs, and LPCCs are required to complete CE on HIV/AIDs prior to their first license renewal.[8] Similarly, newly licensed LEPs are required to take CE related to child abuse assessment and reporting[9] and alcoholism and other chemical substance dependency[10] if not completed prior to initial licensure. CE must be taken from a BBS-accepted provider, such as an accredited university or an organization or association that is recognized by the BBS as a CE provider.[11]

Menopause. Menopause is a natural part of aging for women and people assigned female at birth.[12] During perimenopause, decreases in estrogen and progesterone cause menstrual periods to cease, typically over many years in a person's 40s or 50s. Menopause, which marks the end of a person's fertility, is diagnosed after 12 consecutive months without a menstrual cycle. Symptoms include hot flashes, sleep disturbances, and emotional changes, and may be managed by hormone therapy, prescription medications, and lifestyle changes. Symptoms may improve during postmenopause, but risks of adverse health conditions such including osteoporosis and heart disease are elevated.

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[4] Board of Psychology Continuing Professional Development Information
[5] 16 CCR § 1399.615
[6] Physician Assistant Board Continuing Medical Education Information
[7] 16 CCR § 1887.3(d)
[8] 16 CCR § 1887.3(c)
[9] 16 CCR § 1807.2
[10] 16 CCR § 1810
[11] Board of Behavioral Sciences Licensee Continuing Education Information Brochure
[12] Cleveland Clinic Menopause

A 2017 survey of 183 postgraduates in family medicine, internal medicine, and obstetrics and gynecology residency programs across the US highlighted knowledge gaps concerning hormone therapy and menopause management strategies. Notably, 20% of respondents (36) reported a lack of menopause lectures during residency and just 6.8% (12) felt adequately prepared to manage menopausal patients. The authors of the study emphasized the need to invest in "the education of future clinicians to ensure evidence-based, comprehensive menopause management for the increasing population of midlife women."[13]

This bill would require physician and surgeons, osteopathic physician and surgeons, registered nurses, psychologists, physician assistants, LCSWs, LEPs, LMFTs, and LPCCs to have the option of taking CE related to menopausal mental or physical health within their scope of practice. Considering people of lower socioeconomic status are more likely to experience menopause at a younger age and have worse symptoms,[14] the author's office believes that this bill will reduce health-related inequities by ensuring health care providers are knowledgeable about menopause,

Current Related Legislation.

AB 2467 (Bauer-Kahan) of 2024 would require a health care service plan contract or health insurance policy, except for a specialized contract or policy, that is issued, amended, or renewed on or after January 1, 2025, to include coverage for treatment of perimenopause and menopause. *AB 2467 is pending in the Assembly Health Committee.*

AB 2229 (Wilson) of 2024 would require comprehensive sexual health education to include instruction and materials on menopause, among other topics related to menstruation. *AB 2229 is pending in the Assembly Appropriations Committee.*

AB 2581 (Maienschein) of 2024 would licensees of the MBC, OMBC, BRN, PAB, BOP, and the BBS to have the option of taking coursework on maternal mental health to satisfy CE requirements. *AB 2581 is pending in this committee.*

AB 3119 (Low) of 2024 would require the MBC, in determining its CE requirements, to consider including a course in Long COVID. *AB 3119 is pending in this committee.*

Prior Related Legislation.

AB 845 (Maienschein), Chapter 220, Statutes of 2019, requires the MBC, in determining its CE requirements for licensed physicians and surgeons, to consider including a course in maternal mental health.

AB 1791 (Waldron), Chapter 122, Statutes of 2018, requires the MBC, in determining its CE requirements, to consider including a continuing medical education course relating to the

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[13] Kling JM, MacLaughlin KL, Schnatz PF, Crandall CJ, Skinner LJ, Stuenkel CA, Kaunitz AM, Bitner DL, Mara K, Fohmader Hilsaca KS, Faubion SS. Menopause Management Knowledge in Postgraduate Family Medicine, Internal Medicine, and Obstetrics and Gynecology Residents: A Cross-Sectional Survey. Mayo Clin Proc. 2019 Feb;94(2):242-253.

[14] Santoro N, Sutton-Tyrrell K. The SWAN song: Study of Women's Health Across the Nation's recurring themes. Obstet Gynecol Clin North Am. 2011 Sep;38(3):417-23.

integration of HIV/AIDS pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) medication maintenance and counseling in primary care settings.

AB 1340 (Maienschein), Chapter 759, Statutes of 2017, requires the MBC to, when determining its CE requirements, consider including a course in integrating mental and physical health care in primary care settings.

ARGUMENTS IN SUPPORT:

The **California Retired Teachers Association** writes in support:

> [This bill] would expand the scope of continuing education and professional development opportunities for doctors and therapists to include menopausal mental and physical health. Since a disproportionate number of teachers are women, ensuring medical professionals can expand their expertise on women's medical issues during menopause will provide overall better care.

ARGUMENTS IN OPPOSITION:

None on file

POLICY ISSUE(S) FOR CONSIDERATION:

Need for the bill. Historically, similar bills have either required a board to encourage its licensees to take CE related to a particular topic, mandated licensees to complete CE related to a specific topic, or required a board to consider requiring licensees to complete specified CE. This bill only requires that licensees have the *option* to take CE related to a specific subject—menopausal mental or physical health. This committee is currently aware of at least one CE course on the topic.[15] As such, it is unclear why a licensee would not currently have the option to take CE related to menopausal health unless such coursework is not relevant to the licensee's practice or does not meet a board's parameters for acceptable CE. Provided the availability of CE related to menopause, the benefit of the bill is uncertain.

Relevance. Existing law requires licensees under the BBS (LCSWs, LMFTs, LEPs, and LPCCs) to take CE courses that are related to their field of practice. While the topic of menopause may be relevant to the practice of a LCSW, LMFT, or LPCC, it is much less likely to be applicable to LEPs whose clients are children. However, as currently written, this bill could be interpreted to require the BBS to accept menopause-related CE from any licensee regardless of germaneness.

IMPLEMENTATION ISSUES:

Impact on existing CE requirements. Existing law requires licensees to complete 30-50 hours of CE (depending on license type) every license renewal period. In fulfillment of some of those hours, some boards require licensees to complete coursework related to California law and ethics. As the bill is currently drafted, it is unclear whether the completion of a single CE course related to menopause would satisfy the entirety of a licensee's CE obligation, including any specific coursework required by a board.

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[15] Menopause Online Course | Mayo Clinic

AMENDMENTS:

To address the aforementioned policy and implementation issues, the author has agreed to amend the bill as follows:

1) In Section 3 of the bill, strike out "~~Notwithstanding any law to the contrary, a licensee shall have the option of taking coursework on menopausal mental or physical health within the scope of their practice to satisfy continuing education requirements.~~" and replace with "*In determining its continuing professional development requirements, the board shall consider including a course in menopausal mental or physical health.*"
2) Strike the remainder of the bill.
3) Add "*In determining its continuing education requirements, the board shall consider including a course in menopausal mental or physical health.*" to the following existing BPC Sections, respectively:

    a. BPC § 2191 related to physicians and surgeons
    b. BPC § 2811.5 related to registered nurses
    c. BPC § 3524.5 related to physician assistants
    d. BPC § 4980.54 related to marriage and family therapists
    e. BPC § 4989.34 related to educational psychologists
    f. BPC § 4996.22 related to social workers
    g. BPC § 4999.76 related to clinical counselors

REGISTERED SUPPORT:

California Retired Teachers Association

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2581 (Maienschein) – As Introduced February 14, 2024

SUBJECT: Healing arts: continuing education: maternal mental health.

SUMMARY: Requires licensees of the Medical Board of California (MBC), Osteopathic Medical Board of California (OMBC), Board of Registered Nursing (BRN), Physician Assistants Board (PAB), Board of Psychology (BOP), and the Board of Behavioral Sciences (BBS) to have the option to take coursework on maternal mental health to satisfy continuing education (CE) requirements.

EXISTING LAW:

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

2) Establishes the MBC within the Department of Consumer Affairs for purposes of implementing and enforcing the Medical Practice Act. (BPC § 2001)

3) Establishes the OMBC for purposes of implementing and enforcing the Osteopathic Act and the Medical Practice Act, when applicable. (BPC § 2701)

4) Specifies that references to the MBC in the Medical Practice Act also refer to the OMBC, as specified. (BPC § 2451)

5) Requires the MBC to adopt and administer standards for the CE of its licensees; authorizes the MBC to set content standards for any education regarding the prevention and treatment of a chronic disease; and mandates that the MBC require each licensed physician and surgeon to demonstrate satisfaction of CE requirements at intervals of not less than four nor more than six years. (BPC § 2190)

6) Authorizes the MBC's Division of Licensing to establish continuing medical education standards for courses that serve to maintain, develop, or increase the knowledge, skills, and professional performance that a physician and surgeon uses to provide care, or to improve the quality of care provided to patients. (BPC § 2190.1)

7) Requires a physician and surgeon to complete not less than 50 hours of approved CE during every two years as a condition of license renewal. (California Code of Regulations, Title 16, § 1336)

8) In determining its CE requirements, requires the MBC to consider including courses related to numerous specified subjects. (BPC §§ 2191, 2191.4, 2191.5, 2196.9)

9) Requires most physicians and surgeons to complete a one-time CE course in pain management and the treatment of terminally ill and dying patients, which must include the subject of the risks associated with the use of Schedule II drugs. (BPC § 2190.5)

10) Authorizes a physician and surgeon to complete a one-time CE course on the treatment and management of opiate-dependent patients as an alternative to the required course in pain management. (BPC § 2190.6)

11) Requires the OMBC to adopt and administer standards for CE of osteopathic physician and surgeons. (BPC § 2454.5)

12) Mandates that the OMBC require each licensed osteopathic physician and surgeon to complete a minimum of 50 hours of American Osteopathic Association CE hours, as specified, and demonstrate satisfaction of CE requirements every two years as a condition of license renewal. (BPC § 2454.5)

13) Requires osteopathic physician and surgeons to complete a course on the risks of addiction associated with the use of Schedule II drugs. (BPC § 2454.5)

14) Establishes the Nursing Practice Act, which provides for the state's licensure and regulation of registered nurses. (BPC §§ 2700-2838.4)

15) Establishes the BRN, within DCA, for purposes of implementing and enforcing the Nursing Practice Act. (BPC § 2701)

16) Requires the BRN to, by regulation, establish standards for CE, as specified. (BPC § 2811.5(c))

17) Requires registered nurses to complete 30 hours of CE approved by the BRN every two years as a condition of license renewal. (California Code of Regulations, Title 16, § 1451)

18) In establishing standards for CE, requires the BRN to consider including a course in the special needs care of individuals and their families, including, but not limited to: pain and symptom management; the psychosocial dynamics of death; dying and bereavement; and hospice care. (BPD § 2811.5(f)

19) Requires the BRN to adopt regulations requiring all CE courses to contain curriculum related to implicit bias. (BPC § 2736.5)

20) Requires the BRN to encourage CE in spousal or partner abuse detection and treatment. (BPC § 2811.5(e))

21) Establishes the Psychology Licensing Law, which provides for the state's licensure and regulation of psychologists. (BPC § 2901)

22) Establishes the BOP within DCA for purposes of implementing and enforcing the Psychology Licensing Law. (BPC § 2920)

23) Requires licensed psychologists to complete 36 hours of approved continuing professional development (CPD), as specified, every two years as a condition of license renewal. (BPC § 2915(a))

24) Requires the BOP to encourage every licensed psychologist to take CPD in geriatric pharmacology. (BPC § 2914.1)

25) Requires the BOP to encourage licensed psychologists to take CPD in psychopharmacology and biological basis of behavior. (BPC § 2914.2)

26) Establishes the Physician Assistant Practice Act, which provides for the state's licensure and regulation of PAs. (BPC §§ 3500.5-3545)

27) Authorizes the PAB to require a licensee to complete CE as a condition of license renewal, but not more than 50 hours every two years. (BPC § 3524.5(a))

28) Requires the PAB to adopt regulations that require all CE courses to contain curriculum related to implicit bias. (BPC § 3524.5(b))

29) Requires specified PAs to complete, as part of their CE requirements, a course that covers Schedule II controlled substances and the risks of addiction associated with their use. (BPC § 3502.1(e)(3))

30) Establishes the Licensed Marriage and Family Therapist Act, which provides for the state's licensure and regulation of licensed marriage and family therapists (LMFT), the Educational Psychologist Practice Act, which provides for the state's licensure and regulation of licensed educational psychologists (LEP), the Licensed Professional Clinical Counselor Act, which provides for the licensure and regulation of licensed professional clinical counselors (LPCC), and the Clinical Social Worker Practice Act, which provides for the state's licensure and regulation of licensed clinical social workers (LCSW). (BPC §§ 4980-4989; 4989.10-4989.18; 4991-4998.5, 4999.10-4999.129)

31) Establishes the BBS for purposes of implementing and enforcing the Licensed Marriage and Family Therapist Act, the Educational Psychologist Practice Act, the Licensed Professional Clinical Counselor Act, and the Clinical Social Worker Practice Act. (BPC § 4989.12)

32) Requires licensees, as a condition of license renewal, to certify to the BBS that they have completed 36 hours of approved CE in or relevant to their field of practice in the past two years. (BPC § 4980.54(c), 4989.34(a), 4996.22(a), 4996.6(b)(3), 4999.76(a)(1))

33) Requires that 6 hours of the required 36 hours of CE taken in a renewal period be in the subject of law and ethics. (California Code of Regulations, Title 16, § 1887.3(c))

34) Requires continuing training, education, and coursework to be from approved providers and must incorporate one or more of the following: aspects of the discipline that are fundamental to the understanding or the practice of the profession for which the individual is licensed; aspects of the discipline in which significant recent developments have occurred; or aspects of other disciplines that enhance the understanding or the practice of the profession for which the individual is licensed. (BPC § 4980.54(h), 4989.34(c), 4996.22(f), and 4999.76(f))

35) Requires the BBS to establish, by regulation, a procedure for identifying acceptable providers of CE courses for LMFTs, LPCCs, and LCSWs, and requires all CE providers to adhere to procedures established by the BBS. (BPC §§ 4980.54(g), 4996.22(e), 4999.76(e))

THIS BILL:

1) Requires a licensee of the MBC, BRN, BOP, PAB, or the BBS to have the option of taking coursework on maternal mental health to satisfy continuing education requirements, notwithstanding any law to the contrary.

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

COMMENTS:

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

> In 2019, maternal mental health conditions became the primary cause of pregnancy-related deaths. Training perinatal nurses and providers in maternal mental health is crucial for effective patient support. Understanding women's health factors and addressing pregnancy risks is essential across healthcare disciplines. This bill expands education to include maternal mental health courses for various medical professionals, enhancing their ability to treat patients effectively.

Background.

Continuing Medical Education for Physicians. Physicians and surgeons licensed by the MBC and the OMBC are required to complete 50 hours of approved CE every two years as a condition of license renewal. Though existing law also requires the MBC to consider requiring CE related to various topics (e.g. nutrition), there are only two subject-specific CE requirements in statute. Most physicians and surgeons are required to complete a one-time, 12-hour training in either the pain management and treatment of terminally ill and dying patients or the treatment and management of opiate-dependent patients.[1] Additionally, general internists and family physicians who have a patient population of which over 25 percent are 65 years of age or older must complete at least 20 percent of their mandatory CE in the field of geriatric medicine. Physicians are otherwise afforded great latitude in choosing which CE courses to take to satisfy their 50 hours. Both the MBC and the OMBC require CE courses to be accredited or approved by specified organizations such as the American Medical Association and the Accreditation Council for Continuing Medical Education. Osteopathic physician and surgeons specifically are required to complete a minimum of 20 CE hours certified by the American Osteopathic Association.[2]

Continuing Education for Registered Nurses. All nurses under the BRN are required by statute to complete 30 hours of CE during each two-year renewal cycle to ensure continued competence. Courses must be related to either the scientific knowledge or technical skills required for the practice of nursing, or to direct or indirect patient care.[3] Courses approved by appropriate state, regional and national health professional associations as well as other professional health and licensing boards in and out of California can be acceptable, so long as the content meets the BRN's requirements.

Continuing Professional Development for Psychologists. Psychologists under the BOP are required to complete at least 36 hours of approved CDP every two years as a condition of license

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[1] Pathologists and radiologists are exempt from this requirement.
[2] Osteopathic Medical Board of California Continuing Medical Education
[3] Board of Registered Nursing Continuing Education for License Renewal

renewal. Acceptable CDP activities include professional activities (e.g. peer consultation, exam development, and attendance at a BOP meeting), academic activities (e.g. graduate level coursework and authoring publications), board certification by the American Board of Professional Psychology, and sponsored CE.[4] The BOP accepts up to 27 hours of sponsored CE each renewal period and requires courses to be approved by the American Psychological Association, California Psychological Association, Association of Black Psychologists, California Medical Association, or the Accreditation Council for Continuing Medical Education.

Continuing Medical Education for Physician Assistants. Physician assistants are required to complete 50 hours of CME every two years as a condition of license renewal.[5] Continuing education requirements may be deemed satisfied if the physician assistant is certified by the National Commission on Certification of Physician Assistants at the time of renewal. CME courses must be Category I (Preapproved) by the American Academy of Physician Assistants, the American Medical Association, the American Osteopathic Association Council on Continuing Medical Education, the American Academy of Family Physicians, the Accreditation Council for Continuing Medical Education (ACCME), or a state medical society recognized by the ACCME.[6]

Continuing Education for Social Workers, Marriage and Family Therapists, Educational Psychologists, and Professional Clinical Counselors. The BBS requires licensees to complete 36 hours of CE, including 6 hours of Law and Ethics[7], every two-year license renewal period. LMFTs, LCSWs, LPCCs, and LEPs are also required to take one-time courses on suicide risk assessment and intervention, and telehealth as a condition of license renewal. Newly licensed LMFTs, LCSWs, and LPCCs are required to complete CE on HIV/AIDs prior to their first license renewal.[8] Similarly, newly licensed LEPs are required to take CE related to child abuse assessment and reporting[9] and alcoholism and other chemical substance dependency[10] if not completed prior to initial licensure. CE must be taken from a BBS-accepted provider, such as an accredited university or an organization or association that is recognized by the BSS as a CE provider.[11]

Maternal Mental Health. According to the Maternal Mental Health Leadership Alliance, 20 percent of pregnant people are affected by mental health conditions, ranging from the "baby blues" to more serious conditions such as depression, substance use disorder, post-traumatic stress disorders, bipolar disorder, and psychosis.[12] Of those experiencing maternal mental health (MMH) conditions, 75 percent go untreated, increasing the likelihood of pregnant people having poor prenatal care, abusing substances, and experiencing sexual physical, emotional, or sexual abuse. Postpartum, birthing people are more likely to question their competency as a parent, experience breastfeeding challenges, be less responsive to their baby, and have fewer positive outcome with their baby. Notably, suicide and overdose are the leading cause of maternal deaths. Babies born to parents with untreated MMH conditions have a higher risk of preterm birth, low

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[4] Board of Psychology Continuing Professional Development Information
[5] 16 CCR § 1399.615
[6] Physician Assistant Board Continuing Medical Education Information
[7] 16 CCR § 1887.3(d)
[8] 16 CCR § 1887.3(c)
[9] 16 CCR § 1807.2
[10] 16 CCR § 1810
[11] Board of Behavioral Sciences Licensee Continuing Education Information Brochure
[12] Maternal Mental Health Overview Fact Sheet - MMHLA - Nov 2023

birth weight, excessive crying, developmental delays, and adverse childhood experiences. The risk of stillbirth is also greater. Untreated MMH conditions are estimated to cost $14 billion in the U.S. annually.

In 2019, AB 845 (Maienschein), Chapter 220, Statutes of 2019 was chaptered, requiring the MBC to consider including maternal mental health in its CME requirements for physician and surgeons. This bill would require physicians and surgeons, osteopathic physicians and surgeons, registered nurses, physician assistants, psychologists, LCSWs, LMFTs, LEPs, and LPCCs to have the option of taking CE coursework related to maternal mental health. In doing so, the author's office provides that this bill would help eliminate inequities experiences by marginalized communities who are more likely to experience MMH conditions.

Current Related Legislation.

AB 2270 (Maienschein) of 2024 would require licensees of the MBC, OMBC, BRN, PAB, BOP, or the BBS to have the option to take coursework on menopausal mental or physical health within the scope of their practice to satisfy CE requirements. *AB 2270 is pending in this committee.*

AB 3119 (Low) of 2024 would require the MBC, in determining its CE requirements, to consider including a course in Long COVID. *AB 3119 is pending in this committee.*

Prior Related Legislation.

AB 845 (Maienschein), Chapter 220, Statutes of 2019, requires the MBC, in determining its CE requirements for physicians and surgeons to consider including a course in maternal mental health, as specified.

AB 2193 (Maienschein), Chapter 755, Statutes of 2018, requires a licensed health care practitioner who provides prenatal or postpartum care for a patient to ensure the mother is offered screening or is appropriately screened for MMH conditions.

AB 1340 (Maienschein), Chapter 759, Statutes of 2017, requires the MBC to, in determining its CE requirements, consider including a course on integrating mental and physical health care in primary care settings.

ARGUMENTS IN SUPPORT:

The **American College of Obstetricians and Gynecologists District IX** writes in support of this bill:

> Perinatal depression, which includes major and minor depressive episodes that occur during pregnancy or in the first 12 months after delivery, is one of the most common medical complications during pregnancy and the postpartum period, affecting one in seven women. It is important to identify pregnant and postpartum women with depression because untreated perinatal depression and other mood disorders can have devastating effects.
>
> There is evidence that screening alone can have clinical benefits, although initiation of treatment or referral to mental health care providers offers maximum benefit. Therefore,

it is beneficial for all providers who may be providing care during the perinatal period to be trained in the knowledge and skills necessary to support their patients effectively.

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES.

Need for the bill. Historically, similar bills have either required a board to encourage its licensees to take CE related to a particular topic, mandated licensees to complete CE related to a specific topic, or required a board to consider requiring licensees to complete specified CE. This bill only requires that licensees have the *option* to take CE related to a specific subject—maternal mental health. This committee is currently aware of at least one CE course on the topic.[13] As such it is unclear why a licensee would not currently have the option to take CE related to maternal mental health unless such coursework is not relevant to the licensee's practice or does not meet a board's parameters for acceptable CE. Provided the availability of CE related to maternal mental health, the benefit of the bill is uncertain.

Relevance. Existing law requires licensees under the BBS (LCSWs, LMFTs, LEPs, and LPCCs) to take CE courses that are related to their field of practice. While the topic of menopause may be relevant to the practice of a LCSW, LMFT, or LPCC, it is much less likely to be applicable to LEPs whose clients are children. However, as currently written, this bill could be interpreted to require the BBS to accept menopause-related CE from any licensee regardless of germaneness.

IMPLEMENTATION ISSUES:

Impact on existing CE requirements. Existing law requires licensees to complete 30-50 hours of CE (depending on license type) every license renewal period. In fulfillment of a portion of those hours, some boards require licensees to complete coursework related to California law and ethics. As the bill is currently drafted, it is unclear whether the completion of a single CE course related to maternal mental health would satisfy the entirety of a licensee's CE obligation, including any specific coursework required by a board.

AMENDMENTS:

To address the aforementioned policy and implementation issues, the author has agreed to amend the bill as follows:

1) In Section 3 of the bill, strike out "~~Notwithstanding any law to the contrary, a licensee shall have the option of taking coursework on maternal mental health within the scope of their practice to satisfy continuing education requirements.~~" and replace with "*In determining its continuing professional development requirements, the board shall consider including a course in maternal mental health.*"
2) Strike the remainder of the bill.

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[13] Addressing Perinatal Mental Health Conditions in Obstetric Settings | ACOG

3) Add "*In determining its continuing education requirements, the board shall consider including a course in maternal mental health.*" to the following existing BPC Sections, respectively:

    a. BPC § 2811.5 related to registered nurses
    b. BPC § 3524.5 related to physician assistants
    c. BPC § 4980.54 related to marriage and family therapists
    d. BPC § 4989.34 related to educational psychologists
    e. BPC § 4996.22 related to social workers
    f. BPC § 4999.76 related to clinical counselors

REGISTERED SUPPORT:

American College of Obstetricians and Gynecologists District IX

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2442 (Zbur) – As Introduced February 13, 2024

SUBJECT: Healing arts: expedited licensure process: gender-affirming health care and gender-affirming mental health care.

SUMMARY: Requires specified healing arts boards under the Department of Consumer Affairs (DCA) to expedite the licensure process for applicants who demonstrate that they intend to provide gender-affirming health care or gender-affirming mental health care services.

EXISTING LAW:

1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)

2) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA's jurisdiction, including healing arts boards under Division 2. (BPC § 101)

3) States that boards, bureaus, and commissions within the DCA must establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate, upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public. (BPC § 101.6)

4) Requires boards within the DCA to expedite, and authorizes boards to assist, the initial licensure process for an applicant who has served as an active duty member of the Armed Forces of the United States and was honorably discharged or who, beginning July 1, 2024, is enrolled in the United States Department of Defense SkillBridge program. (BPC § 115.4)

5) Requires boards within the DCA to expedite the licensure process and waive any associated fees for applicants who hold a current license in another state and who are married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders. (BPC § 115.5)

6) Requires boards within the DCA to expedite, and authorizes boards to assist, the initial licensure process for applicants who have been admitted to the United States as a refugee, have been granted asylum by the Secretary of Homeland Security or the Attorney General of the United States, or have a special immigrant visa. (BPC § 135.4)

7) Establishes the Medical Board of California (MBC), which regulates physicians and surgeons under the Medical Practice Act. (BPC §§ 2000 *et seq.*)

8) Authorizes the MBC to either deny an application for licensure as a physician and surgeon or to issue a probationary license subject to terms and conditions. (BPC § 2221)

9) Establishes the Osteopathic Medical Board of California (OMBC), which regulates osteopathic physicians and surgeons who possess effectively the same practice privileges and prescription authority as those regulated by the MBC. (BPC § 2450)

10) Establishes the Board of Registered Nursing (BRN) within the DCA. (BPC § 2700)

11) Establishes the Physician Assistant Board (PAB) within the DCA. (BPC §§ 3500 *et seq.*)

12) Requires the MBC, the OMBC, the BRN, and the PAB to expedite the licensure process for applicants who demonstrate that they intend to provide abortions within the scope of practice of their license. (BPC § 870)

THIS BILL:

1) Requires the MBC, the OMBC, the BRN, and the PAB to expedite the licensure process for applicants who demonstrate that they intend to provide gender-affirming health care or gender-affirming mental health care services within the scope of practice of their license.

2) Defines "gender-affirming health care" as medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, which may include, but is not limited to, the following:

   a) Interventions to suppress the development of endogenous secondary sex characteristics.

   b) Interventions to align the patient's appearance or physical body with the patient's gender identity.

   c) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

3) Defines "gender affirming mental health care" as mental health care or behavioral health care that respects the gender identity of the patient, as experienced and defined by the patient, which may include, but is not limited to, developmentally appropriate exploration and integration of identity, reduction of distress, adaptive coping, and strategies to increase family acceptance.

4) Provides that an applicant shall demonstrate their intent to provide gender-affirming health care or gender-affirming mental health care by providing documentation, including a letter from an employer or contracting entity indicating that the applicant has accepted employment or entered into a contract to provide gender-affirming health care or gender-affirming mental health care, the applicant's starting date, and the location where the applicant will be providing gender-affirming health care or gender-affirming mental health care within the scope of practice of their license.

5) Clarifies that the bill does not change existing licensure requirements, and that applicants applying for expedited licensure must meet all applicable licensure requirements.

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

COMMENTS:

Purpose. This bill is cosponsored by **Planned Parenthood Affiliates of California** and **Equality California**. According to the author:

"Transgender, gender nonconforming, and intersex (TGI) people, especially TGI youth, are confronting an alarming rise in discrimination and political attacks. Over 500 anti-LGBTQ+ bills were introduced in 2023 in more than 40 states, and 84 were passed into law. These bills disproportionately targeted TGI youth and adults, particularly access to health care. The number of states with laws or policies restricting access to gender-affirming care has increased dramatically, with estimates suggesting that about one-third of trans youth in the U.S. now live in states that ban access to gender-affirming care. Many TGI people and their families are now facing agonizing decisions about whether to relocate to continue receiving this lifesaving health care. At the same time, TGI people in California continue to have trouble finding providers for routine care and identifying health care providers who offer gender-affirming care can be even harder. AB 2442 will ensure that licensure applications for providers of gender-affirming care are prioritized to ensure a robust network of providers and timely access to care for both in-state and out-of-state patients."

Background.

Expedited Licensure. The DCA consists of 36 boards, bureaus, and other entities responsible for licensing, certifying, or otherwise regulating professionals in California. As of March 2023, there are over 3.4 million licensees overseen by programs under the DCA, including health professionals regulated by healing arts boards under Division 2 of the Business and Professions Code. Each licensing program has its own unique requirements, with the governing acts for each profession providing for various prerequisites including prelicensure education, training, and examination. Most boards additionally require the payment of a fee and some form of background check for each applicant.

The average length of time between the submission of an initial license application and approval by an entity under the DCA can vary based on a number of circumstances, including increased workload, delays in obtaining an applicant's criminal history, and deficiencies in an application. Boards typically set internal targets for application processing timelines and seek adequate staffing in an effort to meet those targets consistently. License processing timelines are then regularly evaluated through the sunset review oversight process by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development.

The first expedited licensure laws specifically related to the unique needs of military families. The Syracuse University Institute for Veterans and Military Families found that up to 35 percent of military spouses are employed in fields requiring licensure. Because each state possesses its own licensing regime for professional occupations, military family members are required to obtain a new license each time they move states, with one-third of military spouses reportedly moving four or more times while their partner is on active duty. Because of the barriers encountered by military family members who seek to relocate their licensed work to a new state, it is understood that continuing to work in their field is often challenging if not impossible.

In an effort to address these concerns, Assembly Bill 1904 (Block) was enacted in 2012 to require boards and bureaus under the DCA to expedite the licensure process for military spouses and domestic partners of a military member who is on active duty in California. Two years later, Senate Bill 1226 (Correa) was enacted to similarly require boards and bureaus under the DCA to expedite applications from honorably discharged veterans, with the goal of enabling these individuals to quickly transition into civilian employment upon retiring from service.

Statute requires entities under the DCA to annually report the number of applications for expedited licensure that were submitted by veterans and active-duty spouses and partners. For example, in Fiscal Year 2022-23, the MBC received 14 applications from military spouses or partners and 101 applications from honorably discharged veterans subject to expedited processing. In 2023, the federal Servicemembers Civil Relief Act (SCRA) imposed new requirements on states to recognize qualifying out-of-state licenses for service members and their spouses. This new form of enhanced license portability potentially displaces the need for expedited licensure for these applicants.

A decade after the first expedited licensure laws were enacted for military families, the Legislature enacted Assembly Bill 2113 (Low) in 2020 to require licensing entities under the DCA to expedite licensure applications for refugees, asylees, and Special Immigrant Visa holders. The intent of this bill was to address the urgency of allowing those forced to flee their homes to restart their lives upon acceptance into California with refugee status. It is understood that the population of license applicants who have utilized this new expedited licensure program across all DCA entities is, to date, relatively small.

Subsequently in 2022, the Legislature enacted Assembly Bill 657 (Cooper) to add another category of applicants eligible for expedited licensure. This bill required the MBC, OMBC, the BRN, and the PAB to expedite the license application for an applicant who demonstrates that they intend to provide abortions. This bill was passed in the wake of the Supreme Court's decision to overturn *Roe v. Wade*, which led to concerns that with approximately half of all states likely to seek to ban abortion, patients in those states would come to California to receive abortion services, creating a swell in demand for abortion providers. Assembly Bill 657 was passed to ensure that there is an adequate health care provider workforce to provide urgent reproductive care services.

Gender Affirming Care. In recent years, there has been a growing recognition of the importance of addressing the systemic barriers and discrimination faced by transgender, non-binary, and gender-diverse individuals in accessing appropriate healthcare. Studies have demonstrated that social stigma and a lack of access to support systems has led to healthcare avoidance by transgender individuals;[1] these patients also report a higher rate of negative interactions with healthcare providers.[2] As acceptance of the communities grows, there has also been a corresponding backlash within reactionary conservative movements, leading to an even greater increase in trauma and oppression for those simply seeking to live as their authentic selves.

One of the central aspects of transgender healthcare is access to gender-affirming care. Gender-affirming care encompasses medical interventions such as hormone therapy, surgical procedures, and mental health support aimed at aligning an individual's physical body with their gender identity. For many transgender individuals, these interventions are not merely elective but are necessary for alleviating gender dysphoria and improving overall well-being. Ensuring access to gender-affirming care is critical for affirming transgender identities and reducing the psychological distress associated with gender dysphoria.

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[1] Kcomt, Luisa *et al*. "Healthcare avoidance due to anticipated discrimination among transgender people: A call to create trans-affirmative environments." *SSM - population health* vol. 11. 28 May, 2020.
[2] Inman, Elizabeth M. *et al*. "Reports of Negative Interactions with Healthcare Providers among Transgender, Nonbinary, and Gender-Expansive People assigned Female at Birth in the United States." *International journal of environmental research and public health* vol. 20. 31 May, 2023.

Another important aspect of gender-affirming care relates to mental and behavioral health. Gender dysphoria, characterized by significant distress or discomfort due to a misalignment between an individual's gender identity and assigned sex at birth, can have profound effects on mental health and well-being. Health professionals play a critical role in assessing and addressing symptoms of gender dysphoria through therapeutic interventions, including counseling, psychotherapy, and, in some cases, psychiatric treatment.

This bill seeks to support increased access to health professions who commit to providing gender-affirming care by replicating existing expedited licensure processes. Similarly to how applications for abortion providers are currently expedited, applicants would demonstrate their intent to provide gender-affirming health care or gender-affirming mental health care by providing documentation, including a letter from an employer or contracting entity indicating that the applicant has accepted employment or entered into a contract to provide that care. The respective healing arts boards would then prioritize the processing of those applications. The author and sponsors of this bill believe that this expedited processing will help California more quickly deliver health care providers to communities in urgent need of gender affirming care.

Current Related Legislation.

AB 2862 (Gipson) would require boards under the DCA to prioritize African American applicants seeking licenses, especially applicants who are descended from a person enslaved in the United States. *This bill is pending in this committee.*

SB 1067 (Smallwood-Cuevas) would require healing arts boards to expedite the licensure process for applicants who intend to practice in a medically underserved area. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

AB 657 (Cooper, Chapter 560, Statutes of 2022) requires specified boards under the DCA to expedite applications from applicants who demonstrate that they intend to provide abortions.

AB 2113 (Low, Chapter 186, Statutes of 2020) requires entities under the DCA to expedite applications from refugees, asylees, and special immigrant visa holders.

SB 1226 (Correa, Chapter 657, Statutes of 2014) requires entities under the DCA to expedite applications from honorable discharged veterans.

AB 1904 (Block, Chapter 399, Statutes of 2012) requires entities under the DCA to expedite applications from military spouses and partners.

ARGUMENTS IN SUPPORT:

Planned Parenthood Affiliates of California (PPAC) is a co-sponsor of this bill. PPAC writes: "AB 2442 seeks to ensure that licensure applications for providers of gender-affirming care are prioritized to ensure a robust network of trained providers and timely access to care for both in-state and out-of-state patients. This bill increases access to care for people by ensuring that there are more medical professionals in California who are trained in gender-affirming care and helps to eliminate instances of discrimination and bias within the health care delivery system in California."

Equality California (EQCA) is also a co-sponsor of this bill. According to EQCA: "In recent years, the number of states with laws or policies restricting access to gender-affirming care has increased dramatically – climbing from just four states in June 2022 to 23 states in January 2024. These laws and policies often impose severe professional or criminal penalties on medical providers and other professionals offering gender-affirming care. The pervasive wave of anti-LGBTQ+ legislation has particularly harmed transgender youth, as highlighted by the Williams Institute's recent report estimating that approximately 105,200 transgender youth – about one-third of transgender youth in the country – live in states that ban access to gender-affirming care." EQCA argues that "AB 2442 seeks to improve access to gender-affirming care in anticipation of a surge in out-of-state patients seeking care in California.

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

When expedited licensure was first established as a process in California, it was intended to address unique issues relating to military families who move frequently and can often not afford to wait to qualify for a new license each time they relocate to a new state. The addition of refugee and asylee applicants was intended to respond to a growing international refugee crisis by providing similar benefits to a small number of applicants whose relocation to California was presumably abrupt and who would need to rebuild their professions. In that same spirit, the extension of expedited licensure to abortion care providers was aimed at preparing for a potential influx of demand for those services in the wake of the Supreme Court's decision to overturn longstanding protections for reproductive rights.

Several pieces of legislation have been introduced this year that would establish new expedited licensure requirements for additional populations of applicants. Each of these proposals is certainly meritorious, as were each of the measures previously signed into law. However, there is potentially a cause for concern that as the state contemplates adding more categories of license applicants to the growing list of applications that must be expedited by entities within the DCA, the value of expediting each applicant type becomes diluted and non-expedited applications could become unduly delayed.

If the Legislature intends to extend expedited licensure requirements to new demographics of applicants—which the author of this bill has argued cogently in favor of doing—attention should be paid to the impact that all these proposals ultimately have in their totality. The Legislature should also subsequently revisit the need for expedited licensure requirements that were established in particular contexts and determine if they are still needed, which could be achieved by the addition of sunset clauses. It may ultimately prove to be appropriate to continue expediting the licenses applications for those proposed in this bill in the future.

AMENDMENTS:

To allow the Legislature to revisit the expedited licensure requirements of this bill in the future to determine if those requirements are still needed, add a new subdivision providing that the bill's provisions will sunset in four years unless extended by the Legislature.

REGISTERED SUPPORT:

Equality California *(Co-Sponsor)*
Planned Parenthood Affiliates of California *(Co-Sponsor)*
ACLU California Action
American College of Obstetricians and Gynecologists, District IX
API Equality-LA
Black Leadership Council
Board of Registered Nursing
California Latinas for Reproductive Justice
California Academy of Physician Assistants
Center for Immigrant Protection
Courage California
El/la Para Translatinas
Essential Access Health
Glide
Humboldt Area Center for Harm Reduction
LGBTQ+ Rural Resource Center
Lyon-Martin Community Health Services
National Center for Lesbian Rights
National Health Law Program
Oasis Legal Services
Open Door Community Health Centers
PRC
Radiant Health Centers
Reproductive Freedom for All
San Joaquin Pride Center
Shakina Inc.
Transfamily Support Services
Transgender Resource, Advocacy & Network Service
Women's Foundation California
Women's Health Specialists

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2444 (Lee) – As Amended April 2, 2024

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

SUBJECT: Barbering and cosmetology: licensees: manicurists.

SUMMARY: Updates requirements for the State Board of Barbering and Cosmetology (BBC) to disseminate informational materials to its licensees on basic labor laws and requires the Department of Industrial Relations (DIR) to develop those informational materials, which would be required to describe changes in the law relating to employment classification of manicurists.

EXISTING LAW:

1) Establishes the BBC within the Department of Consumer Affairs to license and regulate barbers, cosmetologists, hairstylists, electrologists, estheticians, and manicurists pursuant to the Barbering and Cosmetology Act. (Business and Professions Code (BPC) §§ 7301 *et seq.*)

2) Provides that protection of the public shall be the highest priority for the BBC in exercising its licensing, regulatory, and disciplinary functions. (BPC § 7303.1)

3) Requires the BBC to engage in specified activities, including the making of rules and regulations, the development and administration of examinations, and the issuance of licenses. (BPC § 7312)

4) Provides that the BBC shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. (BPC § 7313)

5) Requires the BBC to establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on specified issues, including how to ensure licensees are aware of basic labor laws. (BPC § 7314.3(a))

6) Provides that basic labor laws include, but are not limited to, all of the following:

    a) Key differences between the legal rights, benefits, and obligations of an employee and an independent contractor.

    b) Wage and hour rights of an hourly employee.

    c) Antidiscrimination laws relating to the use of a particular language in the workplace.

    d) Antiretaliation laws relating to a worker's right to file complaints with the DIR.

    e) How to obtain more information about state and federal labor laws.

    (BPC § 7314.3(b))

7) Defines the practice of cosmetology as all or any combination of the following:

   a) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means the hair of any person.

   b) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

   c) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

   d) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

   e) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails.

   f) Massaging, cleansing, treating, or beautifying the hands or feet of any person.

   g) Tinting and perming of the eyelashes and brows, or applying eyelashes to any person.

   (BPC § 7316(b))

8) Defines the practice of nail care as trimming, polishing, coloring, tinting, cleansing, manicuring, or pedicuring the nails of any person or massaging, cleansing, or beautifying from the elbow to the fingertips or the knee to the toes of any person. (BPC § 7316(d))

9) Exempts from licensure requirements under the Barbering and Cosmetology Act persons engaged in the administration of hair, skin, or nail products for the exclusive purpose of recommending, demonstrating, or selling those products. (BPC § 7319)

10) Prohibits metal instruments from being used when providing a manicure or pedicure, except those metal instruments necessary for the cutting, trimming, manicuring, or pedicuring of nails or cuticles or for the smoothing and massaging of the hands and feet. (BPC § 7320.1)

11) Allows an applicant to take the examination for a license as a manicurist if the applicant:

   a) Is not less than 17 years of age.

   b) Has completed the 10th grade in a public school.

   c) Is not subject to denial based on prior criminal history or disciplinary action.

   d) Has either completed a course in nail care from an approved school; practiced nail care in another jurisdiction for a qualifying period of time; or completed an apprenticeship program in nail care.

   (BPC § 7326)

12) Requires applications for admission to examination and licensure by the BBC, as well as applications to renew a license, to include a signed acknowledgment that the applicant understands their rights as a licensee as outlined in informational materials on basic labor laws. (BPC § 7337)

13) Provides that the examination of applicants for a license under the BBC shall include written tests to determine the applicant's skill in, and knowledge of, the practice of the occupation for which a license is sought. (BPC § 7338)

14) Defines "establishment" as any premises, building or part of a building where any activity licensed under the Barbering and Cosmetology Act is practiced. (BPC § 7346)

15) Provides that any person, firm, or corporation desiring to operate an establishment shall make an application to the BBC for a license, which includes a signed acknowledgment that the applicant understands that establishments are responsible for compliance with any applicable labor laws of the state and that the applicant understands the informational materials on basic labor laws that the applicant is provided by the BBC with the application. (BPC § 7347)

16) Beginning July 1, 2017, requires an establishment licensed by the BBC to post a notice developed by the Labor Commissioner pertaining to workplace rights and wage and hour laws in a conspicuous location in clear view of employees and where similar notices are customarily posted, and requires the notice to be posted in English, Spanish, Vietnamese, and Korean. (BPC § 7353.4(a))

17) Requires the BBC to inspect establishments for compliance with the above posting requirement. (BPC § 7353.4(b))

18) Requires courses in cosmetology to consist of not less than 1,000 hours of practical and technical instruction, with specific numbers of hours required for various areas of instruction. (BPC § 7362.5)

19) Provides that a nail care course established by a school shall consist of not less than 400 hours of practical and technical instruction in the following areas:

    a) One hundred hours in health and safety, which includes hazardous substances, chemical safety, safety data sheets, protection from hazardous chemicals, preventing chemical injuries, health and safety laws and regulations, and preventing communicable diseases.

    b) One hundred hours in disinfection and sanitation, which includes disinfection procedures to protect the health and safety of consumers as well as the technician and proper disinfection procedures for equipment used in establishments.

    c) One hundred fifty hours in manicure and pedicure, which includes water and oil manicures, hand and arm massage, complete pedicures, foot and ankle massage, nail analysis, nail repairs, and application of artificial nails, liquid, gel, powder brush-ons, dip, nail tips, and wraps.

    (BPC § 7365)

20) Requires the BBC to develop or adopt a health and safety course on hazardous substances, basic labor laws, and physical and sexual assault awareness, which shall be taught in schools approved by the board. (BPC § 7389)

21) Authorizes the BBC's executive officer or their designee to temporarily suspend a license without advance hearing following an inspection of an establishment where it is determined that health and safety laws and regulations related to manicure and pedicure equipment have been violated. (BPC § 7403.2)

22) Authorizes the BBC to assess administrative fines for the violation of the Barbering and Cosmetology Act or any rules and regulations adopted by the BBC. (BPC § 7406)

23) Establishes the DIR in the Labor and Workforce Development Agency. (Labor Code § 50)

24) Provides that one of the functions of the DIR is to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code § 50.5)

25) Requires the Labor Commissioner to develop a model notice pertaining to workplace rights and wage and hour laws for employees of establishments licensed by the BBC; requires this model notice to be developed using plain language and in Spanish, Vietnamese, and Korean, and be accessible on the Labor Commissioner's website so that it is reasonably accessible to an establishment. (Labor Code § 9810(a))

26) Further provides that the model notice developed by the Labor Commissioner shall include information including, but not limited to, all of the following:

    a) Misclassification of an employee as an independent contractor.

    b) Wage and hour laws, including, but not limited to, minimum wage, overtime compensation, meal periods, and rest periods.

    c) Tip or gratuity distribution.

    d) How to report violations of the law.

    e) Business expense reimbursement.

    f) Protection from retaliation.

    (Labor Code § 98.10)

27) Establishes the "ABC test," a series of three conditions that must be met for a person providing paid labor or services to be considered an employee rather than an independent contractor, as required in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*. (Labor Code § 2775)

28) Exempts providers of certain professional services from the ABC test, including services provided by individuals licensed by the BBC, if other conditions are met to establish the independence of the professional; repeals this exemption for licensed manicurists beginning January 1, 2025. (Labor Code § 2778)

THIS BILL:

1) Specifies for purposes of the Health and Safety Advisory Committee's role in ensuring that licensees are aware of basic labor laws that "wage and hour rights of an hourly employee" includes the right to sick pay.

2) Provides that the informational materials on basic labor laws that licensees and establishment owners are required to acknowledge during the application and renewal processes shall be written by the DIR and shall include information regarding the ABC test set forth in the Labor Code and the *Dynamex* decision for determining whether a manicurist is considered an employee or independent contractor.

3) Extends the requirement that electronic renewal applications for licensees and establishment owners include a signed acknowledgement of the informational materials on basic labor laws to also apply to paper applications.

4) Requires the BBC to insert the informational materials on basic labor laws into the application and renewal forms themselves.

5) Requires the DIR to develop a language and culturally appropriate notification to all BBC-licensed establishments and licensed manicurists to inform those licensees as follows:

    a) In this state, as of January 1, 2025, there was a change in the law regarding employment classification of manicurists, such that the test under the Labor Code, referred to as the ABC test, applies to manicurists.

    b) Under the ABC test, a person who provides labor or services for compensation is considered an employee unless the hiring entity can demonstrate that the person satisfies all three conditions of the ABC test that describe an independent contractor. If a person is providing nail services in a nail salon, they may be an "employee" under the ABC test and, if so, they will be treated accordingly with regard to state protections for employees, including, but not limited to, minimum wage, sick pay, and workers' compensation.

    c) The failure to properly classify a worker could result in penalties imposed on the establishment owner.

6) Requires the DIR, by July 1, 2025, to disseminate, through ethnic media and individually through United States Postal Service mail, the above information to all BBC-licensed establishments and to licensed manicurists.

7) Requires the BBC to develop language-appropriate and culturally-appropriate educational posts on basic labor law in consultation with the DIR and to share with its licensees, at least two times per year, over the BBC's communications channels such as the quarterly newsletter, social media, and others.

8) Provides that the information required to be provided to licensees by the BBC and the DIR shall be communicated in English, Vietnamese, Spanish, Korean, and Chinese.

9) Makes various findings and declarations.

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

COMMENTS:

Purpose. This bill is co-sponsored by the **California Healthy Nail Salon Collaborative** and **Asian Americans Advancing Justice Southern California**. According to the author:

> "Vietnamese women make up the majority of the nail salon industry's workforce. My goal is to ensure nail salon workers and owners better understand labor laws so there's no room for confusion about their employment. AB 2444 will set a foundation for workers to understand their rights, and for employers to create a fair workplace."

Background.

Oversight of Nail Salon Professionals. The BBC is responsible for licensing and regulating barbers, cosmetologists, hairstylists, estheticians, electrologists, manicurists, apprentices, and establishments. The BBC is one of the largest boards in the country, with over 622,000 licensees as of Fiscal Year 2021-22. This includes over 300,000 licensed cosmetologists and over 125,000 licensed manicurists—the two license types that are authorized under the Barbering and Cosmetology Act to provide manicuring and pedicuring services in licensed establishments such as nail salons.

Under current law, an applicant for licensure as a cosmetologist must complete 1,000 hours in practical and technical instruction in cosmetology, which is referred to as "hair, skin, and nails." In addition to hairstyling and skincare services, cosmetologists are authorized to engage in "cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person." Cosmetology courses are required to include 100 hours in manicure and pedicure, which includes water and oil manicures, hand and arm massage, foot and ankle massage, nail analysis, and artificial nail services, including, but not limited to, acrylic, liquid and powder brush-ons, dip, tips, wraps, and repairs.

The practice of nail care is similarly defined as "all or a combination of trimming, polishing, coloring, tinting, cleansing, manicuring, or pedicuring the nails of any person or massaging, cleansing, or beautifying from the elbow to the fingertips or the knee to the toes of any person." Individuals wishing to obtain this more limited scope of practice as licensed manicurists are required to meet lower requirements than cosmetologists, with 400 hours of required practical and technical instruction. Applicants can also obtain licensure by submitting evidence that they've provided nail care in another jurisdiction for a qualifying period of time, or by completing an apprenticeship program in nail care.

Vietnamese immigrants make up a significant portion of the nail care workforce. Research published in 2018 by the UCLA Labor Center in partnership with the California Healthy Nail Salon Collaborative identified 76 percent of nail salon workers as Asian, and 81 percent of nail salon workers were identified as women. Among the 79 percent of nail salon workers who were born outside the United States, 74 percent were born in Vietnam.

The BBC is required to routinely inspect licensed establishments to ensure compliance with the Barbering and Cosmetology Act, health and safety requirements, and applicable labor laws. In 2022, the BBC issued 6,223 citations for various violations. As of August 2014, the BBC issues all citations and supporting information to licensed manicurists in both English and Vietnamese. The BBC's enforcement unit also advises individuals to call the BBC if an interpreter is needed.

Interpreter services are provided by the BBC in Spanish and Vietnamese, free of charge, if requested by an appellant, at all Disciplinary Review Committee hearings.

The BBC complies with the Dymally-Alatorre Bilingual Services Act, which requires state agencies to provide information in languages utilized by the public who accesses information from that particular agency. The BBC translates all its informational materials into Korean, Spanish, and Vietnamese, and the BBC advised during its last sunset review that language access continues to be one of its top priorities. As of November 2015, the BBC's licensing unit sends examination admission letters in the applicant's preferred language (English, Korean, Spanish, or Vietnamese). Written examinations are offered in English, Spanish, Vietnamese, and Korean.

Information Regarding Basic Labor Laws. Since 2017, the BBC is required to provide information on basic labor laws to its applicants and licensees. The publication, *Know Your Workers' Rights and Responsibilities*, is available on its website and has been translated as well as distributed to the BBC's media contacts, including media contacts that speak Vietnamese, Spanish and Korean. Applicants and licensees are required to acknowledge their understanding of this information during the application and renewal processes. The BBC also publishes a Workers' Rights Pocket Guide, which includes contact information for receiving information or filing complaints related to labor rights and workplace safety.

The BBC is required to establish a Health and Safety Advisory Committee, which provides advice and recommendations on health and safety issues that impact licensees, including how to ensure licensees are aware of basic labor laws. A representative of DIR serves on the Advisory Committee. The Advisory Committee is additionally required to develop or adopt a health and safety course on several subjects, including basic labor laws, which is then required to be taught in schools approved by the BBC.

The Barbering and Cosmetology Act defines "basic labor laws" as including, but not limited to, all of the following:

1. Key differences between the legal rights, benefits, and obligations of an employee and an independent contractor.

2. Wage and hour rights of an hourly employee.

3. Antidiscrimination laws relating to the use of a particular language in the workplace.

4. Antiretaliation laws relating to a worker's right to file complaints with the DIR.

5. How to obtain more information about state and federal labor laws.

In 2018, the Advisory Committee met to discuss recent labor law developments resulting from the court's decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*. Board staff arranged for the Director of the Employment Development Department, the California Department of Tax and Fee Administration, and the Professional Beauty Association to present to the members how the various entities were affected by the recent *Dynamex* decision. This meeting was intended to enable members to see the potential impact of the decision on the "booth rental" business model—a term long used by the BBC to refer to independent contractor practitioners, who are referred to as "booth renters."

The California Supreme Court issued its decision in *Dynamex* in the spring of 2018. This decision significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary conditions:

A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;

B. That the worker performs work that is outside the usual course of the hiring entity's business; and

C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commonly referred to as the "ABC test," the implications of the *Dynamex* decision were wide-reaching into numerous fields and industries utilizing workers previously believed to be independent contractors, including professions regulated by the BBC. Historically, many beautification service providers in California are independent contractors who rent or utilize space in a licensed establishment but do not have a traditional employee-employer relationship with the establishment. In many instances, however, services have likely been provided by individuals who were misclassified from a wage and employment standpoint.

The Labor Code establishes a comprehensive set of protections for employees, including a time-sure minimum wage, meal and rest periods, workers' compensation coverage in the event of an industrial injury, sick leave, disability insurance in the event of a non-industrial disability, paid family leave, and unemployment insurance. Through the Industrial Welfare Commission (IWC), industry-specific wage orders set the wages, hours, and working conditions of employees. The IWC wage orders have the force of regulation and are enforced by the Division of Labor Standards Enforcement (DLSE). When beauty industry workers are misclassified, they are not provided their rights and benefits under the Labor Code.

In 2019, the enactment of Assembly Bill 5 (Gonzalez) effectively codified the *Dynamex* decision's ABC test for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and for IWC wage orders. However, the author negotiated various exceptions with different professions, allowing those exempted from the bill to return to using the multi-factor balancing test that existed prior to the *Dynamex* decision. The Labor Code authorizes an individual contracting for professional services as a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist to do so as a sole proprietor or other business entity if the licensee:

1. Sets their own rates, processes their own payments, and is paid directly by clients.

2. Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.

3. Has their own book of business and schedules their own appointments.

4. Maintains their own business license for the services offered to clients.

The Labor Code further provides that the exemption for licensed manicurists will become inoperative on January 1, 2025. The sunset date for this exemption was previously extended from its prior scheduled repeal on January 1, 2022; however, subsequent efforts to extend or remove the sunset have been unsuccessful. This means that beginning next year, the majority of nail salon workers will be legally required to be classified as employees, rather than independent contractors.

The author and sponsors of this bill believe that while the imminent application of the ABC test will have significant positive affects for manicurists who may currently be misclassified, it is highly possible that many nail salon workers will be unaware of the change in law, particularly when considering that many of them are immigrants with limited proficiency in English. This bill would require the DIR to develop a language and culturally appropriate notification to all BBC-licensed establishments and licensed manicurists to inform those licensees of the recent changes in the law regarding employment classification of manicurists and the application of the ABC test. The DIR would then be required to disseminate this information through ethnic media and individually through United States Postal Service in English, Vietnamese, Spanish, Korean, and Chinese.

In addition to the dissemination of information specifically regarding employment classification, this bill seeks to enhance other information provided to licensees about labor rights and protections. First, the bill would provide that the required component of basic labor laws regarding wage and hour rights of hourly employees includes the right to sick pay. The bill would then require the informational materials on basic labor laws to be written by the DIR, and to specifically include reference the ABC test's application to manicurists. Acknowledgement of this information would be required for all license applications and renewals, including those submitted on paper forms. Finally, the bill requires the BBC, in consultation with the DIR and community-based organizations, to develop and share educational posts on basic labor law at least two times per year over the board's communications channels, such as the quarterly newsletter, social media, and others.

Current Related Legislation.

SB 1084 (Nguyen) would abolish the hairstylist license and remove various services from the scopes of practice of barbering and cosmetology. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

AB 1818 (Nguyen) of 2022 would have deleted the sunset date on the ABC test exemption for licensed manicurists. *This bill died in the Assembly Committee on Labor and Employment.*

AB 231 (Nguyen) of 2021 would have deleted the sunset date on the ABC test exemption for licensed manicurists. *This bill died in the Assembly Committee on Labor and Employment.*

SB 803 (Roth, Chapter 648, Statutes of 2021) extended the operation of the BBC and, among other things, reduced the required number of hours for courses in barbering and cosmetology to 1,000 hours and established a hairstylist license.

AB 1561 (Committee on Labor and Employment, Chapter 422, Statutes of 2021) extended the inoperative date of the exemption of licensed manicurists from the ABC test from January 1, 2022 to January 1, 2025.

AB 2257 (Gonzalez, Chapter 38, Statutes of 2020) recast and clarified the business-to-business, referral agency, and professional services exemptions to the ABC test for employment status and exempted additional occupations and business relationships.

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the *Dynamex* decision's ABC test for purposes of determining employment status and provided for various exemptions.

AB 2025 (Gonzalez, Chapter 409, Statutes of 2016) required the BBC to provide licensees and establishments with information about basic labor laws in the application process and required the BBC's Health and Safety Advisory Committee to provide the BBC with advice and recommendations on how to ensure licensees are aware of basic labor laws, as defined.

ARGUMENTS IN SUPPORT:

This bill is co-sponsored by **California Healthy Nail Salon Collaborative** (CHNSC) and **Asian Americans Advancing Justice Southern California** (AJSOCAL). CHNSC and AJSOCAL write jointly in support of the bill: "This important bill would help ensure that workers licensed by the California Board of Barbering and Cosmetology (BBC) understand their rights under California labor law and that BBC-licensed businesses comply with their corresponding legal obligations to provide a just and fair workplace." The sponsors further argue that "the closer establishments adhere to labor laws and regulations and treat their workers fairly, the better it is for the nail, beauty, and barber industry generally and the professionalism of the trade."

ARGUMENTS IN OPPOSITION:

The **Professional Beauty Federation** (PBF) opposes this bill unless amended "to simply extend the same exemption that hair/skin establishments currently enjoy within the AB 5 law and make it permanent (no sunset date)." The PBF argues that "the long-term and near ubiquitous practice of booth rental in nail salons (the vast majority of which are owned-operated by foreign-born and English-as-second language individuals) will not be able to suddenly pivot to an employer-employee based business. This means beginning next year when the ABC exemption from the 'ABC' for nail salons expires, there will be a systemic level of labor law non-compliance in the nail sector."

REGISTERED SUPPORT:

California Healthy Nail Salon Collaborative *(Co-Sponsor)*
Asian Americans Advancing Justice - Southern California *(Co-Sponsor)*
AAPI Equity Alliance
AAPIs for Civic Empowerment Education Fund
Asian Americans Advancing Justice - Asian Law Caucus
Asian Americans and Pacific Islanders for Civic Empowerment
Asian Health Services
Asian Resources, Inc.
California Domestic Workers Coalition
California Immigrant Policy Center

Center for Asian Americans in Action
Center for Empowering Refugees and Immigrants
Korean American Family Services, Inc.
Koreatown Youth and Community Center
Orange County Asian and Pacific Islander Community Alliance, Inc.
Pacific Asian Counseling Services
Pilipino Workers Center
Southeast Asia Resource Action Center
Thai Community Development Center
Viet Rainbow of Orange County
Worksafe
One individual

REGISTERED OPPOSITION:

Precision Nails
Professional Beauty Federation of California

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2496 (Low) – As Amended March 18, 2024

SUBJECT: Dentistry: oral conscious sedation.

SUMMARY: Allows for dentists to meet existing training requirements to oral conscious sedation for adult patients through pediatric dental residency programs.

EXISTING LAW:

1) Establishes the Dental Practice Act. (Business and Professions Code (BPC) §§ 1600 *et seq.*)

2) Establishes the DBC within the Department of Consumer Affairs to administer and enforce the Dental Practice Act, subject to repeal on January, 1, 2025 unless that date is extended by the Legislature through the sunset review process. (BPC § 1601.1)

3) Provides that protection of the public shall be the highest priority for the DBC and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 1601.2)

4) Requires the DBC to review and report available data on all adverse events related to general anesthesia and deep sedation, moderate sedation, and minimal sedation in dentistry, as well as relevant professional guidelines, recommendations, or best practices for the provision of dental anesthesia and sedation care, and to retain this data for 15 years. (BPC § 1601.4)

5) Requires the Office of Oral Health in the State Department of Public Health, on or before January 1, 2022, and upon appropriation from the Legislature, to provide to the Legislature a report and analysis relating to dental anesthesia. (BPC § 1601.7)

6) Authorizes the DBC to approve a training standard for general anesthesia, deep sedation, and moderate sedation in lieu of Pediatric Advanced Life Support (PALS) certification if the training standard is an equivalent or higher level of training for pediatric dental anesthesia-related emergencies than PALS certification that includes, but is not limited to, pediatric life support and airway management. (BPC § 1601.8)

7) Outlines various requirements for the use of deep sedation and general anesthesia; moderate sedation; oral conscious sedation; and pediatric minimal sedation in dental procedures, including requirements that dentists obtain specified permits, with specific requirements for pediatric procedures. (BPC §§ 1646 – 1647.36)

8) Defines "oral conscious sedation" as a minimally depressed level of consciousness produced by oral medication that retains the patient's ability to maintain independently and continuously an airway, and respond appropriately to physical stimulation or verbal command. (BPC § 1647.18)

9) Prohibits a dentist from administering oral conscious sedation on an outpatient basis to an adult patient unless the dentist possesses a current license in good standing to practice dentistry in California, and one of the following conditions is met:

a) The dentist holds a valid general anesthesia permit, holds a conscious sedation permit, has been certified by the DBC to administer oral sedation to adult patients, or has been certified by the DBC to administer oral conscious sedation to minor patients.

b) The dentist possesses a current permit and either holds a valid general anesthesia permit, or conscious sedation permit, or possesses a certificate as a provider of oral conscious sedation to adult patients.

(BPC § 1647.19)

10) Provides that a dentist who desires to administer, or order the administration of, oral conscious sedation for adult patients, who does not hold a general anesthesia permit, does not hold a conscious sedation permit, and has not been certified by the DBC to administer oral conscious sedation to minor patients, must register with the DBC and submit evidence showing they have satisfied any of the following requirements:

a) Satisfactory completion of a postgraduate program in oral and maxillofacial surgery approved by either the Commission on Dental Accreditation or a comparable organization approved by the DBC.

b) Satisfactory completion of a periodontics or general practice residency or other advanced education in a general dentistry program approved by the DBC.

c) Satisfactory completion of a DBC-approved educational program on oral medications and sedation.

d) For an applicant who has been using oral conscious sedation in connection with the treatment of adult patients, submission of documentation as required by the DBC of 10 cases of oral conscious sedation satisfactorily performed by the applicant on adult patients in any three-year period ending no later than December 31, 2005.

(BPC § 1647.20)

11) Requires a certificate holder to complete a minimum of seven hours of approved courses of study related to oral conscious sedation of adult patients as a condition of certification renewal as an oral conscious sedation provider. (BPC § 1647.21)

12) Requires a physical evaluation and medical history to be taken before the administration of oral conscious sedation to an adult. (BPC § 1647.22)

13) Provides that the fee for an application for initial certification or renewal shall not exceed the amount necessary to cover administration and enforcement costs incurred by the DBC. (BPC § 1647.23)

14) Requires any office in which oral conscious sedation of adult patients is conducted must meet the facilities and equipment standards set forth by the DBC in regulation. (BPC § 1647.24)

15) Provides that a violation of any provision of the statutes governing oral conscious sedation constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, certificate, license, or all three, or the dentist may be reprimanded or placed on probation. (BPC § 1647.25)

THIS BILL:

1) Allows for satisfactory completion of a pediatric dental residency to qualify a dentist to register with the DBC to administer, or order the administration of, oral conscious sedation for adult patients.

2) Makes other technical and nonsubstantive changes.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Dental Association**. According to the author:

> "Dentists who complete a pediatric dentistry program possess comprehensive training in managing complex cases involving pediatric patients, including administering anesthesia tailored to their unique needs and physiology. This specialized training equips them with a deep understanding of anesthesia principles, patient assessment, and monitoring techniques, which are applicable across age groups. Additionally, pediatric dentistry programs often incorporate a broad range of clinical experiences, which can enhance a dentist's overall proficiency in anesthesia administration, making them well-suited to provide safe and effective care to adult patients as well. If a dentist are trained to work on children then they have the training to work on adults and should be permitted to do both children and adults."

Background.

Use of Anesthesia and Sedation in Dental Procedures. Senate Bill 501 (Glazer, Chapter 929, Statutes of 2018) was signed into law in 2018, serving as the culmination of years of policy discussion that followed the tragic death of a young boy while undergoing dental work under anesthesia. In February 2016, the Senate Committee on Business, Professions, and Economic Development sent a letter to the DBC requesting that a subcommittee be formed to investigate pediatric anesthesia in dentistry, and requested that information from that investigation be reported back to the Legislature no later than January 1, 2017. The DBC concluded that existing California law was sufficient to provide protection of pediatric patients during dental sedation; however, it made several recommendations to enhance statute and regulations to provide a greater level of public protection.

SB 501 established a series of new requirements and minimal standards for the use of sedation and anesthesia in pediatric dental procedures. Specifically, the bill created a new process for the DBC to issue general anesthesia permit (that may include a pediatric endorsement) as well as moderate and pediatric minimal sedation permits to applicants based on their level of experience and training; and established new requirements for general anesthesia or sedation administered to patients under thirteen years of age. The bill also required the DBC to review data on adverse events related to general anesthesia and sedation and all relevant professional guidelines for purposes of reporting to the Legislature on any relevant findings.

The DBC is currently going through sunset review by the Senate Committee on Business and Professions and the Assembly Committee on Business Professions. Issue #9 in the background paper authored by the Committees discussed the implementation of SB 501, and the Committees noted that the DBC had been working to implement the requirements recently enacted in SB 501.

The background paper concluded by stating: "The Committees may wish to amend the Act to further the notable patient safety goals of SB 501 pursuant to DBC's clarifying and technical requests."

In its report to the Committees, the DBC raised a number of new issues and recommended legislative changes. Among the issues relating to the use of anesthesia and sedation, the DBC recommended amendments to "provide technical cleanup and clarification to the new laws related to anesthesia and sedation established through SB 501," including language relating to oral conscious sedation for adults. Specifically, the DBC determined that the Dental Practice Act needed to specify whether completing a pediatric residency or holding a Pediatric Minimal Sedation (PMS) permit would fulfill the requirements to perform oral conscious sedation.

This bill would clarify existing law by allowing dentists to satisfy the requirements of an adult minimum sedation permit by submitting evidence showing satisfactory completion of a pediatric dental residency program approved by the DBC. Because these dentists already possess special pediatric permits that allow them to work with more challenging patients who are under the age of 13 and thus pose unique risks compared to adult patients, it can be assumed that they are qualified to safely practice on adults. This clarification would streamline the ability of qualified dentists to administer oral conscious sedation for adults without jeopardizing patient safety.

Current Related Legislation.

AB 2526 (Gipson) would require a dentist to possess a general anesthesia administration or ordering permit issued by the DBC for the purpose of administering or ordering the administration of deep sedation or general anesthesia by a dedicated permitted anesthesia provider, and would include certified nurse anesthetists among those providers. *This bill is pending in this committee.*

SB 1453 (Ashby) is the DBC's 2024 sunset bill. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

SB 652 (Bates) of 2021 would have required, for patients 13 years of age or older, that the operating dentist and at least two additional personnel be present throughout the procedure and that the dentist and one additional personnel maintain current certification in Advanced Cardiac Life Support (ACLS). *This bill died without a hearing in the committee.*

SB 501 (Glazer, Chapter 929, Statutes of 2018) establishes new requirements and minimal standards for the use of sedation and anesthesia in pediatric dental procedures.

ARGUMENTS IN SUPPORT:

The **California Dental Association** (CDA) is sponsoring this bill. The CDA writes: "Pediatric dental residencies trained dentists to work with pediatric patients through age 21, making them an appropriate education for the over 13 adult minimal sedation permit. AB 2496 will authorize a pediatric dentist to satisfy the requirements of an adult minimal sedation permit by submitting evidence showing satisfactory completion of a pediatric dental residency program while still maintaining the patient safety protections in SB 501."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Dental Association *(Sponsor)*

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3119 (Low) – As Amended March 18, 2024

SUBJECT: Physicians and surgeons: continuing medical education: Long COVID.

SUMMARY: Requires the Medical Board of California (MBC) to consider requiring licensed physicians and surgeons to take a continuing education (CE) course related to Long COVID.

EXISTING LAW:

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

2) Establishes the MBC within the Department of Consumer Affairs for purposes of implementing and enforcing the Medical Practice Act. (BPC § 2001)

3) Establishes the Osteopathic Medical Board of California (OMBC) for purposes of implementing and enforcing the Osteopathic Act and the Medical Practice Act, when applicable. (BPC § 2701)

4) Specifies that references to the MBC in the Medical Practice Act also refer to the OMBC, as specified. (BPC § 2451)

5) Requires the MBC to adopt and administer standards for the CE of its licensees; authorizes the MBC to set content standards for any education regarding the prevention and treatment of a chronic disease; and mandates that the MBC require each licensed physician and surgeon to demonstrate satisfaction of CE requirements at intervals of not less than four nor more than six years. (BPC § 2190)

6) Authorizes the MBC's Division of Licensing to establish continuing medical education standards for courses that serve to maintain, develop, or increase the knowledge, skills, and professional performance that a physician and surgeon uses to provide care, or to improve the quality of care provided to patients. (BPC § 2190.1)

7) Requires a physician and surgeon to complete not less than 50 hours of approved CE during every two years as a condition of license renewal. (California Code of Regulations. Title 16, § 1336)

8) In determining its CE requirements, requires the MBC to consider including courses related to numerous specified subjects. (BPC §§ 2191, 2191.4, 2191.5, 2196.9)

9) Requires most physicians and surgeons to complete a one-time CE course in pain management and the treatment of terminally ill and dying patients, which must include the subject of the risks associated with the use of Schedule II drugs. (BPC § 2190.5)

10) Authorizes a physician and surgeon to complete a one-time CE course on the treatment and management of opiate-dependent patients as an alternative to the required course in pain management. (BPC § 2190.6)

11) Requires the OMBC to adopt and administer standards for CE of osteopathic physician and surgeons. (BPC § 2454.5)

12) Mandates that the OMBC require each licensed osteopathic physician and surgeon to complete a minimum of 50 hours of American Osteopathic Association CE hours, as specified, and demonstrate satisfaction of CE requirements every two years as a condition of license renewal. (BPC § 2454.5)

13) Requires osteopathic physician and surgeons to complete a course on the risks of addiction associated with the use of Schedule II drugs. (BPC § 2454.5)

THIS BILL:

1) Would require the MBC, in determining its CE requirements, to consider including a course in Long COVID.

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

COMMENTS:

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

> Although the COVID pandemic has ended, numerous Californians who contracted the virus still endure persistent neurological, cardiovascular, respiratory, and mental health symptoms. [This bill] requires the Medical Board of California to consider incorporating a long COVID course into its continuing education requirements to empower doctors to enhance their comprehension and proficiency in supporting and treating individuals with long COVID.

Background.

Continuing Medical Education for Physicians. Physicians and surgeons licensed by the MBC and the OMBC are required to complete 50 hours of approved CE every two years as a condition of license renewal. Though existing law also requires the MBC to consider requiring CE related to various topics (e.g. nutrition), there are only two subject-specific CE requirements in statute. Most physicians and surgeons are required to complete a one-time, 12-hour training in either the pain management and treatment of terminally ill and dying patients or the treatment and management of opiate-dependent patients.[1] Additionally, general internists and family physicians who have a patient population of which over 25 percent are 65 years of age or older must complete at least 20 percent of their mandatory CE in the field of geriatric medicine. Physicians are otherwise afforded great latitude in choosing which CE courses to take to satisfy their 50 hours.

[1] Pathologists and radiologists are exempt from this requirement.

Both the MBC and the OMBC require CE courses to be accredited or approved by specified organizations such as the American Medical Association and the Accreditation Council for Continuing Medical Education. Osteopathic physician and surgeons specifically are required to complete a minimum of 20 CE hours certified by the American Osteopathic Association.[2]

Long COVID. Approximately 7.2 percent of adults in California are currently experiencing Long COVID,[3] which the Centers for Disease Control and Prevention (CDC) refers to as "the new, returning, or ongoing health problems people can experience four or more weeks after initial infection with the SARS-CoV-2 virus." Long COVID can include an array of health conditions and potentially affect multiple systems of the body. People with Long COVID commonly report experiencing fatigue, fever, cough, chest pain, brain fog, changes in smell or taste, diarrhea, stomach pain, joint or muscle pain, rash, or changes in menstrual cycles, among other symptoms. The CDC reports that some people have unexplained symptoms that healthcare providers do not understand which can delay diagnosis and treatment.

This bill would require the MBC and OMBC to consider requiring its licensees (i.e. physicians) to take CE related to Long COVID, which the author anticipates would bolster medical comprehension of Long COVID for doctors to better assist their patients. This committee is currently aware of at least two Long COVID-CE courses available to physicians and other health care providers.[4] [5]

Current Related Legislation.

AB 2270 (Maienschein) of 2024 would require licensees of the MBC, OMBC, Board of Registered Nursing, Physician Assistants Board, Board of Psychology, and the Board of Behavioral Sciences to have the option to take coursework on menopausal mental or physical health within the scope of their practice to satisfy CE requirements. *AB 2270 is pending in this committee.*

AB 2581 (Maienschein) of 2024 would require licensees of the MBC, OMBC, Board of Registered Nursing, Physician Assistants Board, Board of Psychology, and the Board of Behavioral Sciences to have the option of taking coursework on maternal mental health to satisfy CE requirements. *AB 2581 is pending in this committee.*

Prior Related Legislation.

AB 845 (Maienschein), Chapter 220, Statutes of 2019, requires the MBC, in determining its CE requirements for licensed physicians and surgeons, to consider including a course in maternal mental health.

AB 1791 (Waldron), Chapter 122, Statutes of 2018, requires the MBC, in determining its CE requirements, to consider including a course relating to the integration of HIV/AIDS pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) medication maintenance and counseling in primary care settings.

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[2] Osteopathic Medical Board of California Continuing Medical Education
[3] CDC and NCHS Long COVID Household Pulse Survey
[4] Long COVID Education | University of California Health
[5] Long COVID in Primary Care | Harvard

AB 1340 (Maienschein), Chapter 759, Statutes of 2017, requires the MBC to, when determining its CE requirements, consider including a course in integrating mental and physical health care in primary care settings.

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2862 (Gipson) – As Introduced February 15, 2024

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

SUBJECT: Licenses: African American applicants.

SUMMARY: Requires state licensing boards to prioritize African American applicants seeking licenses, especially applicants who are descended from a person enslaved in the United States.

EXISTING LAW:

1) Provides that the term "board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (Business and Professions Code (BCP) §§ 22)

2) States that unless otherwise expressly provided, the term "license" means license, certificate, registration, or other means to engage in a business or profession regulated by the Business and Professions Code. (BPC § 23.7)

3) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (BPC § 100)

4) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA's jurisdiction. (BPC § 101)

5) States that boards, bureaus, and commissions within the DCA must establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate, upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public. (BPC § 101.6)

6) Requires boards within the DCA to expedite, and authorizes boards to assist, the initial licensure process for an applicant who has served as an active duty member of the Armed Forces of the United States and was honorably discharged or who, beginning July 1, 2024, is enrolled in the United States Department of Defense SkillBridge program. (BPC § 115.4)

7) Requires boards within the DCA to expedite the licensure process and waive any associated fees for applicants who hold a current license in another state and who are married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders. (BPC § 115.5)

8) Requires boards within the DCA to expedite, and authorizes boards to assist, the initial licensure process for applicants who have been admitted to the United States as a refugee, have been granted asylum by the Secretary of Homeland Security or the Attorney General of the United States, or have a special immigrant visa. (BPC § 135.4)

9) Requires the Medical Board of California (MBC), the Osteopathic Medical Board of California (OMBC), the Board of Registered Nursing (BRN), and the Physician Assistant Board (PAB) to expedite the licensure process for applicants who demonstrate that they intend to provide abortions within the scope of practice of their license. (BPC § 870)

10) Requires the MBC to give priority review status to the application of an applicant for a physician's and surgeon's certificate who can demonstrate that they intend to practice in a medically underserved area or serve a medically underserved population. (BPC § 2092)\

11) Requests that the Regents of the University of California assemble a colloquium of scholars to draft a research proposal to analyze the economic benefits of slavery that accrued to owners and the businesses, including insurance companies and their subsidiaries, that received those benefits. (Education Code § 92615)

12) Requires the Insurance Commissioner to obtain the names of any slaveholders or slaves described in specified insurance records, and to make the information available to the public and the Legislature. (Insurance Code § 13811)

13) Declares that descendants of slaves, whose ancestors were defined as private property, dehumanized, divided from their families, forced to perform labor without appropriate compensation or benefits, and whose ancestors' owners were compensated for damages by insurers, are entitled to full disclosure. (Insurance Code § 13813)

14) Requires the State Controller's Office and the Department of Human Resources, when collecting demographic data as to the ancestry or ethnic origin of persons hired into state employment, to include collection categories and tabulations for Black or African American groups, including, but not limited to, African Americans who are descendants of persons who were enslaved in the United States. (Government Code § 8310.6)

THIS BILL:

1) Requires boards to prioritize African American applicants seeking licenses, especially applicants who are descended from a person enslaved in the United States.

2) Clarifies that "board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency"; and "license" includes certificate, registration, or other means to engage in a regulated business or profession.

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

COMMENTS:

Purpose. This bill is sponsored by the author as part of a package of bills introduced by members of the California Legislative Black Caucus. According to the author:

> "AB 2465 would provide an imperative initiative of the prioritization of African Americans when seeking occupational licenses, especially those who are descendants of slaves. There has been historical long-standing deficiencies and internal barriers to African Americans seeking professional work, and by prioritizing their applications, we are bridging the gap of professional inequities of under representation and under compensation."

Background.

Expedited Licensure. The DCA consists of 36 boards, bureaus, and other entities responsible for licensing, certifying, or otherwise regulating professionals in California. As of March 2023, there are over 3.4 million licensees overseen by programs under the DCA, including health professionals regulated by healing arts boards under Division 2 of the Business and Professions Code. Each licensing program has its own unique requirements, with the governing acts for each profession providing for various prerequisites including prelicensure education, training, and examination. Most boards additionally require the payment of a fee and some form of background check for each applicant.

The average length of time between the submission of an initial license application and approval by an entity under the DCA can vary based on a number of circumstances, including increased workload, delays in obtaining an applicant's criminal history, and deficiencies in an application. Boards typically set internal targets for application processing timelines and seek adequate staffing in an effort to meet those targets consistently. License processing timelines are then regularly evaluated through the Legislature's sunset review oversight process.

The first expedited licensure laws specifically related to the unique needs of military families. The Syracuse University Institute for Veterans and Military Families found that up to 35 percent of military spouses are employed in fields requiring licensure. Because each state possesses its own licensing regime for professional occupations, military family members are required to obtain a new license each time they move states, with one-third of military spouses reportedly moving four or more times while their partner is on active duty. Because of the barriers encountered by military family members who seek to relocate their licensed work to a new state, it is understood that continuing to work in their field is often challenging if not impossible.

In an effort to address these concerns, Assembly Bill 1904 (Block) was enacted in 2012 to require boards and bureaus under the DCA to expedite the licensure process for military spouses and domestic partners of a military member who is on active duty in California. Two years later, Senate Bill 1226 (Correa) was enacted to similarly require boards and bureaus under the DCA to expedite applications from honorably discharged veterans, with the goal of enabling these individuals to quickly transition into civilian employment upon retiring from service.

Statute requires entities under the DCA to annually report the number of applications for expedited licensure that were submitted by veterans and active-duty spouses and partners. For example, in Fiscal Year 2022-23, the MBC received 14 applications from military spouses or partners and 101 applications from honorably discharged veterans subject to expedited processing. In 2023, the federal Servicemembers Civil Relief Act (SCRA) imposed new requirements on states to recognize qualifying out-of-state licenses for service members and their spouses. This new form of enhanced license portability potentially displaces the need for expedited licensure for these applicants.

A decade after the first expedited licensure laws were enacted for military families, the Legislature enacted Assembly Bill 2113 (Low) in 2020 to require licensing entities under the DCA to expedite licensure applications for refugees, asylees, and Special Immigrant Visa holders. The intent of this bill was to address the urgency of allowing those forced to flee their homes to restart their lives upon acceptance into California with refugee status. It is understood that the population of license applicants who have utilized this new expedited licensure program across all DCA entities is, to date, relatively small.

Subsequently in 2022, the Legislature enacted Assembly Bill 657 (Cooper) to add another category of applicants eligible for expedited licensure. This bill required the MBC, OMBC, the BRN, and the PAB to expedite the license application for an applicant who demonstrates that they intend to provide abortions. This bill was passed in the wake of the Supreme Court's decision to overturn *Roe v. Wade*, which led to concerns that with approximately half of all states likely to seek to ban abortion, patients in those states would come to California to receive abortion services, creating a swell in demand for abortion providers. Assembly Bill 657 was passed to ensure that there is an adequate health care provider workforce to provide urgent reproductive care services.

State Efforts to Provide Reparations to Descendants of Slavery. In 2020, the Legislature enacted Assembly Bill 3121 (Weber), which established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States. The bill's findings and declarations acknowledged that "more than 4,000,000 Africans and their descendants were enslaved in the United States and the colonies that became the United States from 1619 to 1865." The bill further found that as "a result of the historic and continued discrimination, African Americans continue to suffer debilitating economic, educational, and health hardships," including, among other hardships, "an unemployment rate more than twice the current white unemployment rate."

The Task Force created by AB 3121 was given responsibility for studying and developing reparation proposals for African Americans as a result of slavery and numerous subsequent forms of discrimination based on race. The Task Force was then required to recommend appropriate remedies in consideration of its findings, which were submitted as a report to the Legislature on June 29, 2023. The *California Reparations Report*, drafted with staff assistance from the California Department of Justice, totals over a thousand pages and provides a comprehensive history of the numerous past injustices and persistent inequalities and discriminatory practices. The report also includes a number of recommendations for how the state should formally apologize for slavery, provide compensation and restitution, and address the pervasive effects of enslavement and other historical atrocities.

Chapter 10 of the Task Force's report, titled "Stolen Labor and Hindered Opportunity," addresses how African Americans have historically been excluded from occupational licenses. As discussed in the report, "state licensure systems worked in parallel to exclusion by unions and professional societies in a way that has been described by scholars as "particularly effective" in excluding Black workers from skilled, higher paid jobs. White craft unions implemented unfair tests, conducted exclusively by white examiners to exclude qualified Black workers."

The report additionally describes how as the use of licensure to regulate jobs increased beginning in the 1950s, African American workers continued to be excluded from economic opportunity, in large part due to laws disqualifying licenses for applicants with criminal records, which disproportionately impacted African Americans. This specific issue was previously addressed in California through the Legislature's enactment of Assembly Bill 2138 (Chiu/Low) in 2018, which reduced barriers to licensure for individuals with prior criminal histories by limiting the discretion of most regulatory boards to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with nonviolent offenses older than seven years no longer eligible for license denial.

In its discussion of issues relating to professional licensure, the Task Force concludes by stating that "while AB 2138 represents progress, other schemes remain in California which continue to have a racially discriminatory impact." The Task Force then provides several recommendations on how the Legislature could "expand on AB 2138." This includes a recommendation in favor of "prioritizing African American applicants seeking occupational licenses, especially those who are descendants [of slavery]."

On January 31, 2024, the California Legislative Black Caucus announced the introduction of the 2024 Reparations Priority Bill Package, consisting of a series of bills introduced by members of the caucus to implement the recommendations in the Task Force's report. As part of that package, this bill seeks to implement the Task Force's recommendation by requiring boards to prioritize African American applicants seeking licenses, especially applicants who are descended from a person enslaved in the United States. This requirement would be similar to existing expedited licensure processes for military families, refugee applicants, and abortion providers. While this bill would only represent a single step in what could be considered a long journey toward addressing the malignant consequences of slavery and systemic discrimination, the author believes it would meaningfully address the specific impact those transgressions have had on African Americans seeking licensure in California.

Current Related Legislation.

ACR 135 (Weber) would formally acknowledge the harms and atrocities committed by representatives of the State of California who promoted, facilitated, enforced, and permitted the institution of chattel slavery and the legacy of ongoing badges and incidents of slavery that form the systemic structures of discrimination. *This bill is pending in the Senate Committee on Judiciary.*

AB 3089 (Jones-Sawyer) would provide that the State of California apologizes for perpetuating the harms African Americans faced by having imbued racial prejudice through segregation, public and private discrimination, and unequal disbursal of state and federal funding and declares that such actions shall not be repeated. *This bill is pending in the Assembly Committee on Judiciary.*

AB 2166 (Weber) would update existing prelicensure education and examination requirements for license applicants under the State Board of Barbering and Cosmetology to include instruction and testing on the provision of services to individuals with all hair types and textures. *This bill is pending in this committee.*

AB 2442 (Zbur) requires specified healing arts boards under the DCA to expedite the licensure process for applicants who demonstrate that they intend to provide gender-affirming health care or gender-affirming mental health care services. *This bill is pending in this committee.*

SB 1067 (Smallwood-Cuevas) would require healing arts boards to expedite the licensure process for applicants who intend to practice in a medically underserved area. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

AB 657 (Cooper, Chapter 560, Statutes of 2022) requires specified boards under the DCA to expedite applications from applicants who demonstrate that they intend to provide abortions.

AB 3121 (Weber, Chapter 319, Statutes of 2020) established the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States.

AB 2113 (Low, Chapter 186, Statutes of 2020) requires entities under the DCA to expedite applications from refugees, asylees, and special immigrant visa holders.

AB 2138 (Chiu, Chapter 995, Statutes of 2018) reduced barriers to licensure for individuals with prior criminal convictions.

SB 1226 (Correa, Chapter 657, Statutes of 2014) requires entities under the DCA to expedite applications from honorable discharged veterans.

AB 1904 (Block, Chapter 399, Statutes of 2012) requires entities under the DCA to expedite applications from military spouses and partners.

ARGUMENTS IN SUPPORT:

The **California African American Chamber of Commerce** supports this bill, writing: "By prioritizing African American applicants, especially those with ancestral ties to slavery, AB 2862 seeks to promote equity and provide opportunities for economic advancement within our community. This legislation is crucial in fostering diversity and inclusivity in various industries, paving the way for greater representation and participation of African Americans in the workforce. Furthermore, AB 2862 aligns with the California African American Chamber of Commerce's mission to drive economic opportunity and wealth creation for African American businesses. By ensuring fair access to licensure, this bill contributes to our overarching goal of promoting economic empowerment and prosperity for African American entrepreneurs and professionals across the state."

ARGUMENTS IN OPPOSITION:

The **Pacific Legal Foundation** (PLF) writes in opposition to this bill: "Fewer barriers to entering the workforce, not more, will meaningfully advance opportunity in California. Barriers based on race are especially odious and detrimental. Licensing laws already hinder opportunity, and the government does not need to make things worse by injecting racial discrimination into the system." The PLF further argues that this bill violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

POLICY ISSUE(S) FOR CONSIDERATION:

Creation of Additional Expedited Licensure Processes. When expedited licensure was first established as a process in California, it was intended to address unique issues relating to military families who move frequently and can often not afford to wait to qualify for a new license each time they relocate to a new state. The addition of refugee and asylee applicants was intended to respond to a growing international refugee crisis by providing similar benefits to a small number of applicants whose relocation to California was presumably abrupt and who would need to rebuild their professions. In that same spirit, the extension of expedited licensure to abortion care providers was aimed at preparing for a potential influx of demand for those services in the wake of the Supreme Court's decision to overturn longstanding protections for reproductive rights.

Several pieces of legislation have been introduced this year that would establish new expedited licensure requirements for additional populations of applicants. Each of these proposals is certainly meritorious, as were each of the measures previously signed into law. However, there is potentially a cause for concern that as the state contemplates adding more categories of license applicants to the growing list of applications that must be expedited by entities within the DCA, the value of expediting each applicant type becomes diluted and non-expedited applications could become unduly delayed.

If the Legislature intends to extend expedited licensure requirements to new demographics of applicants—which the author of this bill has argued cogently in favor of doing—attention should be paid to the impact that all these proposals ultimately have in their totality. The Legislature should also subsequently revisit the need for expedited licensure requirements that were established in particular contexts and determine if they are still needed, which could be achieved by the addition of sunset clauses. It may ultimately prove to be appropriate to continue expediting the licenses applications for those proposed in this bill in the future.

Constitutionality. In June of 2023, the Supreme Court of the United States issued its ruling in *Students for Fair Admissions v. Harvard*, in which it decided that the Equal Protection Clause of the Fourteenth Amendment prohibits universities from positively considering race as a factor in admissions. This decision strongly suggests an antagonistic position within the current composition of the Supreme Court when reviewing policies that necessarily consider race as a means of improving equitable access to opportunity or providing redress to representatives of racial groups that have been subjected to discrimination and marginalization. The likelihood of this bill's provisions surviving a strict scrutiny examination by the Supreme Court will be more thoroughly discussed when this bill is re-referred to the Assembly Committee on Judiciary.

IMPLEMENTATION ISSUES:

As currently drafted, this bill would create a new division within the Business and Professions Code for purposes of establishing a single statute with two subdivisions—one of which contains provisions identical to those codified elsewhere that apply to the entire code. In addition to considerations of statutory organization and aesthetics, this placement potentially generates uncertainty relating to the bill's applicability. The author may wish to relocate the provisions of the bill to a section in the chapter that currently includes other expedited licensure requirements.

AMENDMENTS:

1) To allow the Legislature to revisit the expedited licensure requirements of this bill in the future to determine if those requirements are still needed, add a new subdivision providing that the bill's provisions will sunset in four years unless extended by the Legislature.

2) To relocate the bill's contents to an existing chapter of code, strike Section 1 of the bill and instead add the language contained in subdivision (b) to a newly created Section 115.7 in Chapter 1 of the Business and Professions Code.

REGISTERED SUPPORT:

California African American Chamber of Commerce
Greater Sacramento Urban League
One individual

REGISTERED OPPOSITION:

Pacific Legal Foundation

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

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3097 (Chen) – As Amended April 3, 2024

SUBJECT: Radiologist assistants.

SUMMARY: Prohibits a person from holding themselves out as a radiologist assistant (RA) or using the RA title or any other term to imply or to suggest that the person is an RA unless the person meets specified requirements.

CONTENTS

EXISTING LAW REGARDING RADIOLOGY PROFESSIONALS:

1) Regulates the practice of medicine under the Medical Practice Act and establishes the Medical Board of California to administer and enforce the act. (BPC §§ 2000-2529.6)

2) Prohibits the practice, attempt to practice, advertisement of, or holding out as practicing any system or mode of treating the sick or afflicted, or diagnosis, treatment, operation for, or prescription for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of doing so a valid, unrevoked, or unsuspended medical license or being otherwise authorized under state law to perform the medical act. (BPC § 2052)

3) Regulates the practice of nursing under the Nursing Practice Act and establishes the Board of Registered Nursing to administer and enforce the act, including the licensure of registered nurses and the certification of nurse practitioners (NPs). (BPC §§ 2700-2838.4)

4) Regulates the practice of physician assistants (PAs) under the Physician Assistant Practice Act and establishes the Physician Assistant Board to administer and enforce the act. (BPC §§ 3500-3545).

5) Regulates radiologic technology under the Radiology Technology Act to protect the public and radiation workers from excessive or improper exposure to ionizing radiation and requires the California Department of Public Health (CDPH) to administer and enforce the act. (Health and Safety Code (HSC) §§ 27(f), 106965-107115, 114840-114896)

6) Prohibits any person from administering or using diagnostic or therapeutic X-rays on human beings unless that person has been certified as a radiologic technologist (RT) or granted a permit as specified, is acting within the scope of that certification or permit, and is acting under the supervision of a licentiate of the healing arts. (HSC § 106965)

7) Authorizes CDPH to deny, revoke, or suspend certificates and permits, as specified. (HSC § 107070)

8) Requires the CDPH to appoint a Radiologic Technology Certification Committee to assist, advise, and make recommendations for the establishment of regulations necessary to ensure the proper administration and enforcement of radiologic technology certification. (HSC §§ 114850(b), 114855)

9) Specifies the composition of the certification committee, including six physicians, 3 of whom are certified in radiology, two certified RTs, one radiological physicist, one podiatrist, and one chiropractor. (HSC § 114860)

EXISTING LAW REGARDING NEW REGULATION OF A PROFESSION:

1) Establishes requirements and procedures for legislative oversight of state board formation and licensed professional practice. (Government Code (GOV) §§ 9148-9148.8)

2) Requires, before consideration by the Legislature of legislation creating a new state board or legislation creating a new category of licensed professional, that the author or sponsor of the legislation develop a plan for the establishment and operation of the proposed state board or new category of licensed professional. (GOV § 9148.4)

3) The plan must include all of the following:

    a) A description of the problem that the creation of the specific state board or new category of licensed professional would address, including the specific evidence of need for the state to address the problem. (GOV § 9148.4 (a))

    b) The reasons why this proposed state board or new category of licensed professional was selected to address this problem, including the full range of alternatives considered and the reason why each of these alternatives was not selected. (GOV § 9148.4(b))

    c) Alternatives that shall be considered include, but are not limited to, the following:

i) No action taken to establish a state board or create a new category of licensed professional. (GOV § 9148.4(b)(1))

ii) The use of a current state board or agency or the existence of a current category of licensed professional to address the problem, including any necessary changes to the mandate or composition of the existing state board or agency or current category of licensed professional. (GOV § 9148.4(b)(2))

iii) The various levels of regulation or administration available to address the problem. (GOV § 9148.4(b)(3))

iv) Addressing the problem by federal or local agencies. (GOV § 9148.4(b)(4))

d) The specific public benefit or harm that would result from the establishment of the proposed state board or new category of licensed professional, the specific manner in which the proposed state board or new category of licensed professional would achieve this benefit and the specific standards of performance which shall be used in reviewing the subsequent operation of the board or category of licensed professional. (GOV § 9148.4(c))

e) The specific source or sources of revenue and funding to be utilized by the proposed state board or new category of licensed professional in achieving its mandate. (GOV § 9148.4(d))

f) The necessary data and other information required in this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard. (GOV § 9148.4(e))

4) Authorizes the appropriate policy committee of the Legislature to evaluate the plan prepared in connection with a legislative proposal to create a new state board and provides that, if the appropriate policy committee does not evaluate a plan, then the Joint Sunset Review Committee shall evaluate the plan and provide recommendations to the Legislature. (GOV § 9148.8)

THIS BILL:

1) Makes various findings and declarations regarding RAs.

2) Prohibits a person from holding themselves out to be an RA, or use the title of "radiologist assistant," or any other term, to imply or to suggest that the person is an RA, unless the person meets all of the following requirements:

a) The person has passed the RA examination administered by the American Registry of Radiologic Technologists, the radiology practitioner assistant examination administered by the Certification Board for Radiology Practitioner Assistants, or another examination offered by a successor or comparable entity that has been determined by the CDPH to evaluate the knowledge and skills necessary to ensure the protection of the public and has been approved by the CDPH.

b) The person maintains current registration with the American Registry of Radiologic Technologists, the Certification Board for Radiology Practitioner Assistants, or a successor or comparable entity.

c) The person is certified or permitted to conduct radiologic technology in this state or possesses an RA license from another state that licenses RAs.

3) Requires an RA to work only under the supervision of a radiologist.

4) Prohibits an RA from functioning in their capacity as an RA independent of a supervising radiologist.

5) Prohibits an RA from interpreting images, making diagnoses, or prescribing medications or therapies.

6) Authorizes an RA to administer prescribed drugs only as directed by a supervising radiologist or their designee.

7) Authorizes an RA to communicate and document initial clinical and imaging observations or procedures only to a radiologist for the radiologist's use.

8) Authorizes an RA to communicate a supervising radiologist's report to an appropriate health care provider consistent with the American College of Radiology guideline for communicating diagnostic imaging findings.

9) Authorizes a supervising radiologist to delegate to an RA, as the radiologist determines appropriate to the RA's competence, those tasks or services that a radiologist usually performs and is qualified to perform.

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

COMMENTS:

Purpose. This bill is sponsored by the *American Registry of Radiologic Technologists*. According to the author, "[This bill] builds off the Legislature's previous work to ensure patient safety and uphold the dignity of work in healthcare settings. This bill codifies protections to safeguard the Radiologist Assistant (RA) position, and builds out a framework to ensure the longevity of this role in the years to come."

Background. According to the sponsor, an RA is a medical radiographer who is certified by the American Registry of Radiologic Technologists (ARRT) as a Registered Radiologist Assistant (RRA) or by the Certification Board for Radiology Practitioner Assistants (CBRPA) as a Radiology Practitioner Assistant (RPA) to perform radiology services under the supervision of a radiologist. RAs can perform patient assessment, patient management, and certain imaging procedures, including fluoroscopy, but not image interpretation. Currently in California, RAs are certified as RTs and required to hold a license as a certified diagnostic RT and an RT fluoroscopy permit.

RAs must obtain a minimum of a bachelor's degree for RPA certification and a master's or higher for an RRA certification, complete an RA educational program approved by either the ARRT or the CBRPA, pass an examination offered by the relevant organization, and obtain and maintain

the certificate. The RA training goes beyond what is required for RTs, preparing RAs to become advanced practice RTs or radiologist extenders.

Radiologic Technologists. RTs work with ionizing radiation and their education, training, and experience requirements are designed to prevent excessive and improper exposure to ionizing radiation. RTs generally obtain a two-year associate's degree in Radiologic Technology. After obtaining their degree, students are eligible to take the California examination for a diagnostic or therapeutic radiologic technology certificate. They are also eligible to take the national examination for a therapeutic radiologic technology certificate. Both examinations, state and national, are administered by the ARRT. Successful passage of an examination qualifies an RT to X-ray any part of the body. Those who obtain California state certification may also apply for additional certificates, such as the RT Fluoroscopy Permit or the Mammographic Radiologic Technology Certificate if they the requirements. RTs may also become certified in radiation therapy technology through the ARRT. According to the American Society of Radiologic Technologists, RTs practice in hospitals, clinics, and physician's offices across many specialties, from prenatal care to orthopedics.

Radiology. Radiographers perform the imaging aspect of radiology. Radiology is a branch of medicine that uses imaging technology to diagnose and treat disease. The primary medical practitioner of radiology is the radiologist. Radiologists are physician and surgeons who specialize in diagnosing and treating injuries and diseases using radiology, including medical imaging procedures like X-rays, computed tomography (CT), magnetic resonance imaging (MRI), nuclear medicine, positron emission tomography (PET), and ultrasound. Podiatrists and chiropractors also perform radiology within their scope of practice.

Radiologic Technology Act. The Radiologic Technology Act was enacted to protect the public from excessive or improper exposure to ionizing radiation via X-rays. It requires that any individual who uses X-rays on humans for diagnostic or therapeutic purposes meet certain standards of education, training, and experience.

Ionizing radiation is a form of radiation that has enough energy to potentially cause damage to DNA. Risk factors for harm include the radiosensitivity of body organs, the nature and complexity of procedures to be performed, the radiation safety protection problems associated with X-ray procedures, the types of patients to be X-rayed (e.g., ambulatory, geriatric, pediatric, bedridden, non-ambulatory), whether contrast media is used for a procedure, the types of facilities (e.g., hospitals, surgery centers, physician or podiatry offices) and equipment to be encountered (e.g., radiographic, fluoroscopic, portable, mobile and computerized tomography equipment, and ancillary medical equipment such as infusion pumps or contrast injectors), and the types of imaging systems used.

The Radiologic Health Branch (RHB) of the CDPH administers and enforces the Radiologic Technology Act, including the education, training, and licensing requirements. It also administers the meetings of the Radiologic Technology Certification Committee (RTCC). RTCC assists, advises, and makes recommendations for ensuring proper administration and enforcement of the act.

Prior Related Legislation. SB 377 (Hertzberg) of 2022, which was held on the Senate Appropriations Committee suspense file, was identical to this bill as drafted.

SB 480 (Archuleta), Chapter 336, Statutes of 2020, before being amended to address a different subject matter, would have established the RA Advisory Committee under the Medical Board of California to identify the appropriate training, qualifications, and scope of practice for individuals assisting radiologists.

AB 352 (Eng) of 2012, which died pending a hearing in the Assembly Business, Professions and Consumer Protection Committee, would have established title protection for certified RAs.

AB 623 (Lieu) of 2007, which was held on the Appropriations Committee suspense file, would have established an RA certificate program under the CDPH.

SB 700 (Aanestad) of 2005, which died pending a hearing in the Senate Business, Professions and Economic Development Committee, would have established an RA certificate program under the CDPH.

ARGUMENTS IN SUPPORT:

The *American Registry of Radiologic Technologists* (sponsor) writes in support:

> Today, 31 states license, accept, or otherwise recognize the RA. Federal agencies and state governments continue to agree that RAs greatly increase hospital efficiency, improve access to patient care (especially in rural areas), while providing the highest levels of radiation safety. Other than a radiologist, no other practitioner gets as much specialized training in radiology services and radiation safety as the RA.
>
> The fact is, RAs extend the reach of the radiologist and free [them] to focus on those services only the radiologist can provide such as performing complex procedures, consulting with their referring primary care colleagues, interpreting images, and generally diagnosing and treating patients. What's more, RAs help alleviate physician burnout.
>
> As the need for more highly trained medical personnel in the state increases, it is imperative the state keep pace with the rest of the country and recognize the RA profession so they can operate in the state and provide high quality medical care to all Californians.

The *California Radiological Society* writes in support, "RAs in California are not allowed to practice according to their training since there is currently no recognition of the advanced level practitioner. [This bill] would create that opportunity and allow radiology groups to incorporate these professionals into their practice to delegate tasks under their supervision. It would help address the growing issue of workforce capability, complexity of radiology/ imaging practice with the volume of images to be reviewed. This limited delegation of appropriate duties would help address the workload and workforce issues."

RadNet writes in support, "RadNet, like many other medical imaging providers, is affected negatively by the current serious shortage of radiologists and radiologic technologists in

California and across the nation. For perspective, we have nearly 400 vacancies currently for radiologic technologists. The lack of radiologic technologists results in decreased patient access and delayed care as imaging modalities are sidelined and scheduling times lengthened. Radiologists too are in short supply. Radiologist assistants also can help the radiologist by working with patients (e.g., obtaining medical histories, providing procedure descriptions) and performing procedures as directed and supervised by the radiologist. In conclusion, [this bill] is a step in the right direction for dealing with the shortage of radiologists and radiologic technologists in California."

ARGUMENTS IN OPPOSITION:

None on file

SUNRISE REVIEW:

When there are proposals for new or expanded regulation of an occupation, legislators and administrative officials are expected to weigh arguments regarding the necessity of the proposed regulation, determine the appropriate level of regulation (e.g., registration, certification, or licensure), and select a set of standards (education, experience, examinations). As a result, the Legislature uses a process known as "sunrise" to review and assess the proposals.

The process includes a questionnaire and a set of evaluative scales to be completed by the group supporting regulation. The questionnaire is an objective tool for collecting and analyzing information needed to arrive at accurate, informed, and publicly supportable decisions regarding the merits of regulatory proposals.

The Need for Sunrise. New regulatory and licensing proposals are generally intended to assure the competence of specified practitioners in different occupations. However, these proposals have resulted in a proliferation of licensure and certification programs, which are often met with mixed support. Proponents argue that regulation benefits the public by assuring competence and an avenue for consumer redress. Critics argue that regulation benefits a profession more than it benefits the public.

Sunrise helps distill those arguments by: (1) placing the burden of showing the necessity for new regulations on the requesting groups; (2) allowing the systematic collection of opinions both pro and con; and (3) documenting the criteria used to decide upon new regulatory proposals.

Sunrise has been in law since 1990, but recent studies continue to support the need for the process. Specifically, those studies show that, while licensing and other forms of regulation may increase employment opportunities and raise wages, they can also have negative or unintended economic impacts, such as shortages of practitioners or increased costs for services.[1]

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[1] See generally, Morris M. Kleiner, *Reforming Occupational Licensing Policies*, Discussion Paper 2015-01 (The Hamilton Project, Brookings Institution, March 2015); Michelle Natividad Rodriguez and Beth Avery, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* (National Employment Law Project, April 2016); *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*, Report #234 (Little Hoover Commission, 2016); Dick M. Carpenter II, Lisa Knepper, Kyle Sweetland, and Jennifer McDonald, *License to Work: A National Study of Burdens from Occupational Licensing*, 2nd Edition (Institute for Justice, November

In response to concerns over the growing number of professions requiring a license, the White House issued a report in 2015, *Occupational Licensing: A Framework for Policymakers*. The report agreed that, while licensing offers important protections to consumers and can benefit workers, there are also substantial costs, and licensing requirements may not always align with the skills necessary for the profession being licensed. Specifically, the report found:

> There is evidence that licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across State lines. Too often, policymakers do not carefully weigh these costs and benefits when making decisions about whether or how to regulate a profession through licensing. In some cases, alternative forms of occupational regulation, such as State certification, may offer a better balance between consumer protections and flexibility for workers.

Levels of Regulation. If a review of the proponents' case indicates that regulation is necessary to protect public health, safety, and welfare, then a determination must be made regarding the appropriate level of regulation. As noted above, the public is often best served by minimal government intervention. The definitions and guidelines below are intended to facilitate the selection of the least restrictive level of regulation that will adequately protect the public interest.

Level I: Strengthen existing laws and controls. The choice may include providing stricter civil actions or criminal prosecutions. It is most appropriate where the public can effectively implement control.

Level II: Impose inspections and enforcement requirements. This choice may allow inspection and enforcement by a state agency. These should be considered where a service is provided that involves a hazard to the public health, safety, or welfare. Enforcement may include recourse to court injunctions and should apply to the business or organization providing the service, rather than the individual employees.

Level III: Impose registration requirements. Under registration, the state maintains an official roster of the practitioners of an occupation, recording also the location and other particulars of the practice, including a description of the services provided. This level of regulation is appropriate where any threat to the public is small.

Level IV: Provide an opportunity for certification. Certification is voluntary; it grants recognition to persons who have met certain prerequisites. Certification protects a title: non-certified persons may perform the same tasks but may not use "certified" in their titles. Usually, an occupational association is the certifying agency, but the state can be one as well. Either can provide consumers a list of certified practitioners who have agreed to provide services of a specified quality for a stated fee. This level of regulation is appropriate when the potential for harm exists and when consumers have a substantial need to rely on the services of practitioners.

Level V: Impose licensure requirements. Under licensure, the state allows persons who meet predetermined standards to work at an occupation that would be unlawful for an unlicensed person to practice. Licensure protects the scope of practice and the title. It also provides for a

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2017); Adam Thierer and Trace Mitchell, *Occupational Licensing Reform and the Right to Earn a Living: A Blueprint for Action* (Mercatus Center/George Mason University April 2020).

disciplinary process administered by a state control agency. This level of regulation is appropriate only in those cases where a clear potential for harm exists and no lesser level of regulation can be shown to adequately protect the public.

Sunrise Criteria and Questions. Central to the sunrise process are nine sunrise criteria, which were developed in coordination with the Department of Consumer Affairs to provide a framework for evaluating the need for regulation. These criteria are:

1) Unregulated practice of the occupation in question will harm or endanger the public health, safety or welfare.
2) Existing protections available to the consumer are insufficient.
3) No alternatives to regulation will adequately protect the public.
4) Regulation will alleviate existing problems.
5) Practitioners operate independently, making decisions of consequence.
6) The functions and tasks of the occupation are clearly defined.
7) The occupation is clearly distinguishable from other occupations that are already regulated.
8) The occupation requires knowledge, skills, and abilities that are both teachable and testable.
9) The economic impact of regulation is justified.

The criteria were used to develop the sunrise questionnaire noted above and help legislators and administrators answer three policy questions:

1) Does the proposed regulation benefit the public health, safety, or welfare?
2) Will the proposed regulation be the most effective way to correct existing problems?
3) Is the level of the proposed regulation appropriate?

Sunrise Analysis. The following analysis is based on the above criteria and corresponding questions and answers provided by the author, sponsor of the bill, and applicant group in the sunrise questionnaire. The applicant group is the *California Coalition for Radiologist Assistants* (CCRA). According to the CCRA, "We are a coalition of the California Society of Radiologic Technologists, including the [Society of Radiology Physician Extenders (SRPE)], the [American Registry of Radiologic Technologists (ARRT)], and [American Society of Radiologic Technologists (ASRT)]."

Criteria 1. Unregulated practice of RAs will harm or endanger the public health, safety, or welfare. While RAs are not specifically regulated as RAs, all aspects of the RA practice proposed under this bill are regulated in other ways. The lower levels of RA practice are regulated through the certification of RTs, and the higher levels of practice are regulated through the licensure of physicians, physician assistants, and nurse practitioners. If harm is occurring, the practitioner causing the harm will have their license or certificate disciplined. Unlicensed radiology practice, particularly at the higher level of an RA, is also highly unlikely, as the radiological procedures often require expensive and sophisticated equipment and the results would ultimately have to be interpreted by a radiologist or other authorized licensee.

As a result, the applicants acknowledge that there is not currently a significant public demand for the regulation of RAs on the basis of harm, nor is there significant demand generally outside of the radiology community. Instead, they argue that the regulation of RAs will help carve out a regulatory space to practice, increasing public exposure to services specific to RAs and creating additional demand. The applicants specifically note, "The basis for the application is the attempt to improve efficiency and reduce the cost to consumers."

Of the conceptual harms, the applicants note the following:

- "Fluoroscopy and CT scans use radiation for image-guided [procedures] are dangerous in unqualified hands. The more skilled a practitioner is in using these procedures, the less a consumer will be exposed to radiation."

- "There is always the risk of burns from over-radiation, but also, long term risks include cancers that are not easily traceable to radiation. The [radiologic] technologist unqualified in performing an RA's tasks would also risk misdiagnosis of disease."

- "RAs are highly specialized in their area of expertise and have specific training in radiation safety, equipment operation, and all the things needed to prevent patient harm."

On the frequency of harms, the applicants note, "There are examples of radiation burns and over-radiation, but are often [settled] out of court… Harm is more likely to occur to the consumer when other providers are practicing procedures that they rarely or infrequently perform. The risks from providers who do not have the extensive education and clinical training that RA's have, are greatly increased."

While the applicants did provide examples of harm from over-radiation, the two case examples are media articles covering investigations into the harm, which do not go into enough detail to determine whether any particular type of practitioner was the cause of the harm.

Another potential data point would be CDPH enforcement. While this bill does not require the CDPH to regulate the certification of RAs, it does amend the RT Act, which CDPH is required to enforce. The CDPH has previously stated (in the context of SB 377 (Hertzberg) of 2022, which was identical to this bill) that it annually conducts an average of three enforcement actions on similar scope of practice issues.

Criteria 2. Existing protections available to the consumer are insufficient. As noted above, this sunrise application is primarily about providing pathways for RAs to practice. However, while RAs are not specifically licensed, they can currently practice as RTs or theoretically as PAs or NPs who completed multiple pathways for training. As a result, the applicants argue "that there is a lack of clarity both for the consumer and the provider."

Criteria 3. No alternatives to regulation will adequately protect the public. Applicants argue that the following non-governmental avenues are insufficient:

1) Code of ethics: "ARRT has an active ethics enforcement program and California patients would benefit from it. If the RA does not become licensed, then RAs will journey to states where their employers can be paid by Medicare and Medicaid (at least 60% of patients) for RA performed tests and procedures"

2) Codes of practice enforced by professional associations:

    a) "Standards of Practice are developed, published, and adopted by the American Society of Radiologic Technologists… and the Certification Board for Radiology Practitioner Assistants that outline acceptable practice for the RAs. There is no enforcement mechanism for those unless there is a state statute that references them."

b) "The Rules of Ethics are enforced by the ARRT and CBRPA. When a rule of ethics violation happens in a state, it is usually reported to the state's licensing agency, the oversight board, or advisory committee. Those agencies or boards notify ARRT. It is not usual to see something like this come from an individual that is not related to the state agencies that oversee licensure."

The applicants do not make arguments for the inadequacy of dispute-resolution mechanisms such as mediation or arbitration, recourse to currently applicable law, or regulation of those who employ or supervise practitioners.

Criteria 4. Regulation will mitigate existing problems. According to the applicants, the primary problems that would be addressed are quality and access to care. According to the applicants, "The public's best chance for high quality patient care and radiation safety is to recognize educationally prepared and clinically competent providers." As a specific example, they cite that "at Memorial Sloan Kettering Cancer Center show, patient satisfaction scores are noticeably higher when radiology departments employ RAs."

The applicants argue that this bill would also increase access to radiology services by establishing a workforce of radiologist extenders, creating an avenue for reducing the workload of radiologists. Specifically, they write:

> For non-critical access hospitals in rural areas that frequently have less than 5 radiologists on staff, employing an RA could increase the availability of times that fluoroscopy procedures and minor procedures could be performed. The smaller facilities must limit the number of these types of procedures they can do each day that require a radiologist because the radiologists need to spend most of their time interpreting images. With the RA, the facilities could open up more time slots for these procedures.
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> Rural hospitals with limited radiologist coverage often manage multiple modalities. Typically, only one radiologist is assigned to fluoroscopy and minor procedures, but they still must perform all the regular interpretations. In these settings, radiology departments are only able to schedule regular fluoroscopy and minor procedures for 1-2 hours per day and patients have to wait for the next available time slot. With an RA, these facilities can do those procedures for 6-7 hours a day, greatly improving rural access to care.

Criteria 5. Practitioners operate independently, making decisions of consequence. While RAs operate under the supervision of radiologists, their function is to extend the reach of the radiologist's practice and independently exercise judgement in delegated duties. According to the applicants, "Nearly every action that an RA takes is a professional judgment such as: how much radiation is needing to be used, needle placement for lumbar puncture, etc…. One example would be the use of fluoroscopy (high levels of radiation) generally involving image guided procedures."

Criteria 6. Functions and tasks of the occupation are clearly defined. The functions and tasks of RAs are well established via the existing voluntary certification requirements and radiology practice generally, although the day to day practice of any individual RA will depend on the supervising radiologist. This model is similar to PAs under practice agreements or NPs under standardized procedures, although the scope of practice is much broader for PAs and NPs.

Criteria 7. The occupation is clearly distinguishable from other occupations that are already regulated. As noted above, RTs, NPs, and PAs theoretically cover the range of services RAs provide, although RTs would not reach the upper end of services and CDPH does not issue fluoroscopy permits to NPs. In addition, NPs and PAs, like physician radiologists, begin as generalists so would likely need to seek additional training in radiology.

Criteria 8. The occupation requires possession of knowledge, skills, and abilities that are both teachable and testable. Based on the information provided by the applicants and as discussed above, the RA education, examination, and certification process are well established. This career pathway is utilized in other states where RAs are licensed.

Criteria 9. The economic impact of regulation is justified. This bill would only have a financial impact on those who wish to use the title RA and practice as specified under the bill. For those who already fill the practice space the proposed RA would practice in (e.g. RTs, NPs, or PAs), there would be no change unless they wanted to use the title but did not meet the certification requirements under the bill. For those who already meet the requirements of the bill, there would be no impact. The only impact would be to those who currently use the title RA and do not meet the requirements under this bill, although it is unclear how much that is occurring. There may be some inadvertent or otherwise non-objectionable usage, such as an unlicensed medical assistant or RT whose position at work is titled "RA," but that situation can likely be remedied by the employer.

POLICY ISSUES FOR CONSIDERATION:

Sunrise Review. As noted above, the criteria and the sunrise questionnaire are intended to assist policymakers in answering the following questions:

1) *Does the proposed regulation benefit the public health, safety, or welfare?* Based on the information provided by the author, sponsor, applicant group, and supporters, there is demand for RAs in radiology practice, and RAs extending the functions of radiologists may help with workforce issues. However, the sponsor's last estimate (2022) was that there were about 73 RAs in California and 660 RAs nationwide. The sponsor and supporters hope that state recognition, additional practice authority, and the potential to bill Medicare will increase interest in the profession.

2) *Will the proposed regulation be the most effective way to correct existing problems?* This is unclear. The reason RAs are unable to practice to the higher end of their training is that the existing licensing structure of medicine and radiologic technology precludes them from doing so. The approach under this bill is to carve out functions in that regulated practice space and authorize RAs to perform them. There may be other approaches that are conceptually different (i.e. do not create new regulatory requirements on an occupation) that have not been explored, but they would likely require more comprehensive changes to other licensing structures or move the bill outside the jurisdiction of this committee. One option might be authorizing the facilities where radiology is performed to allow more advanced practices under specified circumstances.

3) *Is the level of the proposed regulation appropriate?* The author and sponsors have already agreed to amend the bill to a lower level of regulation, from licensure (Level V) to voluntary certification and title protection (Level IV). It is unclear if a lower level of regulation would achieve the goals of the bill. Strengthening existing laws (Level I), imposing inspections and

enforcement requirements (Level II), and establishing a registry without certification or title protection requirements (Level III) are focused on reducing consumer harm, which is not the primary goal of this bill. Registration would also not authorize more advanced practice, and would unnecessarily require more state resources as all RAs are registered with their certifying entities.

IMPLEMENTATION ISSUES:

1) *Definition of Radiologist*. This bill requires RAs to be supervised by radiologists but does not define the term "radiologist." While the title "radiologist" is understood to mean a physician who specializes in radiology, there are physicians who also complete a one- or two-year fellowship and become board-certified. If this bill passes this committee, the author may wish to consider clarifying the level of specialization required to be considered a radiologist.

2) *Impacts on Existing RT Supervision Requirements*. This bill is not intended to impact existing RT practice, but the current language could be misconstrued to subsequently require the supervision of a radiologist in cases where (1) currently, an RT is being supervised by a non-physician and (2) after the bill passes, the RT qualifies as an RA.

AMENDMENTS:

To clarify that RTs and RAs existing supervision will not be impacted:

On page 12, between lines 30 and 31, insert:

> *(g) This chapter shall not be construed to eliminate, or in any way affect any existing duties for a radiologic technologist or any existing requirements for the supervision of a radiologic technologist.*

REGISTERED SUPPORT:

American Registry of Radiologic Technologists (sponsor)
California Radiological Society
California Society of Radiologic Technologists
Gurnick Academy
RadNet
3 Individuals

REGISTERED OPPOSITION:

None on file

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