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California State Assembly

BUSINESS AND PROFESSIONS



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AGENDA

Tuesday, July 11, 2023
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

- | | | | |
|----|---------|--|--|
| 1. | SB 51 | Bradford | Cannabis provisional licenses: local equity applicants.(Urgency) |
| 2. | SB 339 | Wiener | HIV preexposure prophylaxis and postexposure prophylaxis. |
| 3. | SB 812 | Roth | Tax preparers. |
| 4. | SB 813* | Roth | Structural Pest Control Board. |
| 5. | SB 814 | Roth | Household goods and services. |
| 6. | SB 815 | Roth | Healing arts. |
| 7. | SB 816 | Roth | Professions and vocations. |
| 8. | SB 817 | Roth | Barbering and cosmetology: application, examination, and licensing fees. |
| 9. | SB 887* | Business, Professions and Economic Development | Consumer affairs. |

COVID FOOTER

SUBJECT:

All witness testimony will be in person; there will be no phone testimony option for this hearing. You can find more information at www.assembly.ca.gov/committees.

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 51 (Bradford) – As Amended May 22, 2023

SENATE VOTE: 34-3

SUBJECT: Cannabis provisional licenses: local equity applicants

SUMMARY: Authorizes the Department of Cannabis Control (DCC) to continue to issue and renew provisional licenses to local equity applicants engaged in cannabis retailer activities.

EXISTING LAW:

- 1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000 *et seq.*)
- 2) Establishes the DCC within the Business, Consumer Services, and Housing Agency (previously established as the Bureau of Cannabis Control, the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation), for purposes of administering and enforcing MAUCRSA. (BPC § 26010)
- 3) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements as well as local laws and ordinances. (BPC § 26030)
- 4) Provides the DCC with authority for issuing 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)
- 5) Prohibits the DCC from approving an application for a state cannabis license if approval of the state license will violate the provisions of any local ordinance or regulation. (BPC § 26055)
- 6) Until June 30, 2022, gives the DCC discretion to issue provisional licenses to applicants who are not yet in compliance with CEQA but who provide evidence that compliance is underway, with specific criteria for demonstrating progress. (BPC § 26050.2)
- 7) Requires the DCC to consider issues relating to water use and environmental impacts when issuing cannabis cultivation licenses and prohibits the DCC from issuing new licenses or increasing the total number of plant identifiers within a watershed or area where the State Water Resources Control Board or the Department of Fish and Wildlife has found that cannabis cultivation is causing significant adverse impacts. (BPC § 26060)

- 8) Authorizes the director of the DCC to appoint a deputy director of equity and inclusion. (BPC § 26010.5)
- 9) Establishes the California Cannabis Equity Act, enacted to ensure that persons most harmed by cannabis criminalization and poverty be offered assistance to enter the cannabis industry. (BPC §§ 26240 *et seq.*)
- 10) Defines “local equity program” as a local program that focuses on inclusion and support of individuals and communities in California’s cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization as evidenced by the local jurisdiction’s equity assessment. (BPC § 26240(e))
- 11) Defines “equity assessment” as an assessment conducted by a local jurisdiction that was used to inform the creation of a local equity program, and that assessment may include the following:
 - a) Reference to local historical rates of arrests or convictions for cannabis law violations.
 - b) Identification of the impacts that cannabis-related policies have had historically on communities and populations within that local jurisdiction.
 - c) Other information that demonstrates how individuals and communities within the local jurisdiction have been disproportionately or negatively impacted by the War on Drugs.(BPC § 26240(b))
- 12) Defines “local equity applicant” as an applicant who has submitted, or will submit, an application to a local jurisdiction to engage in commercial cannabis activity within that jurisdiction and who meets the requirements of its local equity program. (BPC § 26240(c))
- 13) Defines “local equity licensee” as a person who has obtained a license from a local jurisdiction to engage in commercial cannabis activity within that jurisdiction and who meets the requirements of that jurisdiction’s local equity program. (BPC § 26240(d))
- 14) Authorizes the DCC to provide technical assistance to a local equity program that helps local equity applicants or local equity licensees. (BPC § 26242)
- 15) Establishes a grant program wherein local jurisdictions may apply to the Governor’s Office of Business and Economic Development (GO-Biz) for a grant to assist with the development of an equity program or to assist local equity applicants and local equity licensees through that local jurisdiction’s equity program. (BPC § 26244)
- 16) Requires the DCC to serve as a point of contact for local equity programs and to publish on its internet website local equity ordinances that have been enacted by the legislative body of the respective local jurisdiction, and model local equity ordinances created by advocacy groups and experts. (BPC § 26246)
- 17) Requires GO-Biz to annually submit a report to the Legislature regarding the progress of local equity programs that have received funding. (BPC § 26248)

- 18) Requires the DCC to develop and implement programs to provide waivers and deferrals for application fees, licensing fees, and renewal fees for equity applicants and licensees whose businesses are no less than 50 percent owned by persons who satisfy one of the following:
- a) They have previously been convicted of an offense related to the sale, possession, use, manufacture, or cultivation of cannabis, under past criminal justice policies implementing cannabis prohibition.
 - b) They have previously been arrested for an offense related to the sale, possession, use, manufacture, or cultivation of cannabis, under past criminal justice policies implementing cannabis prohibition.
 - c) Residence in a household with a household income less than or equal to 60 percent of the area median income for the applicable local jurisdiction.
 - d) Residence in an area with a population disproportionately impacted by past criminal justice policies implementing cannabis prohibition.

(BPC § 26249)

- 19) Establishes the California Environmental Quality Act (CEQA), a process through which environmental impact reports are prepared to identify the significant effects on the environment of discretionary projects proposed to be carried out or approved by public agencies, to identify alternatives to those projects, and to indicate the manner in which those significant effects can be mitigated or avoided; provides for various specific exemptions from this process. (Public Resources Code §§ 21000 *et seq.*)

THIS BILL:

- 1) Authorizes the DCC to issue a provisional license to a local equity applicant for retailer activities, if the applicant has submitted a completed license application to the DCC, complies with state license requirements, and is either in compliance with both CEQA and local ordinances or provides evidence that such compliance is underway.
- 2) Provides that a provisional license issued pursuant to the bill is valid for no more than 12 months from the date it was issued or renewed, and that if the DCC issues or renews a provisional license, it shall include the outstanding items needed to qualify for an annual license specific to the licensee.
- 3) Allows the DCC to renew a provisional license for a local equity applicant for retailer activities issued pursuant to the bill or under existing law until an annual license is issued or denied, or until five years from the date the provisional license was originally issued, whichever is earlier.
- 4) Requires the DCC to make specified determinations regarding an applicant's progress in complying with CEQA prior to renewing a provisional license under the bill.

- 5) Authorizes the DCC to allow a provisional licensee to move locations after the date provisional licenses can no longer be issued provided that the new location is approved in compliance with CEQA.
- 6) Empowers the DCC to revoke or suspend a provisional license if it determines the licensee failed to actively and diligently pursue requirements for the annual license, and requires the DCC to adopt regulations clarifying what constitutes actively and diligently pursuing requirements for the annual license.
- 7) Requires the DCC to cancel a provisional license upon issuance of an annual license, denial of an annual license, abandonment of an application for licensure, or withdrawal of an application for licensure.
- 8) Provides that the other provisions of MAUCRSA apply to provisional licenses.
- 9) Exempts the issuance of provisional licenses from the requirements of CEQA except as otherwise provided.
- 10) Provides that refusal by the DCC to issue a provisional license under the bill, or to revoke or suspend a provisional license, shall not entitle the applicant or licensee to a hearing or an appeal of the decision.
- 11) Finds and declares that the bill furthers the purposes and intent of Proposition 64 and that in order to ensure, as soon as possible, that the cannabis industry, especially local equity licensees, can continue to grow and expand the legal, regulated cannabis industry, it is necessary that the bill go into immediate effect.

FISCAL EFFECT: According to the Senate Committee on Appropriations, the DCC estimates costs of approximately \$319,000 in the first year and \$303,000 ongoing annually for workload associated with processing and reviewing provisional retail license applications and renewals.

COMMENTS:

Purpose. This bill is co-sponsored by the **Social Equity Workers and Owners Association** and **Hood Incubator**. According to the author:

“California’s cannabis licensing system is complicated and expensive. The provisional license program was set up to let businesses begin operating while they make progress toward their full annual license. Unfortunately, applications for provisional licenses have stopped being accepted and no provisional licenses will be granted after June 30, 2023. Without this bill, social equity entrepreneurs will be kicked to the curb and unable to enter the cannabis market despite honest efforts to obtain an annual license.”

Background.

Brief History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician.

This regulatory scheme was further refined by SB 420 (Vasconcellos) in 2003, which established the state’s Medical Marijuana Program. After several years of lawful cannabis cultivation and consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis’s continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. Threat of action by the federal government created persistent apprehension within California’s cannabis community.

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

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

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

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

Equity Programs. Proponents of the AUMA argued that the state’s legalization of recreational cannabis should recognize and address the devastating impact of prohibition on low-income and minority populations as a lawful industry begins to profit from the newly regulated marketplace.

Throughout the decades in which the sale and use of cannabis was largely illegal, innumerable individuals—the majority of whom are people of color—were incarcerated for engaging in activities made lawful by Proposition 64. Many purport that with the passage of the AUMA representing the state’s comfort with allowing for legal sales of cannabis to occur, those communities who were aggressively penalized by the product’s previous illegality should be afforded an opportunity to participate in the marketplace.

However, many have pointed out that compliance with the requirements of MAUCRSA, in addition to standard business start-up costs, creates significant barriers to entering into the cannabis industry for populations without capital or financing. In response, many have advocated for programs specifically aimed at assisting economically disadvantaged communities enter into the cannabis industry through financial assistance. SB 1294 (Bradford)—cited as the California Cannabis Equity Act of 2018—was chaptered to codify the state’s recognition of local equity programs designed to enable populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization to become approved participants in the cannabis marketplace.

Under the California Cannabis Equity Act, local jurisdictions may apply for and receive grant funding for purposes of providing assistance to local equity applicants or licensees seeking to gain entry to the state’s regulated cannabis marketplace. Subsequent trailer bill language relating to cannabis modified the Act to provide that a local jurisdiction must make an “equity assessment” to inform the creation of a local program. These equity assessments include the following:

1. Reference to local historical rates of arrests or convictions for cannabis law violations.
2. Identification of the impacts that cannabis-related policies have had historically on communities and populations within that local jurisdiction.
3. Other information that demonstrates how individuals and communities within the local jurisdiction have been disproportionately or negatively impacted by the War on Drugs.

Once a local equity program has been established, the jurisdiction may receive grant funding to fund the administration of its local equity program. Under such a program, the local jurisdiction may provide assistance to applicants comprised of low-interest or no-interest loans to fund startup and ongoing costs such as rent, legal assistance, furniture, capital improvements, training, regulatory compliance, and the testing of cannabis. Equity funding may also be used by local jurisdictions to fund the provision of technical assistance and expenses associated with supporting efforts to provide sources of capital and assist in the development or administration of programs.

The Budget Act of 2021 included \$20 million to fund the California Cannabis Equity Act. It also changed the grantmaking agency from the DCC to GO-Biz. The Budget additionally authorized the newly established DCC to appoint a Deputy Director of Equity and Inclusion to further the Department’s mission to implement inclusive cannabis policies.

In 2019, SB 595 (Bradford) was enacted to provide further relief to local equity applicants and licensees seeking to enter the cannabis marketplace by allowing the DCC to waive or defer fees.

This bill provided another form of financial support for individuals seeking to become successful cannabis licensees who are already seeking or who are receiving support through a local equity program. SB 595 was conditioned on the allocation of funds to backfill lost revenue associated with the fee waiver or deferral prior to it being offered by the DCC. The Budget Act of 2021 allocated \$30 million to implement the fee waiver and deferral programs and required the DCC to develop and implement a fee waiver program by January 1, 2022, and a fee deferral program by January 1, 2023, for all social equity applicants and who meet certain criteria.

In June of 2022, the DCC modified its interpretation of statute's definition for the term "equity applicants and licensees," increasing the gross revenues threshold applied in its previous regulations from \$1.5 million to \$5 million. The DCC's regulations also provided that an applicant or licensee may be eligible if they have an immediate family member that was arrested or convicted of a cannabis related offense. In support of this change, the DCC argued that "when an immediate family member was arrested for, or convicted of, an offense related to cannabis activity, the disproportionate impact affected the entire family."

Provisional Licensing and CEQA. Language included in MAUCRSA authorized the state's cannabis licensing authorities to issue four month "temporary licenses" to applicants, which could be extended in 90-day increments. These temporary licenses allowed businesses to engage in commercial cannabis activity under state approval while local governments commenced with establishing their own local authorization processes and reviewing applications for local approval. Temporary licenses were issued without any fees and temporary licensees did not have access to the state's track and trace system.

While the intent of MAUCRSA was to transition businesses to full annual licensure no later than December 31, 2018—at which time temporary license authority was scheduled to expire—many local jurisdictions struggled to launch their approval programs. For example, by August of 2018, Humboldt County regulators had received 2,376 permit applications and only approved 240. Some jurisdictions issued temporary or provisional local permits, but had not completed the full process for local permitting.

One of the driving issues behind the delay with local authorization was the requirement that a "complete" application include evidence of compliance with CEQA. Signed into law by Governor Ronald Reagan in 1970, CEQA public agencies to consider the environmental impact of approving discretionary projects. While the scope of this process can vary based on the nature of the project, CEQA review can frequently be protracted and complex.

To transition away from temporary licensure while local authorization issues remained unresolved, the Legislature passed SB 1459 (Cannella) in 2018, which instead established a new "provisional license" scheme. Unlike temporary licenses, provisional license holders must pay a fee, comply with track and trace requirements, and meet additional responsibilities under MAUCRSA. However, provisional licensure does not require proof of compliance with the requirements of CEQA.

The authority to issue and renew provisional licenses was originally scheduled to sunset on January 1, 2020; this was subsequently extended to January 1, 2022. The 2021/22 Budget Act further extended this expiration date, prohibiting the DCC from renewing a provisional license after January 1, 2025 and sunseting the provisional licensing program on January 1, 2026.

Specific expiration dates and deadlines were applied to provisional licensees and applicants based on the size and nature of the business, and new requirements for certain applicants to submit documentation regarding lake or streambed alteration agreement were enacted.

According to information provided by the DCC in 2022, approximately 70 percent of licenses in California remain provisional. Discussions have continued around how to streamline the CEQA process and eliminate redundant reviews. However, CEQA is not the only barrier to licensees transitioning to full annual licensure, particularly in jurisdictions like Los Angeles where local equity retailers have struggled to become compliant with local ordinances.

This bill seeks to ensure that local equity applicants and licensees seeking to engage in cannabis retailer activities will not be debarred from the legal marketplace due to issues relating to local licensing programs. The bill would effectively create a new provisional licensing scheme whereby local equity businesses could receive and maintain provisional licenses for up to five years as long as they can demonstrate that they are actively working to obtain full annual licensure and otherwise complying with MAUCRSA. The author believes that allowing this specific population of business owners to continue to take advantage of provisional licensure is a meaningful way to continue to help less advantaged operators participate in the economic opportunities of the cannabis industry.

Current Related Legislation.

SB 508 (Laird) would establish conditions under which the DCC is not required to serve as a responsible agency under CEQA. *This bill is pending in the Assembly Committee on Natural Resources.*

AB 1565 (Jones-Sawyer) would require the DCC to use a disbursement of \$15 million from the California Cannabis Tax Fund to assist local equity applicants and licensees. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

AB 141 (Committee on Budget, Chapter 141, Statutes of 2021) extended the timeline for provisional licenses, prohibiting renewal after January 1, 2025.

AB 97 (Committee on Budget, Chapter 40, Statutes of 2019) extended the repeal date for the provisional license authority until January 1, 2022.

SB 595 (Bradford, Chapter 852, Statutes of 2019) required the DCC to develop and implement a program that provides a license fee deferral or waiver for needs-based applicants and licensees.

SB 1459 (Cannella, Chapter 857, Statutes of 2018) authorized the state's cannabis licensing authorities to grant provisional licenses until January 1, 2020.

SB 1294 (Bradford, Chapter 794, Statutes of 2018) authorized local jurisdictions to request technical assistance and grant funding from the DCC to establish local equity programs.

SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) enacted MAUCRSA and authorized the state's cannabis licensing authorities to grant temporary licenses.

ARGUMENTS IN SUPPORT:

The **Social Equity Workers and Owners Association** and the **Hood Incubator**, co-sponsors of this bill, writes in a support letter alongside other organizations: “While states have had hopes of creating programs to level the playing field, the results haven’t been as promising, to give social equity operators an equal footing with their non-equity peers. We urge you to support Senate Bill 51, which will allow social equity retailers the privilege of holding a provisional license for at least five years, consistent with the five years given to existing general operators, before being required to transition to an annual license.”

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

As proposed in this bill, a provisional license issued to a local equity applicant could not be renewed beyond five years, requiring those businesses to eventually obtain full annual licensure. This would cap the additional time afforded to those applicants who are seeking to engage in cannabis activities within a local jurisdiction that has not effectively implemented their local licensing scheme. However, there is currently no limitation on the authority of the DCC to issue provisional licenses, meaning that applicants could be granted approval to operate without a local license even in a future where local jurisdictions have resolved issues currently recognized to be systemic. The author may wish to consider imposing some form of sunset date on the authority granted by the bill so as not to establish a provisional licensing program in perpetuity.

AMENDMENTS:

To provide for a 7-year sunset date for the new provisional licensing program, amend Section 2 of the bill to amend subdivision (a) and add a new subdivision (k) as follows:

*(a) **Until January 1, 2031**, the department may, in its sole discretion, issue a provisional license for a local equity applicant, as defined in Chapter 23 (commencing with Section 26240), for retailer activities, if the applicant has submitted a completed license application to the department, provided that the applicant meets the following requirements:*

...

*(k) (1) **On or before January 1, 2030**, the department shall report to the appropriate committees of the Legislature on the number of provisional licenses that have been granted under this section, the number of provisional licenses that have been canceled for each of the circumstances provided in subdivision (g), and the number of provisional licenses granted under this section that remain active at the time of the report.*

*(2) **The requirement for submitting a report imposed under this subdivision is inoperative on January 1, 2034**, pursuant to Section 10231.5 of the Government Code.*

*(3) **A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.***

REGISTERED SUPPORT:

Social Equity Owners and Workers Association (*Co-Sponsor*)
The Hood Incubator (*Co-Sponsor*)
Big Sur Farmers Association
California African American Chamber of Commerce
California Cannabis Industry Association
California Cannabis Manufacturers Association
California NORML
Cannabis Equity Policy Council
City of Long Beach
City of Los Angeles
County of Los Angeles Board of Supervisors
County of San Diego
Greater Sacramento Urban League
Humboldt County Growers Alliance
Kine Hearts Media LLC
Kiva Confections
Lompoc Valley Cannabis Association, Santa Barbara County
Mendocino Cannabis Alliance
Nevada County Cannabis Alliance
Origins Council
Stiiizy
The Parent Company
Trinity County Agriculture Alliance
United Core Alliance

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 339 (Wiener) – As Amended June 29, 2023

NOTE: This bill is double referred and previously passed the Assembly Committee on Health as amended on a 13-0-2 vote.

SENATE VOTE: 40-0

SUBJECT: HIV preexposure prophylaxis and postexposure prophylaxis

SUMMARY: Authorizes a pharmacist to initiate and furnish up to a 90-day course of HIV preexposure prophylaxis (PrEP), or beyond a 90-day course, if certain conditions are met.

EXISTING LAW:

- 1) Establishes the Pharmacy Law. (Business and Professions Code (BPC) §§ 4000 *et seq.*)
- 2) Establishes the California State Board of Pharmacy (BOP) to administer and enforce the Pharmacy Law. (BPC § 4002)
- 3) Declares that protection of the public shall be the highest priority for the BOP in exercising its licensing, regulatory, and disciplinary functions. (BPC § 4001.1)
- 4) Defines “pharmacist” as a natural person to whom a license has been issued by the BOP, which is required for any person to practice pharmacy. (BPC § 4036)
- 5) Declares the pharmacy practice as “a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes” and that the “pharmacy practice is continually evolving to include more sophisticated and comprehensive patient care activities.” (BPC § 4050)
- 6) Prohibits an individual from manufacturing, compounding, furnishing, selling, or dispensing a dangerous drug or dangerous device, or dispensing or compounding a prescription, unless the individual is a licensed pharmacist. (BPC § 4051(a))
- 7) Authorizes a pharmacist to initiate a prescription and provide clinical advice, services, information, or patient consultation, as long as the following conditions are met:
 - a) The clinical advice, services, information, or patient consultation is provided to a health care professional or to a patient.
 - b) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.

c) Access to medical information and record is secure from unauthorized access.

(BPC § 4051(b))

8) Authorizes a pharmacist to do all of the following, among other permissible activities, as part of their scope of practice:

- a) Provide consultation, training, and education to patients about drug therapy, disease management, and disease prevention.
- b) Provide professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals, and participate in multidisciplinary review of patient progress, including appropriate access to medical records.
- c) Order and interpret tests for the purpose of monitoring and managing the efficacy and toxicity of drug therapies in coordination with the patient's provider or prescriber.
- d) Administer immunizations pursuant to a protocol with a prescriber.
- e) Furnish emergency contraception drug therapy, self-administered hormonal contraceptives, human immunodeficiency virus (HIV) preexposure and postexposure prophylaxis, and nicotine replacement products, subject to specified requirements.
- f) Administer drugs and biological products that have been ordered by a prescriber.

(BPC § 4052)

9) Requires a pharmacist to notify the patient's primary care provider of medications or devices furnished to the patient, or enter the appropriate information, as permitted, in a patient record system shared with the primary care provider. (BPC § 4052(a)(10)(B))

10) Authorizes a pharmacist to furnish an approved opioid antagonist in accordance with standardized procedures or protocols developed and approved by the BOP and the Medical Board of California, in consultation with stakeholders. (BPC § 4052.01)

11) Authorizes a pharmacist to initiate and furnish PrEP under certain conditions. (BPC § 4052.02(a))

12) Defines "preexposure prophylaxis" (PrEP) as a fixed-dose combination of tenofovir disoproxil fumarate (TDF) (300 mg) with emtricitabine (FTC) (200 mg), or another drug or drug combination determined by the board to meet the same clinical eligibility recommendations provided in Centers for Disease Control and Prevention (CDC) guidelines. (BPC § 4052.02(b))

- 13) Defines “CDC guidelines” as the “2017 Preexposure Prophylaxis for the Prevention of HIV Infection in the United States–2017 Update: A Clinical Practice Guideline,” or any subsequent guidelines, published by the federal CDC. (BPC § 4052.02(c))
- 14) Authorizes a pharmacist to furnish the medication only upon completion of a training program approved by the BOP, in consultation with the Medical Board of California. (BPC § 4052.02(d))
- 15) Requires a pharmacist to furnish at least a 30 day supply of PrEP, and authorizes a pharmacist to furnish up to a 60 day supply of PrEP, as long as the patient provides negative HIV test results from within the previous seven days, does not report signs or symptoms of HIV, and does not report contraindicated medications; additionally requires that the pharmacist provides specified counseling to the patient on the ongoing use of PrEP and complies with specified record keeping requirements. (BPC § 4052.02(e))
- 16) Prohibits a pharmacist from furnishing more than a 60-day course of PrEP to a single patient more than once every two years, unless directed by a prescriber. (BPC § 4052.02(e)(6))
- 17) Requires a pharmacist to notify the patient’s primary care provider that the pharmacist completed the requirements; if the patient does not have a primary care provider, or refuses consent to notify the patient’s primary care provider, requires the pharmacist to provide the patient a list of physicians and surgeons, clinics, or other health care service providers to contact regarding ongoing care for PrEP. (BPC § 4052.02(e)(7))
- 18) Requires the BOP to adopt emergency regulations in accordance with CDC guidelines no later than July 1, 2020. (BPC § 4052.02(g))
- 19) Authorizes a pharmacist to perform skin puncture in the course of performing routine patient assessment procedures. (BPC § 4052.4)
- 20) Authorizes a pharmacist to initiate, adjust, or discontinue drug therapy for a patient under a collaborative practice agreement with any health care provider with appropriate prescriptive authority. (BPC § 4052.6(b))
- 21) Authorizes a pharmacist to independently initiate and administer any vaccine that has been approved or authorized by the federal Food and Drug Administration and received a federal Advisory Committee on Immunization Practices individual vaccine recommendation published by the federal Centers for Disease Control and Prevention for persons three years of age and older. (BPC § 4052.8)
- 22) Prohibits a health care service plan or health insurer from covering PrEP that has been furnished by a pharmacist in excess of a 60-day supply to a single patient once every two years, unless the pharmacist has been directed otherwise by a prescriber. (Health and Safety Code § 1342.74; Insurance Code § 10123.1933)

- 23) Requires a fee schedule to be established for the list of pharmacist services, including initiating and furnishing PrEP, limited to no more than a 60-day supply to a single patient once every two years. (Welfare and Institutions Code § 14132.968)

THIS BILL:

- 1) Expands the definition of PrEP to include any prescription drugs approved by the U.S. Food and Drug Administration (FDA) or recommended by the CDC to reduce a person's chance of contracting HIV.
- 2) Updates the definition of "CDC guidelines" to include published recommendations.
- 3) Extends the authority of a pharmacist to furnish PrEP from up to a 60-day course to up to a 90-day course, as long as established and existing safety protocols are followed by the pharmacist.
- 4) Removes the requirement that the patient have a documented negative HIV test result obtained within the previous seven days but instead simply requires that the test be obtained consistent with CDC guidelines.
- 5) Updates the required notification to patients to require a notice that the patient may need to be seen by a primary care provider to receive subsequent prescriptions for PrEP and that a pharmacist may not furnish a 90-day course of PrEP to a single patient more than once every two years unless the pharmacist ensures that the patient receives testing and follow up care consistent with CDC guidelines.
- 6) Authorizes a pharmacist to furnish PrEP beyond a 90-day course if all of the following conditions are met:
 - a) The pharmacist ensures that the patient receives testing and follow up care consistent with CDC guidelines, which may include timely testing and treatment, as applicable, for HIV, renal function, hepatitis B, hepatitis C, sexually transmitted diseases, and pregnancy for individuals of childbearing capacity.
 - b) The pharmacist documents, to the extent possible, the services provided by the pharmacist in the patient's record in the record system maintained by the pharmacy. The pharmacist shall maintain records of preexposure prophylaxis furnished to each patient.
 - c) The pharmacist notifies the patient's primary care provider that the pharmacist completed the requirements specified in this subdivision. If the patient does not have a primary care provider, or refuses consent to notify the patient's primary care provider, the pharmacist shall provide the patient a list of primary care providers in the region.
- 7) Requires the California State Board of Pharmacy (BOP) adopt new emergency regulations by July 1, 2024 to implement the provisions of this measure.

- 8) Directs health plans regulated by the California Department of Managed Health Care (DMHC) and health policies regulated by the California Department of Insurance (CDI) to reimburse the costs incurred for PrEP and postexposure prophylaxis (PEP) furnished by a pharmacist, as well as services and related testing that is administered by pharmacists.

FISCAL EFFECT: According to the Senate Appropriations Committee, the BOP anticipates needing a two-year, limited term staff position at \$44,000 in Fiscal Year (FY) 2024-25 and \$44,000 in FY 2025-26, and the Health Benefits Review Program (CHBRP) estimates a \$654,000 increase in Medi-Cal expenditures per year. The fiscal analysis also notes the possibility of an unknown and potentially significant increase in California Public Employees' Retirement System health care premiums and possible unknown regulatory costs for the DMHC and \$6,000 in administrative costs to the CDI.

COMMENTS:

Purpose. This bill is sponsored by the **California Pharmacists Association, Equality California**, and the **San Francisco AIDS Foundation**. According to the author:

“Senate Bill 339 expands on the first-in-nation law, Senate Bill 159, which allows pharmacists to furnish pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) without a physician’s prescription or prior authorization. Since the law went into effect in January 2020, pharmacists have reported significant barriers to implementing SB 159, particularly the limitation to a 60-day supply of PrEP and the lack of insurance reimbursement for pharmacist services in providing PrEP and PEP. As a result of these barriers, few pharmacies have implemented this component of the bill, preventing people from accessing these highly effective HIV prevention medications. Other states have followed California’s lead in enacting this type of law, but unlike California, they have not erected these barriers. As a result, other states are not experiencing these same challenges. We must do everything in our power to increase access to these key prevention strategies and remove unnecessary barriers to access. SB 339 does so.”

Background.

HIV/AIDS. Human immunodeficiency virus (HIV) is an infection that attacks the body’s immune system. Acquired immunodeficiency syndrome (AIDS) is the advanced stage of the disease. HIV targets the body’s white blood cells, weakening the immune system. When the body’s immune system is compromised, there is a greater risk of becoming sick with diseases like tuberculosis, infections, and some cancers. HIV is contracted from body fluids of an infected person, which includes blood, breast milk, semen, vaginal fluids, and drug related activities involving sharing needles or syringes with an infected individual. Individuals living with an undetected and untreated HIV status for years eventually experience the disease progressing to AIDS. According to the CDC, by the end of 2021, an estimated 1.2 million people in the United States had HIV. Of that population of people, about 87% knew they had HIV. The CDC’s Division of HIV Prevention reports that in 2021, HIV rates accounts for 40% (14,528) of new HIV diagnoses. The CDC’s recent report recognized this population comprised of individuals with a new HIV diagnosis disproportionately affect Black/African American

individuals. The CDC also identified that Hispanic/Latino individuals are strongly affected and comprise 29% (10,467) of all new HIV diagnoses.

Deadly Epidemic Creates Damaging Stigma. Since 1981 in the United States, over 700,000 lives have been lost to HIV. More than 1.1 million Americans are currently living with HIV and large populations are still at risk of contracting HIV. According to the CDC, HIV stigma and discrimination affect the emotional well-being and mental health of people living with HIV. People living with HIV often internalize the stigma they experience and begin to develop a negative self-image. In some cases, many individuals living with HIV fear they will be discriminated against or judged negatively if their positive status is revealed. “Internalized stigma” or “self-stigma” happens when a person takes in the negative ideas and stereotypes about people living with HIV and start to apply them to themselves. HIV internalized stigma can lead to feelings of shame, fear of disclosure, isolation, and despair. These feelings can keep individuals from seeking testing, obtaining preventive medications, and treatment for HIV. Since the beginning of this deadly pandemic and identification of the disease, understanding how the disease is transmitted, and the negative health impact on public health, AIDS has caused the death of 40.1 million people.

Populations at Risk for HIV in California. Specific populations in California are considered at high risk for contracting the disease are eligible and encouraged to meet the CDC’s indications for PrEP. More specifically, MSM, high risk heterosexuals (i.e., individuals who engage in sex with two or more opposite sex partners in the past six months and engage in sex with an HIV-infected partner or condomless sex in the past four weeks or sex with a high-risk partner), and PWID. Black/African American and Latino individuals have the highest prevalence of HIV and continue to be at highest risk for contracting HIV.

PrEP. In 2012, the federal FDA approved the first pharmaceutical drug intended to prevent HIV. Emtricitabine/tenofovir is a combination of two antiretroviral medications that significantly reduce the risk of contracting HIV in high-risk individuals. The use of these drugs is referred to as “pre-exposure prophylaxis,” or PrEP. The FDA recommends PrEP for HIV-negative gay or bisexual men who have unprotected sex; heterosexual women who regularly have unprotected sex with partners who are at risk of HIV; and individuals who engage in the use of injectable drugs using shared needles.

Currently, the only recommended PrEP drug approved by the FDA is marketed under the brand name Truvada. According to studies and clinical trials cited by the CDC, PrEP can reduce the risk of HIV infection in people who are at high risk by as much as 92%. The CDC recommends that PrEP users additionally practice safe sex and other preventative methods.

The efficacy of PrEP diminishes significantly if it is not taken consistently. The CDC urges individuals who are on PrEP to take the drug every single day and see a health care provider every three months. Because missing a dose of PrEP can jeopardize its effectiveness in preventing HIV, advocates including the sponsors of this bill have pushed to increase the availability and accessibility of the drug, which can currently only be obtained with a prescription from a health provider such as a physician and surgeon.

Pharmacists Scope of Practice. The Pharmacy Law provides for the licensing and regulation of pharmacists by the BOP within the Department of Consumer Affairs. The law specifies the functions pharmacists are authorized to perform, including to administer, orally or topically, drugs and biologicals pursuant to a prescriber's order, and to administer immunizations pursuant to a protocol with a prescriber. Pharmacists may also furnish emergency contraception drug therapy pursuant to standardized procedures if they have completed a training program. A violation of the Pharmacy Law is a crime.

Prior Legislation. In 2019, the Legislature enacted SB 159 (Wiener), which required a pharmacist who has completed specified training to furnish at least a 30 day supply of PrEP, and authorized a pharmacist to furnish up to a 60 day supply of PrEP, under certain conditions. SB 159 required the patient to provide negative HIV test results from within the previous seven days, have no signs or symptoms of HIV, and not have any reported contraindicated medications, SB 159 also required that the pharmacist provide specified counseling to the patient on the ongoing use of PrEP and comply with specified record keeping requirements. Under SB 159, a pharmacist is prohibited from furnishing more than a 60-day course of PrEP to a single patient more than once every two years, unless directed by a prescriber.

According to the National Alliance of State & Territorial AIDS Directors (NASTAD), pharmacy-initiated PrEP and PEP provides significantly improved access for patients in need of those medications. The accessibility of community pharmacies and pharmacists, coupled with patient trust for pharmacists, make community pharmacies and pharmacists ideal providers of PrEP and PEP for individuals in communities where these medications are most needed, and barriers to access are most significant. Instead of having to schedule an appointment with a primary care provider or practitioner, individuals can go to their local pharmacy and engage about PrEP and PEP with someone they regularly speak with about their health. An individual can drive to their local pharmacy without scheduling an appointment at almost any time, even on the weekend, and can get treatment in a timely fashion from someone they know and trust. The availability of pharmacist-led care is particularly salient for those who need PEP, as pharmacies may be better situated to provide emergency medications within the required 72-hour window. Many of the barriers to access are therefore eliminated through using pharmacies, rather than primary care providers, as the starting point for providing PrEP and PEP treatments.

Since the passage of SB 159, several states have followed California's lead and have passed legislation without the same barriers that SB 159 included. Colorado, Nevada, and Utah opted not to limit the amount of HIV preventive medications a pharmacist can provide. In Colorado, health plans must reimburse a pharmacist employed by an in-network pharmacy for prescribing and dispensing PrEP and PEP to a covered person, and they must provide an adequate consultation fee to those pharmacists. In Nevada, both public and private plans must include coverage for PrEP and PEP and reimburse for laboratory testing, prescribing, dispensing, and administering these medications by a pharmacist at a rate equal to that of a physician.

This bill seeks to expand the provisions of SB 159 by allowing pharmacists to furnish up to a 90-day course of PrEP within the current parameters and safeguards. The bill would further allow pharmacists to furnish beyond a 90-day course under certain additional conditions. Specifically, the pharmacist would be required to ensure that the patient receives testing and follow up care

consistent with CDC guidelines, which may include timely testing and treatment, as applicable, for HIV, renal function, hepatitis B, hepatitis C, sexually transmitted diseases, and pregnancy for individuals of childbearing capacity. Services provided would be documented in the patient's record, and the pharmacist would be additionally required to notify the patient's primary care provider.

The author believes that expanding the ability for a patient to receive PrEP from a pharmacy beyond the limitations of current law will meaningfully expand access to that medication and help prevent those patients from contracting HIV. Additional provisions in the bill relate to how health plans and insurers reimburse pharmacists for services involving the furnishing of PrEP and PEP and related testing. These provisions were previously discussed in the Assembly Committee on Health.

Current Related Legislation.

AB 317 (Weber) would require a health plan and disability insurers that offer coverage for a service that is within the scope of practice of a duly licensed pharmacist to pay or reimburse the cost of services performed by a pharmacist at an in-network pharmacy or by a pharmacist at an out-of-network pharmacy if the health care service plan or insurer has an out-of-network pharmacy benefit. AB 317 is currently pending concurrence in Senate Amendments on the Assembly Floor.

AB 1645 (Zbur) would prohibit a group or individual health plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2024, from imposing a cost-sharing requirement for office visits for preventive care services and screenings and for items or services that are integral to their provision. Prohibits contracts and policies from imposing a cost-sharing requirement, utilization review, or other specified limits on a recommended sexually transmitted infections screening, and from imposing a cost-sharing requirement for any items and services integral to a sexually transmitted infections screening, as specified. AB 1645 is set to be heard in Senate Health Committee on July 12, 2023.

SB 427 (Portantino) would prohibit a health plan or health insurer from subjecting antiretroviral drugs, devices, or products that are either approved by the FDA or recommended by the CDC for the prevention of AIDS/HIV to prior authorization or step therapy, but authorizes prior authorization or step therapy if at least one therapeutically equivalent version is covered without prior authorization or step therapy and the insurer provides coverage for a non-covered therapeutic equivalent antiretroviral drug, device, or product without cost sharing pursuant to an exception request. SB 427 is set to be heard in Assembly Health Committee on July 11, 2023.

Prior Related Legislation.

SB 159 (Wiener, Chapter 532, Statutes of 2019) authorized a pharmacist to initiate and furnish HIV preexposure prophylaxis (PrEP) and postexposure prophylaxis (PEP) at least a 30-day and up to a 60-day supply.

SB 493 (Hernandez, Chapter 469, Statutes of 2013) updated the Pharmacy Law to authorize pharmacists to perform certain functions according to specified requirements; established advanced practice pharmacist (APP) recognition; and authorized the BOP to set the fee, not to exceed \$300, for the issuance and renewal of APP recognition.

ARGUMENTS IN SUPPORT:

The **California Pharmacists Association**, one of the bill's co-sponsors, writes the following in support: "The California Pharmacists Association (CPhA) is pleased to co-sponsor SB 339 (Wiener) and respectfully requests your support. This bill is intended to remove barriers to a patient's ability to receive HIV PrEP and PEP from a community pharmacy. Under current law, once specific requirements are met, pharmacists are authorized to initiate and provide HIV preexposure prophylaxis (PrEP) for a 60-day supply. After that time, the patient is required to see a prescriber. This limitation has proven to be a barrier to care. Additionally, health plans aren't reimbursing pharmacists for the care required to provide this life-saving medication which is also contributing to this problem. This bill seeks to remedy these issues. This bill will allow pharmacists to provide PrEP for 90 days and if the patient wishes to continue receiving this medication from their pharmacist, the pharmacists may provide ongoing care following CDC guidelines. The bill will also require health plans reimburse for the pharmacist's services and related testing ordered by the pharmacist, and reimburse pharmacist services at 100% of the fee schedule for physician services."

Equality California, also a co-sponsor, writes the following in support of the bill: "SB 339 will remove barriers that are preventing pharmacists from fully implementing SB 159 and expand access to PrEP and PEP for Californians at risk of contracting HIV. Specifically, SB 339 builds on SB 159 by: (1) Requiring health plans to cover PrEP and PEP that has been furnished by a pharmacist, including costs for pharmacist's services and testing, and (2) Increasing the amount of PrEP a pharmacist can furnish from 60 to 90 days or on an ongoing basis provided the patient receives testing and follow up care consistent with CDC guidelines. By doing so, SB 339 ensures that the state is doing everything in its power to improve access to these critical HIV prevention medications. For these reasons, Equality California is proud to cosponsor SB 339."

ARGUMENTS IN OPPOSITION:

The **American College of Obstetricians and Gynecologists District IX** (ACOG) has an Opposed Unless Amended position and writes the following: "Unfortunately, SB 339 now removes important patient protections, allowing a pharmacist to continuously dispense both PrEP and PEP in perpetuity without the patient ever seeing a qualified medical provider and receiving a prescription. While pharmacists may be authorized to perform certain tests, their lack of medical training does not afford them the appropriate knowledge to interpret the results of such tests, and without an appropriate follow up visit, a significant medical issue resulting from the drug may go undetected and worsen over time. Again, we fully support the author's goal to improve access to these important drugs. However, we must find an appropriation balance that will improve access by modifying the timeframe a pharmacist may dispense the drugs but also ensuring that appropriate safeguards are in place to ensure the patient receives appropriate testing and care from a qualified health care provider.

POLICY ISSUES:

This measure, as proposed, would expand the quantity of PrEP that can be independently furnished by a licensed California pharmacist. Under the bill's provisions, a pharmacist would be authorized to furnish up to a 90-day course of medication and continue to supply this medication, which is highly effective when taken regularly and with consistency. However, there are remaining concerns when considering if this expansion would inadvertently allow individuals to have the medication continuously dispensed without any contact with their primary care physician or another qualified health care provider. The author may wish to consider expressly requiring pharmacists to verify that the patient is continuing to receive testing and followup care from a qualified health care provider within their scope of practice. The author may also wish to additionally clarify in references to the patient receiving testing and treatment that they receive this from a qualified health care provider within their scope of practice.

REGISTERED SUPPORT:

California Pharmacists Association (*Co-Sponsor*)
Equality California (*Co-Sponsor*)
San Francisco Aids Foundation (*Co-Sponsor*)
ACLU California Action
Alliance of Catholic Health Care
APLA Health
Bienestar Human Services
Biocom California
California Community Pharmacy Coalition
California Life Sciences
California Retailers Association
California Society of Health System Pharmacists
Cepheid
City and County of San Francisco
City of Long Beach
City of West Hollywood
Color Health
County Health Executives Association of California
County of Santa Clara
Desert Aids Project
End the Epidemics
Instituto Familiar De LA Raza
Liver Coalition of San Diego
Medical Board of California
National Association of Social Workers, California Chapter
National Community Pharmacists Association
Parivar Bay Area
Planned Parenthood Affiliates of California

Radiant Health Centers
Reach LA
San Francisco Community Health Center
San Francisco Department of Public Health
Somos Familia Valle
Stonewall Democratic Club
Western Center on Law & Poverty

OPPOSE UNLESS AMENDED

American College of Obstetricians and Gynecologists District IX
America's Health Insurance Plans
Association of California Life & Health Insurance Companies
California Association of Health Plans
California Medical Association

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Annabel Smith / B. & P. / (916) 319-3301

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 812 (Roth) – As Amended April 27, 2023

SENATE VOTE: 39-0

SUBJECT: Tax preparers

SUMMARY: Extends the sunset date for the California Tax Education Council (CTEC) by four years to January 1, 2028.

EXISTING LAW:

- 1) Establishes the Tax Preparation Act (Act) which provides for the registration of paid tax preparers by CTEC and repeals the Act on January 1, 2023. (Business and Professions Code (BPC) §§ 22250 *et seq.*)
- 2) Requires a CTEC-registered tax preparer (CRTP) to maintain a \$5,000 surety bond. (BPC § 22250.1)
- 3) Specifies that a “tax preparer” includes a person who, for a fee or other consideration, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who hold themselves out as offering those services. A tax preparer is also a business entity that has associated with it people who have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns or that hold themselves out as offering those services or having that authority. (BPC § 22251(a))
- 4) Specifies that CTEC is a single nonprofit organization exempt from taxation under section 501(c)(3) of Title 26 of the United States Code. (BPC § 22251(d))
- 5) Specifies that it is the intent of the Act to enable consumers to easily identify credible CRTPs who are bonded and registered, to ensure CRTPs receive adequate education and treat confidential information appropriately, to prohibit CRTPs from making fraudulent, untrue, or misleading representations, and to provide for a self-funded nonprofit oversight body to register paid tax preparers and ensure that they meet all of the requirements of CRTPs. (BPC § 22251.1)
- 6) Specifies that protection of the public must be the highest priority for CTEC when exercising its registration and disciplinary authority, and any other functions. (BPC § 22251.2(b))
- 7) Requires CTEC to be governed by a board of directors, as specified, and subjects board meetings to the Bagley-Keene Open Meeting Act. (BPC § 22251.2(c) and (d))
- 8) Requires CTEC to issue registrations, deny applications, and discipline registrants as authorized by the Act. (BPC § 22251.2)

- 9) Requires CTEC to establish application fees, renewal fees, delinquent fees, and other fees related to the regulatory cost of providing services and carrying out CTEC's responsibilities and duties. (BPC § 22251.2)
- 10) Requires CTEC to establish and maintain on its website a searchable public registry of CRTPs, as specified. (BPC § 22251.4)
- 11) Requires any CRTP, before providing services, to provide a customer in writing with the following:
 - a) The CRTP's name, address, and telephone number.
 - b) Evidence of compliance with the surety bond requirement, including the bond number, if any.
 - c) CTEC's website.(BPC § 22252)
- 12) Prohibits a CRTP from disclosing confidential information concerning a client or a prospective client without their written permission, except as provided. (BPC § 22252.1)
- 13) Specifies acts and omissions that constitute a violation of the Act and for which CTEC is authorized to deny an application for registration or discipline a CRTP. (BPC § 22253)
- 14) Authorizes the Franchise Tax Board (FTB) to notify CTEC when it identifies an individual who has failed to register as a tax preparer and authorizes the Attorney General, a district attorney, or a city attorney to cite, fine, and issue a cease and desist order to that individual. (BPC § 22253.2(a) and (b))
- 15) Authorizes CTEC to enter into an agreement with the FTB to provide reimbursement to the FTB for any expenses incurred. (BPC § 22253.2(c))
- 16) Authorizes CTEC to take disciplinary action against a CRTP, as specified. (BPC § 22253.3)
- 17) Prohibits CTEC from disciplining a CRTP or denying registration to an applicant except as specified. (BPC § 22253.4)
- 18) Requires, as a condition of registration, applicants to submit fingerprints for a background check. CTEC must submit the fingerprints and related information to the Department of Justice (DOJ) for the purpose of obtaining state and federal criminal history information. (BPC § 22253.5)
- 19) Requires providers of tax preparer education to meet standards and procedures as approved by CTEC. A listing of providers approved by CTEC must be made available to CRTPs upon request. (BPC § 22254)
- 20) Mandates that CTEC issue a "certificate of completion" to a tax preparer when the tax preparer demonstrates that they have completed at least 60 hours of instruction in basic

income tax law, theory, and practice by an approved curriculum provider within the previous 18 months and provides evidence of the surety bond requirement. (BPC § 22255(a))

- 21) Requires a CRTP to complete 20 hours of continuing education (CE), as specified, annually. (BPC § 22255(b))
- 22) Specifies that a person who violates the Act, except as specified, is guilty of a misdemeanor punishable by a fine not exceeding \$1,000 or by imprisonment in county jail for not more than one year, or by both. (BPC § 22256)
- 23) Specifies that if a CRTP fails to perform a duty specifically imposed by the Act, any person may maintain an action for enforcement of those duties or to recover a civil penalty in the amount of \$1,000 or both enforcement and recovery. A prevailing plaintiff is also entitled to attorney's fees and costs. (BPC § 22257)
- 24) Exempts certified public accountants, attorneys, enrolled agents, and employees of these licensees, as well as specified financial institutions and their employees, from the requirement to register as a tax preparer. (BPC § 22258)
- 25) Specifies that the Act will be repealed on January 1, 2024. (BPC § 22259)

THIS BILL:

- 1) Extends the Act's sunset date to January 1, 2028.

FISCAL EFFECT: Pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author: "This bill ensures continued oversight of tax preparers in California by extending the operations of the California Tax Education Council for 4 years. California consumers are better off with standardized education and professional accountability for professionals who provide fee-based tax preparation services throughout the state."

Background.

Sunset review. In order to ensure that California's myriad of professional boards, bureaus, commissions, and councils are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals. Currently, the sunset review process applies to approximately three dozen different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on

the efficacies and efficiencies of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

History and function of the California Tax Education Council. CTEC is responsible for the registration and enforcement of paid tax preparers in California. Anyone who charges a fee to assist with or prepare a state or federal income tax return, excluding certified public accountants, attorneys, enrolled agents, and certain financial institutions and their employees, must be registered with CTEC.¹ These exempt individuals are subject to their respective professional disciplinary standards for conduct and competence. CRTPs make up the second largest segment of tax preparation professionals serving California, following certified public accountants.² On June 30, 2022, a total of 38,278 individuals had registered with CTEC.³

To register with CTEC, an applicant must complete a total of 60 hours of education from a CTEC-approved provider, of which 45 hours are dedicated to federal tax education and 15 hours to state tax education.⁴ Although CTEC does not require applicants to pass a standardized exam to register, applicants are required to pass the final exam of their qualifying education course with a grade of 70% or higher.⁵ Additionally, applicants must purchase and maintain a \$5,000 surety bond, pass a background check, obtain a Preparer Tax Identification Number (PTIN) from the Internal Revenue Service, and pay the registration fee.⁶ Once all these requirements have been fulfilled, CTEC issues a Certificate of Completion to an applicant. Once registered, CRTPs are required to complete 20 hours of CE annually, including 10 hours on federal tax law, 5 hours on state tax law, 3 hours on tax law updates, and 2 hours on ethics.⁷

CTEC is responsible for approving all providers of tax preparer qualifying education (QE) and CE providers for applicants and registrants.⁸ On June 30, 2022, CTEC has a total of 103 approved providers, 52 QE providers and 71 CE providers.⁹

CTEC's board of directors is required to be comprised of no more than one representative from each California nonprofit corporation representing CRTPs, enrolled agents, attorneys, or certified public accountants with a membership in California of at least 400 in each of the last three calendar years that elects to participate; no more than one representative from each for-profit tax preparation corporation that had at least 400 employees or franchisees in California during the

¹ California Tax Education Council. (n.d.-a). *About Us*. California Tax Education Council.

<https://www.ctec.org/taxpayers/about-ctec>

² Ibid.

³ California Tax Education Council. (95812). (rep.). *Background Information and Overview of the Current Regulatory Program* Sunset Review June 30, 2022. Sacramento, CA.

⁴ BPC § 22255

⁵ California Tax Education Council. (95812). (rep.). *Background Information and Overview of the Current Regulatory Program* Sunset Review June 30, 2022. Sacramento, CA.

⁶ California Tax Education Council. (n.d.). *CTEC APPLICATION PROCESS FOR NEW PREPARERS*. California Tax Education Council. <https://www.ctec.org/App/Preparer/NewApplication/index>

⁷ California Tax Education Council. (95812). (rep.). *Background Information and Overview of the Current Regulatory Program* Sunset Review June 30, 2022. Sacramento, CA.

⁸ Ibid.

⁹ Ibid.

previous calendar year and has been operating in California for the last three years that chooses to participate; and six CRTPs.¹⁰ On June 30, 2022, CTEC had 14 volunteers on its board of directors, which include representatives from the following:

- California Society of Enrolled Agents
- California Society of Tax Consultants, Inc.
- H & R Block Tax Services, Inc.
- Jackson Hewitt Tax Service
- Liberty Tax Service
- National Association of Enrolled Agents
- National Association of Tax Professionals
- National Society of Accountants¹¹

CTEC has adopted the following mission statement:

The California Tax Education Council (CTEC) will continue to protect the public by establishing professional tax education standards, approving tax education providers who comply with these standards, and facilitating tax preparer compliance.¹²

Sunset issues for consideration. In preparation for the sunset hearings, committee staff prepared public background papers that identify outstanding issues relating to the entity being reviewed. These background papers are available on the Committee's website:

<https://abp.assembly.ca.gov/jointsunsethearings>. While all of the issues identified in the background paper remain available for discussion, the following are currently being addressed in this bill or otherwise actively discussed:

- 1) *Sunset Issue #3: Implementation of AB 3143 (Low), Chapter 597, Statutes of 2018.* AB 3143 (Low), in part, required applicants to submit fingerprints for a background check as a condition of registration with CTEC, beginning July 1, 2020. Applicants are required to submit fingerprints to DOJ for a background check. A report from DOJ is then issued to CTEC indicating whether or not the applicant has a criminal history.¹³ CTEC's paralegal reviews each report provided by DOJ and if the applicant has criminal history that is relevant to tax preparation, the report is sent on to CTEC background reviewers for further review. CTEC reports that it has denied 92 applications for registration.¹⁴ Of the 92 denials, 78 applications were denied for failure to disclose criminal history information on the application.

CTEC reports that it has been informed by the DOJ that the language establishing the new fingerprinting and background requirement in AB 3143 (Low) was not worded in such a manner that the Federal Bureau of Investigation (FBI) would provide federal

¹⁰ BPC § 22251.2

¹¹ California Tax Education Council. (95812). (rep.). *Background Information and Overview of the Current Regulatory Program* Sunset Review June 30, 2022. Sacramento, CA.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

criminal history information to CTEC regarding applicants.¹⁵ Consequently, CTEC has not been able to comply with the existing law, which requires both a state and federal background check.¹⁶ CTEC has provided at least one example of an applicant who had no criminal offenses in California but had significant federal offenses that are related to tax preparation.

This committee has recently become aware of at least two other entities (the California Massage Therapy Council and the Department of Cannabis Control) that are also unable to receive federal criminal history information from the FBI.

- 2) *Sunset Issue #12: Continued Regulation.* CTEC ensures a minimum level of education and professional accountability for CRTPs in California.

This bill would extend CTEC's sunset date to January 1, 2028.

Current Related Legislation.

AB 1257 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Dental Hygiene Board of California. *Pending in the Senate Business, Professions, and Economic Development Committee.*

AB 1262 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Professional Fiduciaries Bureau. *Pending in the Senate Judiciary Committee.*

AB 1263 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Bureau of Automotive Repair. *Pending in the Senate Business, Professions, and Economic Development Committee.*

AB 1264 (Assembly Business and Professions Committee) of 2023 is the sunset review bill for the Acupuncture Board. *Pending in the Senate Business, Professions, and Economic Development Committee.*

SB 813 (Roth) is the sunset review bill for the Structural Pest Control Board. *Pending in this committee.*

SB 814 (Roth) is the sunset review bill for the Bureau of Household Goods and Services. *Pending in this committee.*

SB 815 (Roth) is the sunset review bill for the Medical Board of California. *Pending in this committee.*

Prior Related Legislation.

SB 1140 (Stone) Chapter 65, Statutes of 2020, would have, in part, required CRTPs to provide clients with a written notice of all costs and fees prior to starting tax preparation services and

¹⁵ Ibid.

¹⁶ BPC § 22253.5

inform clients that they may be eligible for free tax preparation services. SB 1140 was substantially amended in the Assembly Appropriations Committee and was not germane to tax preparation when it was signed into law.

AB 3143 (Low), Chapter 597, Statutes of 2018, in part, extended the Act's sunset date by four years, authorized CTEC to contract with the FTB to carry out enforcement activities, and required applicants to undergo a background check.

SB 1476 (Figueroa), Chapter 658, Statutes of 2006, in part, increased the number of CRTPs appointed to CTEC from two to six.

POLICY ISSUES:

During CTEC's sunset review in March of this year, a coalition of organizations including the California Budget & Policy Center, Golden State Opportunity, United Ways of California, and GRACE submitted a memo with recommendations to provide greater consumer protections for low-income tax filers. Their proposed policy changes include: 1) requiring CRTPs to disclose fees up-front; 2) requiring CTEC to post complaints made against CRTPs on its website; 3) limiting the individuals who are exempt from registration with CTEC; 4) requiring CRTPs to provide written disclosure of free tax preparation assistance; 5) increasing CRTPs bond requirement; 6) reconsidering the approval process for tax provider education curriculum providers; and 7) requiring CRTPs to provide side-by-side comparison of the full amount of the tax refund a filer would receive if they pursued a Refund Anticipation Loan (RAL) compared to if they did not. A RAL is a loan based upon a filer's anticipated refund and is not the refund itself.

IMPLEMENTATION ISSUES:

Existing law currently requires applicants to submit fingerprints for a background check. However, as previously discussed in the Background section of this analysis, CTEC has not been able to receive federal criminal history information from the FBI since the fingerprinting and background check requirement took effect on July 1, 2020.

In the event that a statutory resolution is not identified in time for this bill to be passed by the Legislature and signed into law this year, the author may wish to remove or postpone the federal background check requirement.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 813 (Roth) – As Amended April 27, 2023

SENATE VOTE: 40-0

SUBJECT: Structural Pest Control Board

SUMMARY: Extends the sunset date for the Structural Pest Control Board (SPCB) by four years to January 1, 2028.

EXISTING LAW:

- 1) Licenses and regulates structural pest control applicators, field representatives, operators, and structural pest control companies, and establishes the SPCB within the Department of Consumer Affairs to administer and enforce the licensing program until January 1, 2024. (Business and Professions Code (BPC) §§ 8500-8697.4)
- 2) Defines, for purposes of licensure, “structural pest control” and “pest control,” with respect to household pests and wood-destroying pests or organisms, or other pests that may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or the performance of, any of the following:
 - a) Identification of infestations or infections. (BPC § 8505(a)(1))
 - b) The making of an inspection or inspections for the purpose of identifying or attempting to identify infestations or infections of household or other structures by those pests or organisms. (BPC § 8505(a)(2))
 - c) The making of inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to those infestations or infections. (BPC § 8505(a)(3))
 - d) The making of contracts, or the submitting of bids for, or the performance of any work including the making of structural repairs or replacements, or the use of pesticides, or mechanical devices for the purpose of eliminating, exterminating, controlling, or preventing infestations or infections of those pests, or organisms. (BPC § 8505(a)(4))

FISCAL EFFECT: According to the Senate Appropriations Committee, the 2023-24 Governor’s Budget provides approximately \$7.4 million (Structural Pest Control Fund) and 30.9 positions to support the continued operation of the SPCB’s licensing and enforcement activities.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, “In early 2023, the Senate Business, Professions and Economic Development Committee and the Assembly Committee on Business and Professions (Committees) began their comprehensive sunset review

oversight of eight regulatory entities including the Board. The Committees conducted two oversight hearings in March of this year. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.”

Background. The SPCB was first established in 1935 within the Department of Professional and Vocational Standards to regulate and license the business of structural pest control. Currently, the SPCB is established within the Department of Consumer Affairs and also regulates inspections and repairs related to structural pest control. The SPCB’s highest priority is the protection of the public through its licensing, regulatory, and disciplinary functions within the pest control industry.

The SPCB regulates three branches (practice areas) of pest control:

- Branch 1 Fumigation: the practice relating to the control of household and wood-destroying pests or organisms by fumigation with poisonous or lethal gases.
- Branch 2 General Pest: the practice relating to the control of household pests, excluding fumigation with poisonous or lethal gases.
- Branch 3 Wood Destroying Pests and Organisms: the practice relating to the control of wood-destroying pests or organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation with poisonous or lethal gases.

Within those branches, the SPCB issues three license types are:

- Applicator: an entry-level license category issued for Branch 2 and 3 only. An Applicator is an individual licensed by the SPCB to apply a pesticide, or any other medium to eliminate, exterminate, control, or prevent infestations or infections. Applicators cannot inject lethal gases used in fumigation.
- Field Representative: a full journey-level license issued in all three branches. A Field Representative secures work, makes identifications, makes inspections, submits bids, and contracts for work on behalf of a registered company.
- Operator: the highest level of licensure issued in all three branches. Depending on the license category, an Operator must have at least two years, or as many as four years, qualifying experience. Only a licensed Operator may qualify a company for registration by assuming responsibility for the company and its employees as the company Qualifying Manager.

Administration and Funding. As of June 30, 2022, the SPCB had approximately 24,813 active licenses, 3,566 active Principle and Branch Office Registrations, 2,987 delinquent licensees, and 2,031 current but inactive licensees. On average, SPCB receives approximately 337 complaints per year since FY 2019-20. SPCB notes 86% of cases brought for accusations have been settled rather than resulting in a hearing.

SPCB is funded through regulatory fees and license renewal fees and does not receive funds from California's General Fund (GF). The SPCB administers three funds: (1) Structural Pest Control Fund, (2) Structural Pest Control Education and Enforcement Fund, and (3) Structural Pest Control Research Fund.

The SPCB's Fiscal Year (FY) 2022-23 fund condition projects a balance of \$3,330,000, with 6 months in budget reserve. For the past four FYs, the SPCB's total program expenditures have increased by 11%. Personnel services expenditures increased by 21% and operating equipment and expenditures increased by 0.05%. SPCB attributes the personnel service increase to shifting an analyst from the education and enforcement fund to the support fund.

Current Related Legislation. AB 1257 (Berman), which is pending in the Senate, is the sunset review bill for the Dental Hygiene Board of California, extends the board until January 1, 2028, and makes other changes raised during sunset review.

AB 1262 (Business and Professions Committee), which is pending in the Senate, is the sunset review bill for the Professional Fiduciaries Bureau, extends the bureau until January 1, 2028, and makes other changes raised during sunset review.

AB 1263 (Business and Professions Committee), which is pending in the Senate, is the sunset review bill for the Bureau of Automotive Repair, extends the bureau until January 1, 2028, and makes other changes raised during sunset review.

AB 1264 (Berman), which is pending in the Senate, is the sunset review bill for the California Acupuncture Board, extends the board until January 1, 2028, and makes changes raised during sunset review.

SB 812 (Roth), which is pending in this committee, is the sunset review bill for the California Tax Education Council and extends the enacting statute for the council until January 1, 2028.

SB 814 (Roth), which is pending in this committee, is the sunset review bill for the Bureau of Household Goods and Services, extends the bureau until January 1, 2028, and makes other changes raised during sunset review.

SB 815 (Roth), which is pending in this committee, is the sunset review bill for the Medical Board of California and extends the board until January 1, 2028, and makes other changes raised during sunset review.

Prior Related Legislation. SB 607 (Min), Chapter 607, Statutes of 2021, extended the SPCB by one year until January 1, 2024, among numerous other things.

SB 1481 (Hill), Chapter 572, Statutes of 2018, was the prior sunset review bill for the SPCB and extended the board until January 1, 2023, and made other changes raised during sunset review.

SB 1244 (Lieu), Chapter 560, Statutes of 2014, was a sunset bill for the SPCB and extended the board until January 1, 2023, and made other changes raised during sunset review.

AB 1317 (Frazier), Chapter 352, Statutes of 2013, made statutory changes to reflect the changes made by the Governor's Reorganization Plan No. 2. The Governor's Reorganization Plan No. 2

was a 2012 reorganization plan of the executive branch of state government that, among other things, moved the SPCB from the Department of Pesticide Regulation to the Department of Consumer Affairs.

AB 20 X4 (Audra Strickland), Chapter 18, Statutes of 2009, was an extraordinary session bill that consolidated and reorganized various agencies under the Department of Consumer Affairs, including moving the SPCB from the Department of Consumer Affairs to the Department of Pesticide Regulation.

AB 2382 (Miller), Chapter 823, Statutes of 1935, first established the SPCB and the licensing program for structural pest control.

ARGUMENTS IN SUPPORT:

None on file

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 814 (Roth) – As Amended June 27, 2023

SENATE VOTE: 40-0

SUBJECT: Household goods and services

SUMMARY: Extends the sunset date for the Bureau of Household Goods and Services (BHGS) until January 1, 2028 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the BHGS’s sunset review oversight process.

EXISTING LAW:

- 1) Establishes the BHGS within the jurisdiction of the Department of Consumer Affairs (DCA) and provides that the BHGS shall be subject to legislative oversight as though it were scheduled to be repealed on January 1, 2024. (Business and Professions Code (BPC) § 9810)
- 2) Establishes the Electronic and Appliance Repair (EAR) Law, which requires licensure for those providing repair services for televisions, microwave ovens, audio and video playback equipment, video cameras, video games, copiers, computer systems, smart phones, tablets/ the repair and installation of auto stereo and alarm equipment, interlock ignition devices and residential satellite/antenna equipment, major home appliances, such as refrigerators, freezers, stoves/ovens, washer, dryers, dishwashers and trash compactors, and the sale and administration of service contracts for various consumer items sold or used for personal, family or household use. (BPC §§ 9800 *et seq.*)
- 3) Establishes the Home Furnishing and Thermal Insulation (HFTI) Act, which requires licensure of furniture and bedding manufacturers, importers, wholesalers, retailers, supply dealers, custom upholsterers, thermal insulation manufacturers, and bedding sanitizers. (BPC §§ 19000 *et seq.*)
- 4) Establishes the Household Movers (HHM) Act with licensing and enforcement duties for HHMs. (BPC §§ 19225 *et seq.*)

THIS BILL:

- 1) Extends the operation of the BHGS until January 1, 2028.
- 2) Expands the definition of “appliance” to mean any device primarily used for residential purposes, including an ice-maker, dehumidifier, and portable residential furnace.
- 3) Expands the definitions within the “electronic set” to include a cellular device or any other device that depends for its functioning on digital electronics.
- 4) Expands the definition of “appliance” to include any device primarily used for residential purposes, including an icemaker, dehumidifier, and portable residential furnace.

- 5) Updates definition of “video game” by removing the requirement that it has its own cathode ray tube, television set, or monitor.
- 6) Requires the BHGS to perform spot check investigations of service dealers at least twice a year and clarifies that required regulatory information can be posted on the BHGS’s website.
- 7) Authorizes the BHGS to impose conditions on an EAR dealer registration.
- 8) Provides that an EAR dealer registration that is not renewed within six years of its expiration shall be canceled, but if the holder of the registration submits a new application and meets specified requirements, the registration may be reissued or reinstated.
- 9) Authorizes professions regulated by the BHGS to start the process for licensure as limited liability companies (LLCs).
- 10) Consolidates the BHGS’s various special funds into a single Household Goods and Services Fund by July 1, 2026.
- 11) Makes other technical and nonsubstantive changes.

FISCAL EFFECT: According to the Senate Appropriation Committee’s fiscal analysis, the BHGS reports no additional fiscal impact to comply with the spot check investigation provisions of this bill, as the bureau already conducts these investigations twice per year. BHGS anticipates other workload to reinstate expired licenses to be absorbable. The Office of Information Services (OIS) reports an estimated cost of \$24,000 to build license reinstatement functionality in BHGS’s IT system, which may be absorbed by the redirection of existing maintenance resources. OIS notes a delayed implementation date of July 1, 2024 may be required to allow for the completion of this IT work.

COMMENTS:

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

“In early 2023, the Senate Business, Professions and Economic Development Committee and the Assembly Committee on Business and Professions (Committees) began their comprehensive sunset review oversight of eight regulatory entities including the Board. The Committees conducted two oversight hearings in March of this year. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.”

Background.

Sunset review. In order to ensure that California’s myriad professional boards and bureaus are meeting the state’s public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity “sunsets” unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to

laws governing the regulation of professionals. Currently, the sunset review process applies to approximately three dozen different boards and bureaus under the DCA, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacy and efficiency of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process. This is the BHGS's sunset bill.

Bureau of Household Goods and Services. The DCA and BHGS shared mission is to protect and serve California consumers while maintaining a fair and competitive market. BHGS provides consumer protection by enforcing the provisions of the EAR Law, the Home Furnishings and Thermal Insulation Act, and the Household Movers (HFTI) Act. Although BHGS administers three practice acts, it is bifurcated into four distinct areas of regulation: home furnishings and thermal insulation, electronic, and appliance repair, service contracts, and household movers.

As discussed in the BHGS's 2022 Sunset report, the combination of the regulatory entities mentioned and the combination of resources between the two provided cost savings. BHFTI and BEAR were housed together and placed under the oversight of one Chief in the late 1990s. As time went on, units within the Bureaus consolidated and staff cross-trained, sharing the workload. In 2009, Assembly Bill (AB) X4 20 officially merged the two bureaus, which was renamed the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation. SB 19 created the Division of Household Movers within the Bureau and augmented the Bureau's existing workforce by providing additional licensing, enforcement, and administrative positions to effectively regulate the moving industry and protect consumers. The Bureau recruited additional staff, while providing cross-training and opportunities for existing staff to affect the implementation of the new program. This was done while maintaining a high level of service for the existing programs.

Beginning January 1, 2019, SB 1483, (Hill, Chapter 578, Statutes of 2018) renamed the Bureau to the "Bureau of Household Goods and Services" (BHGS) to convey the addition of household movers to the Bureau's scope. BHGS currently licenses and regulates over 41,000 companies across the globe from small single-person businesses to major corporations. BHGS currently has a combined staff of over 60 employees who license, register, and permit companies, handle consumer complaints, inspect businesses, ensure compliance with laws and regulations, conduct investigations, test products to determine whether they meet BHGS and federal standards, and initiate disciplinary action against companies that commit violations.

The statutory changes proposed in this sunset measure are recommends from BHGS and articulated through its thorough 2022 Sunset Review Report. Many of the statutory changes included in the bill are technical, yet important for its internal operations and appropriate oversight of BHGS and communication, education, and jurisdiction over its licensed populations. This bill provides necessary technical cleanup, which authorizes BHGS the appropriate authority and oversight and continue its role protecting consumers and its licensed workforce for all Californians.

Prior Related Legislation.

AB 2956 (Committee on Transportation, Chapter 295, Statutes of 2022) amends various sections of the Vehicle Code changing references from the Commission to the Bureau, Public Utilities Code to Business and Professions Code, and other amendments to recognize the transfer of the Household Movers Act to the Bureau.

SB 1443 (Roth, Chapter 625, Statutes of 2022) extends provisions of the Electronic and Appliance Service Dealer Registration Law that would have been repealed on January 1, 2023, to accommodate the one-year sunset review postponement.

REGISTERED SUPPORT:

California Moving & Storage Association

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Annabel Smith / B. & P. / (916) 319-3301

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 815 (Roth) – As Amended May 25, 2023

SENATE VOTE: 32-1

SUBJECT: Healing arts

SUMMARY: Extends the sunset date for the Medical Board of California (MBC) until January 1, 2028 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the MBC's sunset review oversight process.

EXISTING LAW:

- 1) Enacts the Medical Practice Act, which provides for the licensure and regulation of physicians and surgeons. (Business and Professions Code (BPC) §§ 2000 *et seq.*)
- 2) Establishes the MBC, a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members, including 7 public members, subject to repeal on January 1, 2024. (BPC § 2001)
- 3) Provides that protection of the public shall be the highest priority for the MBC in exercising its licensing, regulatory, and disciplinary functions. (BPC § 2001.1)
- 4) Entrusts the MBC with responsibility for all of the following:
 - a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
 - b) The administration and hearing of disciplinary actions.
 - c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.
 - d) Suspending, revoking, or limiting certificates after the conclusion of disciplinary actions.
 - e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.
 - f) Approving undergraduate and graduate medical education programs.
 - g) Approving clinical clerkship and special programs and hospitals.
 - h) Issuing licenses and certificates under the board's jurisdiction.
 - i) Administering the board's continuing medical education program.

(BPC § 2004)

- 5) Provides that all members of the MBC must have been citizens of California for five years preceding their appointment; requires all non-public members of the MBC to be actively licensed physicians; prohibits any member from owning any interest in any medical school; and requires that four of the physician members hold faculty appointments in a clinical department of an approved medical school in California. (BPC § 2007)
- 6) Authorizes the MBC to appoint panels of at least four of its members for the purpose of fulfilling its disciplinary obligations, and requires that a majority of the panel members be physicians. (BPC § 2008)
- 7) Establishes four-year terms for members of the MBC and provides that each appointing authority has the power to fill its vacancies for the unexpired term. (BPC § 2010)
- 8) Allows each appointing power to remove its board members for neglect of duty, incompetency, or unprofessional conduct. (BPC § 2011)
- 9) Provides that the MBC shall elect a president, a vice president, and a secretary from its members. (BPC § 2012)
- 10) Authorizes the MBC to establish advisory committees consisting of physicians in good standing and members of the public with interest or knowledge of a subject matter assigned to the committee, who are not required to be members of the MBC. (BPC § 2015.5)
- 11) Requires the MBC to keep an official record of all its proceedings. (BPC § 2017)
- 12) With approval from the Director of DCA, and subject to repeal on January 1, 2024, authorizes the MBC to employ an executive director as well as investigators, legal counsel, medical consultants, and other assistance, but provides that the Attorney General is legal counsel for the MBC in any judicial and administrative proceedings. (BPC § 2020)
- 13) Allows the MBC to select and contract with necessary medical consultants who are licensed physicians to assist it in its programs. (BPC § 2024)
- 14) Requires the MBC to adopt regulations to require its licensees to provide notice to their clients or patients that the practitioner is licensed in California by the MBC. (BPC § 2026)
- 15) Requires the MBC to post on its website the current status of its licensees and any prior history of discipline. (BPC § 2027)
- 16) Requires medical school graduates to obtain a postgraduate training license (PTL) from the MBC within 180 days of enrolling in a board-approved postgraduate training program and provides that a PTL shall be valid until 90 days after the holder has received either 12 months credit of postgraduate training from a medical school in the United States and Canada or 24 months of postgraduate training from a foreign medical school. (BPC § 2064.5)
- 17) Requires a graduate who has completed their first year of postgraduate training to pass the next written examination for licensure within 27 months from the commencement of the residency or fellowship and provides that if the board denies their application for licensure, all privileges and exemptions shall automatically cease. (BPC § 2065)

- 18) Provides that an applicant who has received credit for at least 12 months of postgraduate training from a medical school in the United States and Canada, or 24 months of postgraduate training for graduates of foreign medical schools, shall be eligible for licensure, which may include oral and maxillofacial surgery residency programs. (BPC § 2096)
- 19) Requires the MBC to automatically place a physician's and surgeon's certificate in delinquent status if the licensee has not received credit for at least 36 months of postgraduate training, including successful progression through 24 months in the same program within 60 days of the date of the initial license expiration. (BPC § 2097)
- 20) Empowers the MBC to take action against persons guilty of violating the Medical Practice Act. (BPC § 2220)
- 21) Required the Director of DCA to appoint an independent enforcement monitor no later than March 1, 2022 to monitor the MBC's enforcement efforts, with specific concentration on the handling and processing of complaints and timely application of sanctions or discipline imposed on licensees and persons in order to protect the public. (BPC § 2220.01)
- 22) Requires the MBC to prioritize its investigative and prosecutorial resources to ensure that physicians representing the greatest threat of harm are identified and disciplined expeditiously, with the following allegations being handled on a priority basis and with the first paragraph receiving the highest priority:
 - a) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician represents a danger to the public.
 - b) Drug or alcohol abuse by a physician involving death or serious bodily injury to a patient.
 - c) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor.
 - d) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.
 - e) Sexual misconduct with one or more patients during a course of treatment or an examination.
 - f) Practicing medicine while under the influence of drugs or alcohol.
 - g) Repeated acts of clearly excessive prescribing, furnishing, or administering psychotropic medications to a minor without a good faith prior examination of the patient and medical reason therefor.

(BPC § 2220.05)

- 23) Clarifies that the MBC is the only licensing board that is authorized to investigate or commence disciplinary actions relating to the physicians and surgeons it licenses. (BPC § 2220.5)
- 24) Requires that any complaint determined to involve quality of care, before referral to a field office for further investigation, shall be reviewed by a qualified medical expert and shall include the review of the following:
- a) Relevant patient records.
 - b) The statement or explanation of the care and treatment provided by the physician and surgeon.
 - c) Any additional expert testimony or literature provided by the physician and surgeon.
 - d) Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether there was a departure from the standard of care.
- (BPC § 2220.08)
- 25) Authorizes the MBC to either deny an application for licensure as a physician and surgeon or issue a probationary license, subject to specified conditions and limitations. (BPC § 2221)
- 26) Allows the MBC to delegate its authority to conduct investigations and inspections and to institute proceedings to its executive director or to other personnel, with exceptions, and requires the board to delegate to its executive director the authority to adopt a decision entered by default and a stipulation for surrender of a license. (BPC § 2224)
- 27) Provides that any statute of limitations applicable to the filing of an accusation by the MBC against a licensee or a health care facility for failing or refusing to comply with a court order shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals. (BPC § 2225.5)
- 28) Provides that a licensee whose matter has been heard by an administrative law judge, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the MBC, may be subject to any of the following disciplinary actions:
- a) Have their license revoked upon order of the board.
 - b) Have their right to practice suspended for a period not to exceed one year.
 - c) Be placed on probation and be required to pay the costs of probation monitoring.
 - d) Be publicly reprimanded by the MBC, which may include a requirement that the licensee complete relevant educational courses approved by the MBC.
 - e) Have any other action taken in relation to discipline as part of an order of probation, as the MBC or an administrative law judge may deem proper.

(BPC § 2227)

- 29) Enacts the Patient's Right to Know Act of 2018 to require certain healing arts licensees, including physicians, who are on probation for certain offenses to provide their patients with information about their probation status prior to the patient's first visit. (BPC § 2228.1)
- 30) Provides that all proceedings against a licensee for unprofessional conduct, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act. (BPC § 2230)
- 31) Requires the MBC to automatically revoke the license of any person who has been required to register as a sex offender, with the exception of registrations required following convictions of a misdemeanor for indecent exposure. (BPC § 2232)
- 32) Requires the MBC to take action against any licensee who is charged with unprofessional conduct, including, but not limited to, the following:
- a) Violations of the Medical Practice Act.
 - b) Gross negligence.
 - c) Repeated negligent acts.
 - d) Incompetence.
 - e) Acts of dishonesty or corruption that are substantially related to the practice of medicine.
 - f) Any action or conduct that would have warranted the denial of a certificate.
 - g) Failure to attend and participate in an interview by the MBC.
- (BPC § 2234)
- 33) Provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician constitutes unprofessional conduct. (BPC § 2236)
- 34) Automatically suspends a physician's license during any time that the physician is incarcerated after conviction of a felony. (BPC § 2236.1)
- 35) Provides that the failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct. (BPC § 2266)
- 36) Provides that the revocation, suspension, or other discipline, restriction, or limitation imposed by another state or the federal government upon a license or certificate to practice medicine issued by that state, that would have been grounds for discipline in California by the MBC, constitutes grounds for disciplinary action for unprofessional conduct against the licensee in California. (BPC § 2305)
- 37) Allows for a person whose certificate has been surrendered or revoked for unprofessional conduct to petition the MBC for reinstatement or modification of penalty after at least three years, or two years if specified in the MBC in a revocation order; additionally allows for a petition of early termination of probation to be filed after three years or more. (BPC § 2307)

- 38) Provides that numerous inappropriate activities or violations of the law constitute unprofessional conduct. (BPC §§ 2237 – 2318)
- 39) Requires the MBC to set as a goal the improvement of its disciplinary system so that an average of no more than six months will elapse from the receipt of complaint to the completion of an investigation. (BPC § 2319)
- 40) Requires that licensees be given notification of proposed actions to be taken against the licensee by the MBC and be given the opportunity to provide a statement to the deputy attorney general assigned to the case, but provides that these statements shall not be considered for purposes of adjudicating the case. (BPC § 2330)
- 41) Allows the MBC and the Attorney General to establish panels or lists of experts as necessary to assist them in their respective duties. (BPC § 2332)
- 42) Requires for specified information regarding proposed expert testimony in matters brought by the MBC to be exchanged between the parties of the case 30 calendar days prior to the originally scheduled commencement date of the hearing, or as determined by an administrative law judge. (BPC § 2334)
- 43) Requires that all proposed decisions and interim orders of the Medical Quality Hearing Panel within the Office of Administrative Hearings shall be transmitted to the executive director of the MBC to be acted on by the full board or a panel. (BPC § 2335)
- 44) Requires the MBC to adopt rules to govern the conduct of oral argument following nonadoption of a proposed decision. (BPC § 2336)
- 45) Authorizes the MBC's Division of Licensing to prepare and mail to every licensed physician at the time of license renewal a questionnaire containing any questions as are necessary to establish that the physician currently has no mental, physical, emotional, or behavioral disorder that would impair the physician's ability to practice medicine safely. (BPC § 2425)
- 46) Authorizes the MBC to charge various fees for applications for and renewals of certain licenses, permits, and certificates. (BPC §§ 2168.4; 2435; 2443; 2520; 2529.5; 3577)
- 47) Establishes a registration program under the MBC wherein graduates and students of the Southern California Psychoanalytic Institute, the Los Angeles Psychoanalytic Society and Institute, the San Francisco Psychoanalytic Institute, the San Diego Psychoanalytic Center, or equivalent institutes may engage in psychoanalysis as an adjunct to teaching, training, or research and hold themselves out to the public as psychoanalysts as long as they do not state or imply that they are licensed to practice psychology. (BPC §§ 2529 – 2529.6)
- 48) Establishes the Osteopathic Medical Board of California (OMBC), which regulates physicians and surgeons who possess effectively the same practice privileges and prescription authority as those regulated by MBC but with a training emphasis on diagnosis and treatment of patients through an integrated, whole-person approach. (BPC § 2450)
- 49) Establishes the Licensed Physicians and Dentists from Mexico Pilot Program, which allows up to 30 physicians from Mexico specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology to practice medicine in California. (BPC § 853)

THIS BILL:

- 1) Extends the MBC's sunset date until January 1, 2028.
- 2) Increases the number of public members appointed by the Legislature to the MBC by two, creating a public member majority on the board.
- 3) Establishes a Complainant Liaison Unit within the MBC responsible for the following:
 - a) Respond to communications from the public about the complaint review and enforcement process.
 - b) After a complaint has been referred to a field investigation, assist with coordinating communications between the complainant and investigators, as necessary.
 - c) Following a disciplinary decision, respond to questions from the complainant regarding any appeals process available to the disciplined licensee.
 - d) Conduct and support public outreach activities to improve the public's understanding of the board's enforcement process, including related laws and policies.
 - e) Evaluate and respond to requests from complainants to review a complaint closure that the complainant believes was made in error.
- 4) Provides that all PTLs shall be valid for a period of 36 months regardless of when the holder has received their approved postgraduate training and repeals language requiring graduates to pass the next licensure exam after their first year of postgraduate training.
- 5) Requires a complaint determined to involve quality of care to include an interview of the complainant, patient, or patient representative, if that information is provided, prior to referral to a field office for further investigation.
- 6) Changes the statute of limitations applicable to the filing of an accusation by the MBC against a licensee or a health care facility for failing or refusing to comply with a court order to provide that any statute shall be tolled upon the service of an order to show cause, until such time as the subpoenaed records are produced, including during any period the licensee is out of compliance with the court order and during any related appeals, or until the court declines to issue an order mandating release of records to the MBC.
- 7) Requires the owner, corporate officer, or manager of an entity licensed by the Board of Pharmacy to provide the MBC with requested records within three business days of the time the request was made, unless a request for an extension of not more than 14 calendar days is granted.
- 8) Provides that conviction of a felony by a licensee, where the conviction involves moral turpitude, dishonesty or corruption, fraud, or sexual assault, whether in the course of the licensee's actions as a physician and surgeon or otherwise, constitutes cause for license revocation and does not require expert witness testimony to prove the relationship between the felony conviction and the practice of medicine.

- 9) Requires the MBC to suspend the license of a physician who has been convicted of a felony as described above until the time for appeal has elapsed if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the MBC.
- 10) Adds the following acts to specified examples of unprofessional conduct:
 - a) Any action of the licensee, or another person acting on behalf of the licensee, intended to cause their patient or their patient's authorized representative to rescind consent to release the patient's medical records to the MBC or the DCA, Health Quality Investigation Unit.
 - b) Dissuading, intimidating, or tampering with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.
- 11) Provides that it is unprofessional conduct for a licensee under investigation to fail to attend and participate in an interview by the MBC within 30 calendar days after being notified.
- 12) Specifies that physicians and surgeons shall maintain adequate and accurate records relating to the provision of services to their patients for at least seven years after the last date of service to a patient.
- 13) Modifies the length of time that must have elapsed before a person may petition the MBC for reinstatement or modification of penalty to require five years for a license surrendered or revoked for unprofessional conduct and to require the greater of two years or at least one-half of a probation term to have elapsed for early termination of probation.
- 14) Requires the MBC to automatically reject a petition for early termination or modification of probation if the board files a petition to revoke probation while the petition for early termination or modification of the probation is pending.
- 15) Authorizes the MBC to establish a fee to be paid by a person seeking a license reinstatement or modification of penalty, not exceed the board's reasonable costs.
- 16) Requires complainant statements to be considered, where relevant, for purposes of adjudicating the case to which the statement pertains.
- 17) Requires the exchange of information related to expert testimony to be completed no later than 90 calendar days prior to the originally scheduled commencement date of the hearing.
- 18) Provides that the standard of proof required to obtain an order on a statement of issues or accusation for a violation that would result in license suspension or revocation shall be a clear and convincing evidence standard, and that the standard of proof for any other violation shall be a preponderance of the evidence standard.
- 19) Allows the MBC's Division of Licensing to electronically provide the renewal questionnaire about a physician's ability to practice medicine safely and removes current language specifying that the objective to identify a disorder that is mental, physical, emotional, or behavioral.
- 20) Increases both the initial license fee and the biennial renewal fee for a physician's and surgeon's certificate from \$863 to \$1,289.

21) Transfers the responsibility for registering research psychoanalysts from the MBC to the Board of Psychology.

22) Makes various additional technical changes and clarifications to the Medical Practice Act.

FISCAL EFFECT: According to the Senate Committee on Appropriations, ongoing costs to the MBC of \$1,473,000 to support the new Complaint Liaison Unit; increased per diem and one-time training costs to support the two additional public members; increased license fee revenue of approximately \$8,498,000 in Fiscal Year 2023-24 and \$34,036,000 in 2024-25 and ongoing; approximately \$162,000 to address an increase in workload associated with the transfer of the Research Psychoanalyst registration program; and approximately \$97,000 to the Office of Information Services, of which \$80,000 is considered non-absorbable.

COMMENTS:

Purpose. This bill is the sunset review vehicle for the Medical Board of California, authored by the Chair of the Senate Committee on Business, Professions, and Economic Development. The bill extends the sunset date for the board and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the sunset review oversight process. According to the author: “This bill is necessary to make changes to MBC operations in order to improve oversight of licensees.”

Background.

Sunset review. In order to ensure that California’s myriad professional boards and bureaus are meeting the state’s public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity “sunset” unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals. Currently, the sunset review process applies to approximately three dozen different boards and bureaus under the DCA, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature’s policy committees, which in return prepare a comprehensive background paper on the efficacy and efficiency of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process. This is the MBC’s sunset bill.

Medical Board of California. The first Medical Practice Act in California was enacted in 1876. Early iterations of the MBC consisted of members either appointed directly by professional medical societies or who were appointed from lists of names provided by these societies. In 1901, the Act was completely rewritten and a Board of Examinations was established, comprised of nine members; the membership was increased to 11 in 1907. In 1976, significant changes were made to the Act to create MBC much as it exists today, as well as adjustments to MBC’s composition. The prior board’s 11 members originally included only one non-physician member; the MBC’s membership was increased to 19 members, including seven public members. The MBC underwent more structural change in 2008 with the elimination of its Divisions of Licensing and Medical Quality and the creation of a unified board.

Today, the MBC is comprised of 15 members: eight physicians and seven public members. All eight professional members and five of the public members are appointed by the Governor. One public member of the MBC is appointed by the Senate Committee on Rules and one public member is appointed by the Speaker of the Assembly. Current law requires that four of the physician members hold faculty appointments in a clinical department of an approved medical school in the state, but no more than four members may hold full-time appointments to the faculties of such medical schools. The MBC meets about four times per year.

The MBC has jurisdiction over physicians and surgeons, as well as special program registrants/organizations and special faculty permits which allow those who are not MBC licensees but meet licensure exemption criteria outlined in the Medical Practice Act to perform duties in specified settings. The MBC also has statutory and regulatory authority over licensed midwives, medical assistants, registered polysomnographic trainees, registered polysomnographic technicians, registered polysomnographic technologists, research psychoanalysts, and student research psychoanalysts. The MBC also approves accreditation agencies that accredit outpatient surgery settings and issues Fictitious Name Permits to physicians practicing under a name other than their own.

Issues Raised during Sunset Review. The background paper for the MBC's sunset review oversight hearing contained a total of 18 issues and recommendations, each of which is eligible to result in statutory changes enacted through the MBC's sunset bill. Each of the following issues were discussed in that background paper and relate to proposals contained in this bill.

Issue #1: Board Composition. The sunset background paper discussed the MBC's membership composition. As previously discussed, the MBC is currently comprised of 15 members, with 8 physician members representing a narrow majority over 7 public members. This has led to criticisms that there is an appearance of bias within the MBC, including through news reports and media publications that have censured the MBC's enforcement activities for failing to aggressively prosecute physicians guilty of misconduct. On July 6, 2021, the *Los Angeles Times* editorial board published a piece titled: "Put non-physicians in charge of the state medical board."¹ The editorial pointed out that the MBC only takes formal disciplinary action in about three percent of cases, and that more than 80 percent of complaints are dismissed without investigation. The *Times* argued that while "changing the board's balance of power and boosting its budget won't necessarily lead to more effective enforcement and fewer instances of bad doctors continuing to practice," it would still be beneficial to "give the public more confidence that the board is focused on protecting healthcare consumers, not healthcare providers."

This issue is similar to those that have been raised for the majority of regulatory boards that have undergone sunset review since 2015, when the Supreme Court of the United States issued a ruling in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.² As discussed in the MBC's sunset review background paper, this case originated when 2010 when the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners for exclusion of non-dentists from the practice of teeth whitening. The FTC alleged that the board's decision was an uncompetitive and unfair method of competition under the Federal Trade Commission Act. This opened the board to lawsuits and substantial damages from affected parties.

¹ <https://www.latimes.com/opinion/story/2021-07-06/california-medical-board-reform>

² *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. 494 (2015)

The North Carolina board was composed of six licensed, practicing dentists and two public members. The practice of teeth whitening was not addressed in the statutes comprising the Dental Practice Act. Instead of initiating a rulemaking effort to clarify the appropriate practice of teeth whitening, the board sent cease-and-desist letters to non-dentists in the state offering teeth whitening services. The board argued that the FTC's complaint was invalid because the board was acting as an agent of North Carolina, and according to state-action immunity, one cannot sue the state acting in its sovereign capacity for anticompetitive conduct. A federal appeals court sided with the FTC, and the board appealed to the Supreme Court.

In February 2015, the Court agreed with the FTC and determined that the board was not acting as a state agent and could be sued for its actions. The Court ruled, "Because a controlling number of the board's decision-makers are active participants in the occupation the board regulates, the board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met." The Court was not specific about what may constitute "active participants" or "active supervision." However, the Court did say that "active supervision" requires "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy," and that "the supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it."

In October 2015, the FTC released a staff guidance, *Active Supervision of State Regulatory Boards Controlled by Market Participants* in order to better explain when active supervision of a state regulatory board would be required, in order for a board to invoke the state action defense. The guidance also aimed to highlight what factors are relevant when determining if the active supervision requirement has been satisfied. The FTC states that active supervision includes the ability of a state supervisor to review the substance of the anticompetitive decision and have the power to veto or modify a decision. The state supervisor may not be an active market participant. In addition, the FTC states that active supervision must precede the implementation of the alleged anticompetitive restraint.

The FTC states that the guidance addresses only the active supervision requirement of the state action defense, and antitrust analysis is fact-specific and context-dependent. This means that although a state action defense might not be applicable in a certain case, this does not mean that the conduct of a regulatory board necessarily violates federal antitrust laws.

On October 22, 2015, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development held a joint informational hearing to explore the implications of the Court decision on the DCA's professional regulatory boards and consider recommendations. In response to the Court's decision, State Senator Jerry Hill requested an opinion from the Office of Attorney General Kamala Harris (AG). The AG released the following:

"*North Carolina Dental* has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond. Whatever the chosen response may be, the state can be assured that North Carolina Dental's 'active state supervision' requirement is satisfied when a non-market-participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies."

North Carolina State Board of Dental Examiners v. FTC placed limitations on the immunity of regulatory boards controlled by active market participants. This is because individuals who are directly affected by their own rulemaking may not be able to detect their biases, purposefully or inadvertently placing their benefit over those of the public. Or, as the Supreme Court stated, “Dual allegiances are not always apparent to an actor.”

Following the MBC’s multiple sunset review oversight hearings, SB 806 (Roth), the board’s sunset extension vehicle, was briefly amended to reconstitute the board composition as a public member majority by adding two additional public members appointed by the Legislature. However, this language was subsequently removed from the bill only eight days later, and the bill never received a vote with that provision included. Advocates for associations representing licensed physicians strongly opposed the language during the time that it was in print, arguing that it would undermine the MBC’s ability to regulate the practice of medicine by applying the standard of care. Another bill introduced the following year similarly sought to change the composition of the MBC to a public member majority, but failed to pass out of the Assembly.

This bill once again proposes to change the MBC’s membership composition by adding two additional public members to be appointed by the Legislature. This would result in a 17-member board, of which a majority of nine members are non-physicians. While this change would potentially aid the MBC in reassuring the public of its independence, previously raised questions as to whether there would be any practical benefit to patients remain unresolved.

Issue #2: Research Psychoanalysts. The background paper discussed the MBC’s registration program for research psychoanalysts. According to the American Psychological Association, psychoanalysis is a specialty in psychology that is distinguished from other specialties by its body of knowledge and its intensive treatment approaches, and aims at structural changes and modifications of a person’s personality. Psychoanalytic training typically requires four to eight years of advanced study after completion of a doctoral degree in psychology acceptable to the American Board of Professional Psychology and further requires specialized training at free-standing psychoanalytic institutes, postdoctoral university programs, or an equivalent training secured independently that is acceptable to the American Board and Academy of Psychoanalysis.

In 1977, when research psychoanalysts were first recognized statutorily, MBC—then the Board of Medical Quality Assurance—was comprised of three sections: the Division of Medical Quality, the Division of Licensing, and the Division of Allied Health Professions. Several allied health professions were within the jurisdiction of the Division of Allied Health Professions, including audiologists, acupuncturists, hearing aid dispensers, physical therapists, medical assistants, physician assistants, podiatrists, registered dispensing opticians, speech pathologists, and psychologists. In 1990, when the Board of Psychology came into existence, RPs remained under the MBC’s oversight.

Prior sunset review background papers for the MBC questioned whether it would be more appropriate for research psychoanalysts to be registered by the Board of Psychology, which has more expertise in the discipline. In its January 2022 letter to the Legislature and again in its 2023 Sunset Report, MBC requested that research psychoanalyst registration be transferred to the Board of Psychology, citing that regulatory body as having appropriate resources and expertise to regulate this category of individuals. This bill would effectuate that request by transferring responsibility for registering research psychoanalyst graduates and students from the MBC to the Board of Psychology.

Issue #4: Complainant Liaison. The MBC's sunset background paper proposed the creation of a formal program with dedicated staff and resources to assist patients as they navigate the enforcement process. In its February 2022 meeting, the MBC voted to pursue the creation and funding of a Complainant Liaison Unit through the vehicle of its sunset bill. Specifically, the MBC proposed that the new unit would have the following areas of responsibility:

- Consumer Communication Prior to Filing a Complaint
- Complainant Communication Support After Case Referred to Field
- Support Consumer Outreach Regarding the Board's Role and Procedures
- Evaluate Complaint Closure Review Requests Consumer Communication Prior to Filing a Complaint

The proposed Complainant Liaison Unit would respond to all communications from the public about the complaint review and enforcement process prior to the filing of a complaint. It would communicate with complainants throughout the enforcement process and assist the complainant through the various steps of any subsequent appeals of a disciplinary decision and the timing involved. The MBC has stated that the Complainant Liaison Unit would require four new employees, including a lead or manager and three analysts.

This bill would establish the MBC's proposed Complainant Liaison Unit. It would further enumerate the unit's responsibilities in communicating with the public and complainants about complaint review and the enforcement process. The intent of this proposal is to improve the public's understanding of the MBC's enforcement role and assist complainants with engaging with that process.

Issue #5: Fund Condition and Fees. The sunset background paper discussed the lengthy history of concern regarding the MBC's fund condition and the insufficient revenue it is currently receiving from license fees. Like all boards and bureaus under the DCA, the MBC does not typically receive any General Fund support and close to 90 percent of its revenue is derived from fees charged to physicians and surgeons. The MBC's financial reserves have been drawn down to perilously low levels, resulting in repeated discussion around the need to increase fee levels.

In November 2019, the MBC contracted with a consulting firm to perform an independent fee study, which published its results in January 2020. The fee study pointed out that the MBC's fees had not been changed since 2009, with revenue remaining relatively static for 13 years despite growing expenditures. The fee study specifically recommended that the initial and renewal fees charged to physicians be increased from \$790 to \$1,150; this increase was originally proposed in SB 806 (Roth), the MBC's most recent sunset review in 2021, but the amount as ultimately reduced to a much lower increase to \$863.

The MBC ended FY 2021/22 with one month in reserves, and began FY 2022/23 with a \$6.6 million fund balance. Because fee revenue remains insufficient to sustain the MBC's operations, this balance includes a \$10 million loan from the Bureau of Automotive Repair. If the MBC is not provided additional revenue through increased fees beginning in 2024, the fund will be insolvent and MBC will have a negative -4.8 months balance by the end of the next fiscal year.

The 2023 Preliminary Monitor’s Report on the MBC states:

“Over the past four fiscal years, expenses increased 15.7%, or at an annualized rate of 3.9%. Many of these increases, such as employee salaries and benefits and billable rates for services by HQIU, OAG and OAH, are outside the control of MBC ... If [revenue] increases do not fully materialize, additional loans and/ or significant reductions in program operations will be implemented. To overcome the structural funding imbalance, the monitor recommends establishing a licensee fee-funding model with automatic periodic adjustments tied to a recognized monetary barometer, such as the Consumer Price Index (CPI) or similar index. The mechanism for implementing such adjustments should be studied by MBC with participation from its key stakeholders, then proposed for legislative approval.”

This bill currently proposes to increase the initial and renewal license fees charged to physicians and surgeons from \$863 to \$1,289. The original amount requested by the MBC, \$1,350, was originally in this bill but lowered in the Senate. A fee level of \$1,289 would require the MBC’s existing loans to be converted to a new loan to be repaid over six years, which is estimated to provide the MBC with three months of reserve. Professional associations representing physicians in California continue to argue that the proposed fee amount is excessive and have sought to negotiate alternative solutions, and those discussions are ongoing. However, it is undeniable that the MBC will go insolvent without a substantial increase in revenue, and this bill would address that urgent situation through an increase in licensing fees.

Issue #6: Application Inquiries. The MBC’s sunset background paper questioned whether asking applicants about physical or mental health conditions potentially prevents them from seeking important and necessary treatment. Currently, applicants for licensure as physicians and surgeons must respond to a questionnaire that asks whether they have a current physical or mental health condition that impacts their ability to practice medicine safely. Statute specifically requires that the questionnaire determine whether the individual has a “mental, physical, emotional, or behavioral disorder.”

According to the MBC, any positive answer to the questionnaire does not automatically disqualify the applicant from licensure and the MBC will make an individualized assessment of the nature and severity and the duration of the risks associated with an ongoing medical condition to determine whether an unrestricted license should be issued, or conditions should be imposed on the license. However, the background paper raised the concern that license applicants may be fearful of potential punitive and disciplinary action as a result of admitting to a disorder, and this fear could lead to them not seeking assistance for those issues. This bill would seek to address that concern by striking the terms “mental, physical, emotional, or behavioral” from statute and merely requiring that a questionnaire contain questions to establish that the physician has no disorder that would impair their ability to practice medicine safely.

Issue #7: Postgraduate License. Applicants for licensure as physicians and surgeons in California are required to complete at least 36 months of accredited postgraduate training; this aligns with the three years of training commonly required for board certification by various American Board of Medical Specialty boards. In 2017, the MBC’s sunset bill required all medical school graduates who matched into an accredited postgraduate training program in California were required to obtain a postgraduate training license (PTL) in order to practice medicine as part of their training program, which would be valid for up to 39 months and could not be renewed; however, the MBC had limited authority to grant an extension.

Following the implementation of the PTL, the MBC experienced a high number of PTL applications, leading to processing delays during the COVID-19 pandemic. There was also widespread confusion about whether the PTL was an unrestricted license and to what extent residents could engage in the practice of medicine in connection with their duties as an intern or resident physician in a MBC-approved program. As a result, the MBC's sunset bill in 2021 adjusted the PTL program to clarify that a physician and surgeon can obtain a physician and surgeon certificate after receiving credit for 12 months of postgraduate training, but must receive credit for 36 months of postgraduate training in order for the certificate to be renewed at the time of initial renewal. The bill also granted broad discretion to the MBC to make a determination of license renewal even if certain timeframes are not met in order to take into consideration leave or other factors that may affect completion of a program within exactly 36 months.

This bill would make further changes to how the PTL is established in statute to further address unresolved concerns. The bill would provide that all PTLs shall be valid for a period of 36 months regardless of when the holder has received their approved postgraduate training and would repeal language requiring graduates to pass the next licensure exam after their first year of postgraduate training. Additional changes to statutes establishing the PTL have been proposed by the MBC, and stakeholder discussions are ongoing about what other corrections are needed to ensure successful implementation of the program.

Issue #8: Mexico Pilot Program. In part to address the primary care physician shortage and to increase the number of physicians who already possess cultural and linguistic competence in the treatment of communities with high proportions of immigrant families from countries like Mexico, the Legislature enacted Assembly Bill 1045 (Firebaugh) in 2002. This bill created the Licensed Physicians and Dentists from Mexico Pilot Program. The pilot program allows a limited number of qualifying physicians and dentists to come to California and practice for a limited time under a three-year nonrenewable license.

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

However, there have been reports of certain barriers in the process through which physicians from Mexico receive approval to participate in the pilot program. As noncitizens, applicants typically will not have an ITIN or SSN, which is required by all regulatory boards, including the MBC, as a condition of receiving a license. Meanwhile applicants typically cannot apply to receive a visa and accompanying SSN without proof that they may legally work in California, which they cannot demonstrate without a license from the MBC.

The MBC's sunset background paper discussed a proposal to resolve this issue by creating a process through which the MBC grants a license to applicants who meet all requirements except the ability to submit an ITIN or SSN. The applicant would then apply for and obtain the needed documentation, at which point they would submit that documentation to the MBC in order to finalize approval of their participation in the pilot program. The physicians would be prohibited from engaging in the practice of Medicine in California until the MBC determines that they have completed all the requirements of participation, including submission of the documentation.

Stakeholders have also requested language to allow the MBC to extend the three-year nonrenewable license of a participant in the pilot program who is unable to provide services during the period of time they were licensed. Specifically, the proposal would authorize an extension of a license when the physician was unable to work due to a delay in the visa application process beyond the established time line by the federal Customs and Immigration Services. The MBC would also be authorized to extend a license if the physician was unable to treat patients for more than 30 days due to an ongoing condition, including pregnancy, serious illness, credentialing by health plans, or serious injury.

As recommended in its sunset review background paper, the MBC has engaged with supporters of the above proposal and have negotiated language to address the perceived issues with the program. This language was introduced and passed by this committee through two separate legislative vehicles. However, there has been an agreement to incorporate that negotiated language into the MBC's sunset bill, which will be included in amendments taken in committee.

Issue #10: Evidentiary Standard. The sunset background paper discussed a request by the MBC to lower the evidentiary standard required in its disciplinary cases from “clear and convincing” to “preponderance.” According to the MBC, “the Board is at a significant disadvantage, in comparison to most other medical boards, when attempting to investigate and prosecute a licensee suspected of failing to properly care for their patients or otherwise act in an unprofessional manner.” Existing caselaw, *Ettinger v. Board of Medical Quality Assurance* (1982), requires the MBC to obtain “clear and convincing proof to a reasonable certainty” to impose discipline on a licensee, which the MBC says is a higher burden of proof than in 41 other jurisdictions that only apply a “preponderance of the evidence” standard.

While this bill would not entirely grant the MBC's request to lower the evidentiary standard for all cases, it would allow for a lower standard in *some* cases. Specifically, the bill would codify the clear and convincing evidence standard for the MBC to obtain an order on a statement of issues or accusation for a violation that would result in license suspension or revocation. For any other violation, a preponderance of the evidence standard would be applied. This bifurcation is intended to preserve the current due process that is afforded physicians when they are at risk of losing their license to practice, while allowing the MBC to engage in swifter and less arduous enforcement actions when seeking to impose less severe discipline.

Issue #11: Timeframe to Request Probation Modification. As discussed in the MBC's sunset background paper, current law allows for a person whose certificate has been surrendered or revoked for unprofessional conduct to petition the MBC for reinstatement or modification of penalty after at least three years, or two years if specified in the MBC in a revocation order. The law additionally allows for a petition of early termination of probation to be filed after three years or more. Between July 1, 2013, and June 30, 2022, the MBC granted only 37 percent of the petitions requesting reinstatement of a physician's license. In FY 2019/20, the most recent year with no pending petitions, the MBC denied all the petitions for modification for probation.

In light of the low petition approval rate and high costs associated with reviewing the requests, the MBC requested that the length of time that must elapse before a petition be increased. This bill would modify the length of time that must have elapsed before a person may petition the MBC for reinstatement or modification of penalty to require five years for a license surrendered or revoked for unprofessional conduct. For petitions for early termination of probation, the bill would require the greater of two years or at least one-half of a probation term to have elapsed.

Issue #15: Enforcement Enhancements. The MBC requested various updates to statute to improve its ability to take swift disciplinary action when appropriate, which were discussed in its sunset background paper. One issue that was raised was the lack of any clear and definite timeframe for pharmacies to turn over their records to investigators. This bill would require the owner, corporate officer, or manager of an entity licensed by the Board of Pharmacy to provide the MBC with requested records within three business days of the time the request was made, unless a request for an extension of not more than 14 calendar days is granted.

Another issue raised in the sunset background paper is the assertion that some physicians under investigation have asked their patients to rescind their consent to release their medical records to investigators. The MBC proposed discouraging this behavior by making it unprofessional conduct for a licensee, or person acting on their behalf, to take any action intended to cause their patient or their patient's authorized representative to rescind consent to release the patient's medical records to the MBC or DCA investigators. This bill would expressly provide that it is unprofessional conduct to cause a patient or their representative to rescind consent to release the patient's medical records, or to dissuade, intimidate, or tamper with a patient, witness, or any person in an attempt to prevent them from reporting or testifying about a licensee.

The MBC's sunset background paper also noted that while failure to participate in an investigatory interview "in the absence of good cause" is considered unprofessional conduct and could result in discipline, this qualification has resulted in unacceptably long delays in the investigation. The MBC requested language to require a licensee participate in an interview within a certain timeframe. This bill would require a licensee under investigation to attend and participate in an interview by the MBC within 30 calendar days after being notified that they are under investigation.

Issues relating to the exchange of expert witness testimony were also discussed in the sunset background paper. Current law requires the MBC and counsel for the licensee to exchange expert opinions, and related information, no later than 30 calendar days prior to the originally scheduled hearing date. However, the MBC has noted that this timeframe puts it at a disadvantage and has long requested that the law be amended to require the exchange of this information no later than 90 calendar days prior to the original hearing date instead. This bill would effectuate that change.

Another issue discussed in this section of the sunset background paper relates to statutes of limitations. Under current law, when a licensee refuses to produce medical records pursuant to an investigative subpoena, the MBC is required to litigate a petition for subpoena enforcement in superior court. The MBC reported that during this often-lengthy process, the statute of limitations continues to run on the stalled underlying investigation of the subject. The statute does not begin to toll unless and until the licensee fails to produce the subpoenaed records by the deadline set by the court, after granting the MBC's enforcement petition. The MBC requested that the date of the superior court's issuance of the order to show cause be established as the point to toll the statute of limitations. This bill would enact that change.

Patient records retention was also discussed in the sunset background paper. Currently, physicians are required to maintain records for a length of time that corresponds to the standard of care, which can vary. The MBC requested that the law be amended to require records to be maintained for at least seven years after the last date of service to a patient. This bill contains that requested language.

In addition to proposals specifically requested by the MBC, this bill includes several other proposed enhancements to the MBC's enforcement process. This bill would further empower complainants in an investigation against a physician involving quality of care by requiring an interview of the complainant, patient, or patient representative to be included in the review that is required prior to referral to a field office for further investigation. The bill would also require a complainant's statement to be considered, where relevant, for purposes of adjudicating the case to which the statement pertains, in addition to being considered for purposes of setting generally applicable policies and standards.

Another enforcement enhancement proposed by this bill relates to physicians who are convicted of certain felonies. Current law provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct. Under the existing process, the MBC is required to obtain expert witness testimony to prove the relationship between the felony conviction and the practice of medicine. This bill would provide that the conviction of any felony by a licensee involving moral turpitude, dishonesty or corruption, fraud, or sexual assault, whether in the course of the licensee's actions as a physician and surgeon or otherwise, constitutes cause for license revocation.

Issue #17: Technical Changes. As with all sunset reviews, the MBC's background paper proposed the inclusion of amendments that are technical in nature but may improve MBC operations and the enforcement of the Medical Practice Act. This bill contains numerous technical changes and nonsubstantive changes to the law.

Issue #18: Continued Regulation by the Medical Board of California. The MBC's sunset paper ended with the traditional question of whether the licensing and regulation of physicians and surgeons and other allied health professionals should be continued and be regulated by the current MBC membership. The background paper ultimately concluded that the operation of the MBC should be continued, and reviewed again on a future date. This bill would extend the sunset date for the MBC until January 1, 2028.

Current Related Legislation.

SB 812 (Roth) is the sunset bill for the California Tax Education Council. *This bill is pending in this committee.*

SB 813 (Roth) is the sunset bill for the Structural Pest Control Board. *This bill is pending in this committee.*

SB 814 (Roth) is the sunset bill for the Bureau of Household Goods and Services. *This bill is pending in this committee.*

AB 1257 (Business and Professions) is the sunset bill for the Dental Hygiene Board of California. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

AB 1262 (Business and Professions) is the sunset bill for the Professional Fiduciaries Bureau. *This bill is pending in the Senate Committee on Judiciary.*

AB 1263 (Business and Professions) is the sunset bill for the Bureau of Automotive Repair. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

AB 1264 (Business and Professions) is the sunset bill for the Acupuncture Board. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

AB 1395 (Garcia) would require the MBC to issue a license to applicants for participation in the Licensed Physicians and Dentists from Mexico Pilot Program who do not currently possess federal documentation. *This bill is pending on the Senate Floor.*

Prior Related Legislation.

AB 2060 (Quirk) of 2022 would have changed the membership composition of the MBC so that a majority of the board consists of public members. *This bill died on the Assembly Floor.*

SB 806 (Roth, Chapter 649, Statutes of 2021) extended the sunset date for the MBC until January 1, 2023 and made numerous reforms to the Medical Practice Act.

SB 1448 (Hill, Chapter 570, Statutes of 2018) requires physicians and surgeons, osteopathic physicians and surgeons, podiatrists, acupuncturists, chiropractors and naturopathic doctors to notify patients of their probationary status beginning July 1, 2019.

SB 798 (Hill, Chapter 775, Statutes of 2017) extended the sunset date for the MBC and the OMBC and enacted various other changes and reforms in response to sunset review.

ARGUMENTS IN SUPPORT:

Consumer Watchdog supports this bill, writing: “We write in strong support of SB 815 (Roth) which contains critically needed reforms to improve physician oversight at the Medical Board of California and protect patients.” Consumer Watchdog specifically supports the proposals to require patient or patient family member interviews, increase licensing fees, change the MBC’s member composition, require consideration of impact statements and create a Complainant Liaison Unit, adjust the standard of proof, and streamline various enforcement procedures. Consumer Watchdog concludes by stating: “Each element of SB 815 is a critical piece of meaningful reform patients have been seeking from the legislature for decades.”

The **Consumer Protection Policy Center** (CPPC) at UC San Diego’s Center for Public Interest Law also supports this bill, writing: “The proposed reforms, many of which the Consumer Protection Policy Center (formerly the Center for Public Interest Law) recommended in its oral testimony at the Board’s Joint Sunset Review Oversight hearing on March 16, 2023, are critical steps to restoring the public’s trust in MBC’s ability to protect the public from unethical and incompetent physicians and surgeons.” In its letter, the CPPC further urges the Legislature to consider moving the DCA’s investigators to the Office of the Attorney General and restoring the vertical enforcement method of investigation.

ARGUMENTS IN OPPOSITION:

The **California Orthopaedic Association** opposes this bill, specifically arguing against the change in MBC’s member composition: “One of the core functions of the Medical Board is to set and maintain appropriate standards for the practice of medicine in California. Not only must practicing physicians possess clinical skills and appropriate demeanor, they must follow the standard of care. Although we recognize and value the role that nonphysicians play on the Medical Board, we do not believe that a civilian majority is appropriate.”

The **California Medical Association** (CMA) opposes this bill unless amended. The CMA writes: “On behalf of the nearly 50,000 physician members and medical students of the CMA, we respectfully write to oppose SB 815 unless amended. SB 815 would increase licensing fees by about 50%, shift the Medical Board of California MBC to a public member majority and lower the evidentiary standard of proof for MBC enforcement actions that can devastate a physician’s livelihood.” The CMA opposes the bill’s proposal to make certain felony convictions cause for license revocation without expert witness testimony, require patient records to be retained seven years, and establish a Complainant Liaison Unit without first resolving the MBC’s budget issues. The CMA opposes various other provisions in the bill, but concludes by stating: “CMA is eager to discuss these issues and identify workable solutions where they exist.”

POLICY ISSUES:

Impact of Board Composition Change. Out of the twenty healing arts boards placed under the DCA, all but four of them feature a majority of professional members.³ This tradition is in large part because of the nature of health professional regulation, particularly with boards that follow a “standard of care” model of discipline. When the MBC is determining whether to bring an accusation against a licensee for misconduct following a complaint or adverse event, the motivating question is not whether the physician adhered to the letter of the law. The threshold question in many cases is: did the physician follow the appropriate standard of care, acting reasonably at the time in accordance with their training?

It is only logical that the individuals best situated to judge whether a professional met the standard of care would be fellow professionals. This is why the earliest forms of healing arts boards were essentially self-regulatory bodies consisting of members of professional societies. When state agencies took over these functions, the perspectives of those within the profession retained their voice through the appointment of professional board members. While most boards feature nearly as many members appointed from the disinterested public to offset any potential bias, the prevailing concept has long been that health professionals charged with failing to meet the expectations of their license should be held accountable foremost by their peers.

There are a number of ways the MBC assesses whether a licensee failed to meet the standard of care beyond the presence of professional members on the board. Any complaint determined to involve quality of care is required to be reviewed by “medical experts with the pertinent education, training, and expertise to evaluate the specific standard of care issues raised by the complaint.” These medical reviewers are themselves physicians, who advise the board on whether there was a deviation in the standard of care. Expert witnesses are utilized frequently in disciplinary hearings and are required to produce evidence of their credentials.

These disciplinary functions are largely delegated by the MBC as a whole to one of two panels that review proposed decisions and settlements. The Medical Practice Act allows these panels to act on behalf of the full board in various matters relating to disciplinary proceedings. To ensure that those charged with approving, modifying, or rejecting these outcomes fully appreciate the methodology for establishing and assessing the standard of care, statute requires that a majority of those serving on these disciplinary panels must physician members.

³ The Acupuncture Board, Board of Behavioral Sciences, and Bureau of Vocational Nursing and Psychiatric Technicians each have a one-member public majority; the Respiratory Care Board has an equal number of licensee and public members, in addition to a physician member.

In recent years, efforts to restructure the MBC's member composition have frequently cited the Court's decision in *North Carolina State Board of Dental Examiners v. FTC* and its implications for regulatory boards featuring a professional member majority. While this decision initially suggested that there may be substantial ramifications for state licensing policymaking, to date there has been no meaningful litigation against public bodies established under California law. This is likely attributable in part to key distinctions between the facts of that case and California's administrative structure for its regulatory programs. While the MBC is a board overseeing the practice of medicine on which a majority of members are physicians, numerous differences between the MBC's regulatory activities and the facts of the *NC Dental* case arguably render the likelihood of similarly successful antitrust litigation improbable.

For example, while the North Carolina State Board of Dental Examiners is considered an "agency of the State," its eight-member board featured six practicing dentists and one practicing dental hygienist, all of whom were elected by practicing licensees within the profession. A single public member was appointed by the Governor to the board. By contrast, the MBC has thirteen members, of which only a narrow majority of eight are practicing physicians, all of whom were appointed by the Governor without direct involvement from any professional association or society.

Further, the oversight provided by the DCA uniquely confirms the presence of "active state supervision" for purposes of *NC Dental*. The MBC is considered only semiautonomous, with much of its rulemaking and disciplinary activity subject to involvement by multiple other governmental entities. The DCA has also worked to ensure that members are adequately trained in certain procedures to ensure an adequate record of deliberation for purposes of defense against any potential allegations of antitrust.

A more easily argued benefit to changing the MBC's membership composition would be the removal of perceived bias exhibited by a controlling majority of board members. The theory of "regulatory capture" posits that government agencies are often at risk of gradually becoming ideologically motivated by the needs of an interest group, rather than the interest of the public, through the accumulation of influence exerted by a regulated constituency. The MBC has been charged with similar allegations, as the seemingly infrequent occurrence of formal discipline against licensees has been correlated with the physicians who make up a majority of its board members.

While the Legislature has consistently criticized the MBC's underwhelming enforcement program and patient safety advocates have blamed identified shortcomings as the result of the medical profession's lobbying influence, no evidence has been provided that would unequivocally establish such a link. Supporters of this change have been unable to produce any examples of an action taken by the MBC in which a narrow majority of professional members overwhelmed the dissent of the public member minority by a single vote. While certainly professional members have a tendency to be more active participants in debate generally on licensing boards, this would remain true even if that demographic's representation were reduced, with a vocal and persuasive minority still potentially dominating discourse. It should also be noted that with even public members representing a one-vote majority on the MBC, nothing would prevent a quorum from being established when a majority of those in attendance are physician members.

The strongest argument for establishing a public member majority, therefore, would be to remove the *appearance* of undue influence on the board. That is not to say that such a benefit would be trivial; the public's perception of government, particularly agencies like the MBC who are entrusted with protecting patients, is meaningful, and even superficial reform to the MBC would arguably help replace trust in the regulator's service on behalf of the people. However, those who expect reform of the MBC's membership composition to existentially reshape its activities in a dramatic fashion should contemplate whether the immediate value of the change may prove to be more symbolic than consequential. Meanwhile, the author should consider whether this arguably cosmetic change would outweigh the potential downsides to the reform.

Misalignment with Osteopathic Medical Board. Currently, this bill would extend the MBC's sunset date until January 1, 2028. Meanwhile, the OMBC is scheduled for its next sunset review to take place in the year preceding January 1, 2026. While the MBC and OMBC are distinct boards that receive individualized reviews through the sunset process, many of the laws generally governing the licensure and regulation of physicians and surgeons impact the duties and functions of both entities. The author may therefore wish to amend the bill to extend the OMBC's sunset date to realign its review with the MBC's, as currently provided in the bill.

IMPLEMENTATION ISSUES:

On May 22, 2023, the MBC sent a letter to the author of this measure taking a "Support, if Amended" position on the bill and specifying various requested amendments. The majority of these requested amendments to not represent substantive changes to the policy effect of any proposal but instead request that the language be drafted differently to ensure successful implementation upon enactment. The author has agreed to accept many of these requested amendments, which would aid the MBC in implementing the following provisions of the bill:

- *Interviews for Quality-of-Care Complaints* – The MBC requests that provisions in the bill be replaced with a new statute requiring an interview to occur before a case is closed. The MBC further requests that a definition for "patient representative" be established to mean a spouse, domestic partner, another person responsible for the care of the patient, or next of kin.
- *Providing Complainant Statements to the Board's Disciplinary Panels* – The MBC requests that this bill be amended to require the MBC to request statements from the complainant or their representative at the time of referral for investigation, with 60 days provided to respond. The MBC further requests language to provide that the statement would be subject to discovery by the licensee and legal review and that the bill's requirements would apply only to the MBC.
- *Burden of Proof Changes* – The MBC's letter states that it is "still evaluating how this proposal would work in practice." In the meantime, the MBC has requested amendments to remove references to a statement of issues and clarify that any statutory changes do not impact the requirements related to proving that a licensee has violated the terms of their probation.
- *Reinstituting a 36-month Postgraduate Training License* – The MBC requests language to provide that a PTL is valid for a 36-month period after issuance. The MBC further requests making these provisions retroactive so that current PTL holders would similarly benefit.
- *Transfer of the Research Psychoanalyst Program to the Board of Psychology* – Both the MBC and the Board of Psychology have requested a delayed implementation of this transfer; a delayed implementation date of January 1, 2025 has been agreed to.

AMENDMENTS:

- 1) To strike the proposed changes to the MBC's membership composition, amend Section 1 of the bill to revert the language in subdivisions (a) and (b) to current law.
- 2) To adopt the MBC's requested language to implement the bill's complainant interview requirements, strike Section 8 from the bill and instead create a new section as follows:

(a) For purposes of this section and Section 2220.2, a patient representative is defined as the spouse or domestic partner of the patient, a person responsible for the care of the patient, or the patient's next of kin.

(b) (1) Before a complaint within the jurisdiction of the board pertaining to the quality-of-care that a licensee provided to their patient may be closed, the board shall conduct an interview with the complainant, the patient, or the patient's representative, if one is identified in the complaint.

(2) This subdivision shall not apply to complaints that are submitted anonymously or without the contact information of the complainant, patient, or a patient representative.

(c) If the board's request for an interview is declined by the complainant, patient, or a patient representative identified in the complaint, or the board has not received a response within 30 calendar days, the board may close the complaint, if otherwise warranted.

(e) If, after the complaint is closed, the complainant, patient, or patient representative provides additional information pertinent to that complaint, the board may reopen the matter, subject to the provisions of Section 2230.5.

- 3) To adopt the MBC's requested language to implement the bill's requirements related to complainant statements, strike Section 18 from the bill and instead create a new section as follows:

(a) At the time that a complaint is referred for a field investigation, the relevant complainant, patient, or patient representative shall be provided with the opportunity to provide a statement relative to the harm they experienced.

(b) The complainant, patient, or patient representative shall have up to 60 days following receipt of the notification described in subdivision (a) to provide the statement to the board.

(c) Notwithstanding Section 2330, the statement shall be considered by the board, or a panel of the board, for the purposes of adjudicating the case to which the statement pertains.

(d) This section shall not apply to the Osteopathic Medical Board of California.

- 4) To adopt additional language requested by the MBC related to complainant statements, amend BPC § 2334 to add those statements to provisions of law specifying information that must be exchanged between parties during the hearing process.

- 5) To adopt the MBC's requested language to implement the bill's changes to the evidentiary standard in disciplinary cases brought by the MBC against physicians and surgeons, amend Section 20 of the bill as follows:

(a) The standard of proof required to obtain an order on ~~a statement of issues or an~~ accusation for a violation that would result in license suspension or revocation shall be a clear and convincing evidence standard.

(b) The standard of proof required to obtain an order on a statement of issues, ~~or an~~ accusation that would result in any other form of discipline ~~for any other violation~~, or to revoke probation, shall be a preponderance of the evidence standard.

- 6) To adopt the MBC's requested language making changes to the PTL timelines retroactive, amend subdivision (b) as currently proposed to be amended in Section 4 of the bill as follows:

(b) The physician's and surgeon's postgraduate training license shall be valid for a period of 36 months. Any postgraduate training license in an active status issued on or after January 1, 2020, shall be valid for a period of 36 months. The physician's and surgeon's postgraduate training licensee may engage in the practice of medicine only in connection with the licensee's duties as an intern or resident physician in a board-approved program, including its affiliated sites, or under those conditions as are approved in writing and maintained in the postgraduate licensee's file by the director of the program.

- 7) To adopt additional language requested by the MBC relating to PTL timelines, amend subdivisions (a) and (b) as currently proposed to be amended in Section 7 of the bill as follows:

(a) In addition to other requirements of this chapter, before a physician's and surgeon's license may be renewed, at the time of initial renewal, a physician and surgeon shall show evidence satisfactory to the board that the licensee has received credit for at least 36 months of board-approved postgraduate training ~~which includes successful progression through 24 months in the same program~~, pursuant to the attestation of the program director, designated institutional official, or delegated authority for the approved postgraduate training program where the applicant participated, except licensees or applicants who meet the requirements of Section 2135, 2135.5, 2151, 2428, or by a licensee or applicant using clinical practice in an appointment under section 2113 as qualifying time to meet the postgraduate training requirements in section 2065.

(b) A physician's and surgeon's certificate shall be automatically placed in delinquent status by the board if the holder of a physician's and surgeon's certificate does not show evidence satisfactory to the board that the physician and surgeon has received credit for at least 36 months of board-approved postgraduate training ~~which includes successful progression through 24 months in the same program~~ before the licensee's initial license expiration. The Board may grant an additional 60 days to the initial license expiration date authorized under Section 2423.

- 8) To delay the transfer of the research psychoanalyst registration program from the MBC to the Board of Psychology, amend Sections 23 through 28 of the bill to provide that those sections shall not take effect until January 1, 2025.
- 9) To realign the OMBC's next sunset review with the MBC, add a new section amending Section 2450 of the Business and Professions Code to extend the OMBC's sunset date to January 1, 2028.
- 10) To incorporate language relating to the Licensed Physicians and Dentists from Mexico Pilot Program that was previously negotiated for another vehicle, add a new section amending BPC § 853 to insert the following language as new subdivisions (i) and (j):

(i) (1) Notwithstanding subdivisions (a) to (d), inclusive, of Section 30, the Medical Board of California shall issue a three-year nonrenewable license pursuant to this section to an applicant who has not provided an individual taxpayer identification number or social security number if the board staff determines the applicant is otherwise eligible for a license only under the Licensed Physicians from Mexico Pilot Program pursuant to this section, subject to the following conditions:

(A) The applicant shall immediately seek both an appropriate three-year visa and the accompanying social security number from the United States government within 14 days of being issued a medical license under this section.

(B) The applicant shall immediately provide to the Medical Board of California a social security number obtained in accordance with subparagraph (A) within 10 days of the federal government issuing the social security card related to the issued visa.

(C) The applicant shall not engage in the practice of medicine pursuant to this section until the Medical Board of California determines that the conditions in subparagraphs (A) and (B) have been met.

(2) The Medical Board of California, if it determines that an applicant has met the conditions in paragraph (1), shall notify the applicant that the applicant may engage in the practice of medicine under the license in accordance with this section.

(j) (1) Subject to paragraphs (2), (3), and (4), the Medical Board of California may extend the three-year nonrenewable license period if, prior to January 30, 2024, the licensee was unable to practice more than 30 consecutive business days due to at least one of the following circumstances:

(A) The pregnancy of the licensee.

(B) The pregnancy of the married spouse of the licensee.

(C) The pregnancy of the domestic partner who is in a civil union with the licensee.

(D) Delay caused by the credentialing process of health plans.

(E) Delay caused by the visa application and review process by the United States Citizenship and Immigration Services.

(2) For a licensee to be eligible for an extension under this subdivision, both of the following shall be submitted to the Medical Board of California no later than January 30, 2024:

(A) A declaration signed by the licensee under penalty of perjury and supporting documentation demonstrating that the licensee meets the requirements of this subdivision.

(B) A request for the extension from the chief executive officer of the community health center who employs the licensee.

(3) If the Medical Board of California determines that the requirements of this subdivision have been satisfied for a licensee, it may grant a one-time extension for the timeframe in which the licensee was unable to work.

(4) An extension granted pursuant to this subdivision shall not extend the license period by more than one year or beyond September 30, 2026, whichever is sooner, and shall be dependent upon the program having sufficient funding appropriated in the annual Budget Act.

REGISTERED SUPPORT:

Consumer Protection Policy Center
Consumer Watchdog

REGISTERED OPPOSITION:

California Chapter of the American College of Cardiology
California Chapter of the American College of Emergency Physicians
California Medical Association
California Orthopaedic Association
California Rheumatology Alliance
California Society of Plastic Surgeons
Concentra

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

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 816 (Roth) – As Amended June 27, 2023

SENATE VOTE: 39-0

SUBJECT: Professions and vocations

SUMMARY: Raises several types of licensing fees imposed by the Board of Psychology, Board of Pharmacy, Board of Accountancy, and the Landscape Architects Technical Committee and makes two technical changes pertaining to the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) and Veterinary Medical Board (VMB). Makes numerous technical changes, statutory improvements, and policy reforms raised during the California Council for Interior Design Certification’s (CCIDC) sunset review in 2022.

EXISTING LAW RELATED TO THE BOARD OF PSYCHOLOGY:

- 1) Establishes the Board of Psychology within the Department of Consumer Affairs (DCA) for the purpose of licensing, regulating, and enforcement of psychologists and psychological associates. (Business and Professions Code (BPC) §§ 2900-2919)
- 2) Sets forth specified licensing fees assessed by the Board of Psychology (BPC §§ 2900-2919)

EXISTING LAW RELATED TO THE BOARD OF PHARMACY:

- 1) Establishes the California State Board of Pharmacy within DCA for the purpose of licensing, regulating, and enforcement of pharmacists, advanced practice pharmacists, intern pharmacists, pharmacy technicians, designated representatives, and designated paramedics, and facility licenses. (BPC §§ 4000 - 4427.8)
- 2) Sets forth specified licensing fees assessed by the Board of Pharmacy (BPC §§ 4000 - 4427.8)

EXISTING LAW RELATED TO THE BOARD OF ACCOUNTANCY:

- 1) Establishes the California Board of Accountancy within DCA for the purpose of licensing, regulating, and enforcement of certified public accountants and accountancy corporations. (BPC §§ 5000 - 5025.3)
- 3) Sets forth specified licensing fees assessed by the Board of Accountancy (BPC §§ 5000 - 5025.3)

EXISTING LAW RELATED TO THE LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE:

- 1) Establishes the California Architects Board within DCA for the purpose of licensing, regulating, and enforcement of architects. (BPC §§ 5500 - 5610.7)
- 2) Establishes the Landscape Architects Technical Committee within the California Architects Board and authorizes the Landscape Architects Technical Committee to assist with all of the following:
 - a. Assist in the examination of candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations.
 - b. Investigate, assist, and make recommendations to the board regarding the regulation of landscape architects in this state.
 - c. Perform duties and functions that have been delegated to it by the California Architects Board.
 - d. Send a representative to all meetings of the full California Architects Board to report on their activities.

(BPC §§ 5621 - 5622)

- 4) Sets forth specified licensing fees assessed by the California Architects Board. (BPC § 5681)

EXISTING LAW RELATED TO THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS:

- 1) Establishes the BVNPT within the DCA to license and regulate vocational nurses and psychiatric technicians, and enforce the Vocational Nursing Practice Act and Psychiatric Technicians Law. (BPC §§ 2841, 4501)
- 2) Requires a vocational nursing and psychiatric technician school or program seeking approval by the BVNPT to pay specified fees, including a continuing approval fee in an amount equal to the reasonable costs incurred by the BVNPT in providing oversight and review of the school or program up to \$5,000 once every four years. (BPC § 2881.2(b)(3) and BPC § 4531.1(b)(3))
- 3) Authorizes the BVNPT to reduce the continuing approval fees, by no more than one-half of the established fee, for a program that experiences a reduction in state funding that directly leads to a reduction in enrollment capacity. (BPC § 2881.2(d) and BPC § 4531.1(d))

EXISTING LAW RELATED TO THE VETERINARY MEDICAL BOARD:

- 1) Establishes the VMB within the DCA for the purpose of licensing, regulating, and enforcement of veterinarians, veterinary technicians, and veterinary assistants in California. (BPC § 4800 *et seq.*)

- 2) Authorizes the VMB to issue a probationary veterinary assistant controlled substance permit, subject to terms and conditions deemed appropriate by the board. (BPC § 4836.2(b))
- 3) Prohibits the VMB from issuing a veterinary assistant controlled substance permit to any applicant with a state or federal felony controlled substance conviction if, among other reasons, the applicant or permit holder has been convicted of a state or federal felony controlled substance violation. (BPC § 4836.2(c))
- 4) Authorizes the VMB to deny, revoke, or suspend a license or registration or assess a fine as provided, for, among other things,
 - a. A conviction of a crime substantially related to the qualifications, functions, or duties of veterinary medicine, surgery, or dentistry, in which case the record of the conviction shall be conclusive evidence.
 - b. Unprofessional conduct, that includes, but is not limited to, a conviction of a charge of violating any state or federal statutes or rules regulating dangerous drugs or controlled substances, as specified.

EXISTING LAW RELATED TO CALIFORNIA COUNCIL FOR INTERIOR DESIGN CERTIFICATION:

- 1) Defines “certified interior designer” (CID) to mean a person who prepares and submits nonstructural or nonseismic plans consistent with Sections 5805 and 5538 to local building departments that are of sufficient complexity so as to require the skills of a licensed contractor to implement them, and who engages in programming, planning, designing, and documenting the construction and installation of nonstructural or nonseismic elements, finishes and furnishings within the interior spaces of a building, and has demonstrated by means of education, experience and examination, the competency to protect and enhance the health, safety, and welfare of the public. (BPC § 5800(a))
- 2) Defines an “interior design organization” to mean a nonprofit organization of CIDs whose governing board shall include representatives of the public as specified. (BPC § 5800(b))
- 3) Authorizes a CID to obtain a stamp from an interior design organization that includes a number that uniquely identifies and bears the name of that CID. The stamp certifies that the interior designer has provided the interior design organization with evidence of passage of an interior design examination approved by that interior design organization and met education and/or experience requirements, as specified. (BPC § 5801)
- 4) Requires all drawings, specifications, or documents prepared for submission to any government regulatory agency by any CID to be affixed by a stamp, as specified, and signed by that CID. (BPC § 5802(a))
- 5) Provides that it is an unfair business practice for any CID or any other person to advertise or put out any sign or card or other device, including any stamp or seal, or to represent to

the public through any print or electronic media, that they are “state certified” to practice interior design, or to use any other words or symbols that represent to the public that they are so certified. (BPC § 5804)

- 6) States that nothing precludes CIDs or any other person from submitting interior design plans to local building officials, except as specified. In exercising discretion with respect to the acceptance of interior design plans, the local building official shall reference the California Building Standards Code. (BPC § 5805)
- 7) States that nothing prohibits interior design or interior decorator services by any person or retail activity. (BPC § 5806)
- 8) Requires a CID to use a written contract when contracting to provide interior design services to a client, except as specified. The written contract shall be executed by the CID and the client, or their representative, prior to the CID commencing work. The written contract shall contain specified information. (BPC § 5807)
- 9) States that it is an unfair business practice for any person to represent or hold himself or herself out as, or to use the title “certified interior designer” or any other term, such as “licensed,” “registered,” or “CID,” that implies or suggests that the person is certified as an interior designer when they do not hold a valid certification. (BPC § 5812)
- 10) Sunsets the aforementioned provisions on January 1, 2027. (BPC § 5810(b))
- 11) States that the Architect Practice Act does not prohibit any person from furnishing either alone, or with contractors, labor and materials, with or without plans, drawings, specifications, instruments of service, or other data covering such labor and materials to be used for any of the following:
 - a) Nonstructural or non-seismic storefronts, interior alterations or additions, fixtures, cabinetwork, furniture, or other appliances or equipment.
 - b) Nonstructural or non-seismic work necessary to provide for their installation.
 - c) Nonstructural or non-seismic alterations or additions to any building necessary to or attendant upon the installation of those storefronts, interior alterations or additions, fixtures, cabinetwork, furniture, appliances, or equipment, provided those alterations do not change or affect the structural system or safety of the building.

(BPC § 5588)

THIS BILL:

- 1) Makes the following change related to the Board of Vocational Nursing and Psychiatric Technicians:
 - a. Authorizes the BVNPT to reduce the continuing approval fees for vocational nursing programs, by no more than one-half of the established fee, for a program

- that experiences a reduction in enrollment capacity that directly leads to a reduction in state funding.
- b. Authorizes the BVNPT to reduce the continuing approval fees for psychiatric technician programs, by no more than one-half of the established fee, for a program that experiences a reduction in enrollment capacity that directly leads to a reduction in state funding.
- 2) Makes the following changes related to the Board of Psychology:
- a. Sets the application fee for a psychologist at \$236.
 - b. Sets the application fee for the California Psychology Law and Ethics Examination at \$127.
 - c. Deletes the provision of existing law that specifies that the initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date for the date on which the license is issued.
 - d. Sets the initial license fee for a psychologist at \$231.
 - e. Sets the biennial renewal fee for a psychologist at \$795 and authorizes the Board of Psychology to adopt regulations to set the fee at a higher amount, up to a maximum of \$1,100.
 - f. Sets the application fee for registration as a registered psychological associate at \$424.
 - g. Sets the annual renewal fee for the registration of a psychological association at \$224 and authorized the Board of Psychology to adopt regulations to set the fee at a higher amount, up to a maximum of \$400.
 - h. Specifies that the delinquency fee for renewal of each license type may not exceed \$397.50.
 - i. Sets the fee for Fingerprint Hard Card Processing for Out of State Applicants to be \$184 and specifies that applicants must also pay the Board of Psychology for the actual cost of processing the fingerprint hard card with the Department of Justice and Federal Bureau of Investigation.
 - j. Sets the fee for a psychological associate to add or change their supervisor to be \$210 and requires the fee to be the actual cost to the Board of Pharmacy of processing the addition or change.
 - k. Requires a licensed psychologist who holds an inactive license to pay a biennial renewal fee of \$221 and authorizes the Board of Psychology to adopt regulations to set the fee at a higher amount, up to a maximum of \$400.
- 3) Makes the following change to the Board of Pharmacy:

- a. Repeals BPC § 4119.01 on January 1, 2025, and recasts those provisions in a new BPC § 4119.01 beginning January 1, 2025, in order to delay implementation of the following fee changes:
 - i. Sets the application and initial license fee to operate an emergency medical services automated drug delivery system (EMSADDS) at \$100 per machine. Requires the license to be renewed annually and prohibits the license fee from being transferred to a different location if the EMSADDS is moved.
 - ii. Sets the penalty fee for failure to renew an EMSADDS license at \$35.
 - iii. Sets the application and renewal fee for a licensed wholesaler that is also an emergency medical services provider agency at \$780.
- b. Repeals BPC § 4119.11 on January 1, 2025, and recasts those provisions in a new BPC § 4119.11 beginning January 1, 2025, in order to delay implementation of the following fee:
 - i. Sets the application and renewal fee for a pharmacy to operate an automated patient dispensing system at \$300, which may be increased to \$500. Authorizes the Board of Pharmacy to lower the renewal fee to not less than \$200 if a lower fee level will provide sufficient resources to support their regulatory activities.
- c. Repeals BPC § 4128.2 on January 1, 2025, and recasts those provisions in a new BPC § 4128.2 beginning January 1, 2025, to delay repealing a provision that specifies that until January 1, 2017, the fee for issuance or annual renewal of a centralized hospital packaging pharmacy license must be \$600 and may be increased by the Board of Pharmacy to \$800.
- d. Repeals BPC § 4161 on January 1, 2025, and recasts those provisions in a new BPC § 4161 beginning January 1, 2025, in order to delay implementation of the following fee:
 - i. Specifies that a temporary license fee for a nonresident wholesaler or nonresident third-party logistics provider must be \$550 or another amount established by the Board of Pharmacy not to exceed the annual fee for renewal of a license to compound sterile drug products.
- e. Repeals BPC § 4202.5 on January 1, 2025, and recasts those provisions in a new BPC § 4202.5 beginning January 1, 2025, to delay repealing a provision that specifies that the fee for application and issuance of an initial license as a designated paramedic must be \$140 for a two-year license, the biennial renewal must be \$140, and the penalty fee for failure to renew an authorized paramedic license must be \$65.

- f. Repeals BPC § 4210 on January 1, 2025, and recasts those provisions in a new BPC § 4210 beginning January 1, 2025, to delay repealing a provision that specifies that the Board of Pharmacy may, by regulation, set the fee for the issuance and renewal of advanced practice pharmacist recognition at the reasonable cost of regulating advanced practice pharmacists pursuant and prohibits the fee from exceeding \$300.
- g. Repeals BPC § 4400 on January 1, 2025, and recasts those provisions in a new BPC § 4400 beginning January 1, 2025, to delay the following changes to various fees assessed by the Board of Pharmacy:
 - i. Sets the fee for a pharmacy license at \$750 and authorizes the fee to be increased to \$2,000. Sets the fee for the issuance of a temporary pharmacy permit at \$1,600 and authorizes the fee to be increased to \$2,740.
 - ii. Sets the fee for a nonresident pharmacy license at \$2,427 and authorizes the fee to be increased to \$3,424. Sets the fee for the issuance of a temporary nonresident pharmacy permit at \$2,000 and authorizes it to be increased to \$2,469.
 - iii. Sets the fee for a pharmacy license annual renewal at \$1,025 and authorizes the fee to be increased to \$2,000.
 - iv. Sets the fee for a nonresident pharmacy license annual renewal at \$1,025 and authorizes the fee to be increased to \$2,000.
 - v. Set the fee for regrading an examination at \$115 and authorized the fee to be increased to \$200.
 - vi. Sets the fee for a pharmacist biennial renewal at \$450 and authorizes the fee to be reduced to \$360.
 - vii. Sets the fee for a wholesaler or third-party logistics provider license and annual renewal at \$1,000 and authorizes the fee to be increases to \$1,411. Deletes a provision that specifies that the application fee for any additional location after licensure of the first 20 locations is \$300 and may be decreased to no less than \$225. Specifies that a temporary license fee may be increased to \$1,009.
 - viii. Sets the fee for a hypodermic license at \$550 and authorizes the fee to be increased to \$775. Sets the fee for a hypodermic license renewal at \$400 and authorizes the fee to be increased to \$561.
 - ix. Sets the fee for application, investigation, and issuance of a license as a designative representative, designated representative-3PL, or designated representative-reverse distributor at \$345 and authorizes the fee to be increased to \$485.

- x. Sets the fee for the annual renewal of license as a designative representative, designated representative-3PL, or designated representative-reverse distributor at \$388 and authorizes the fee to be increased to \$547.
- xi. Sets the fee for the application, investigation, and issuance of a license as a designated representative for a veterinary food-animal drug retailer at \$345 and authorizes the fee to be increased to \$485.
- xii. Sets the fee for the annual renewal of a license as a designated representative for a veterinary food-animal drug retailer at \$388 and authorizes the fee to be increased to \$547.
- xiii. Sets the application fee for a nonresident wholesaler or third-party logistics provider license at \$1,000 and authorizes the fee to be increased to \$1,411.
- xiv. Deletes a provision specifying that for nonresident wholesalers or third-party logistics providers that have 21 or more facilities operating nationwide the application fees for the first 20 locations must \$780 and may be increased to \$820, that the application fee for any additional location after licensure of the first 20 locations is \$300 and may be decreased to no less than \$225, and that a temporary license fee is \$715 and may be decreased to no less \$550.
- xv. Sets a temporary license fee at \$715 and authorizes the fee to be increased to \$1,009.
- xvi. Sets the annual renewal fee for a nonresident wholesaler license or third-party logistics provider license at \$1,000 and authorizes the fee to be increased to \$1,411.
- xvii. Sets the fee for an intern pharmacist license at \$175 and authorizes the fee to be increased to \$245. Set the fee for transfer of intern hours or verification of licensure to another state at \$120 and authorizes the fee to be increased to \$168.
- xviii. Sets the fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change at \$75 and authorizes the fee to be increased to \$100.
- xix. Sets the fee for processing an application to change information on a premises license record at \$395 and authorizes the fee to be increased to \$557.
- xx. Sets the fee for processing an application to change a name or correct an address on a premises license record at \$206 and authorizes the fee to be increased to \$282.

- xxi. Sets the fee for processing an application to change a pharmacist-in-charge, designated representative-in-charge, or responsible manager on a premises license at \$250 and authorizes the fee to be increased to \$353.
- xxii. Sets the fee for any applicant for a clinic license to be \$620 and authorizes the fee to be increased to \$873. Sets the annual fee for renewal of the license at \$400 and authorizes the fee to be increased to \$561.
- xxiii. Sets the fee for the issuance of a pharmacy technician license at \$120 and authorizes the fee to be increased to \$165. Sets the fee for the renewal of a pharmacy technician license at \$180 and authorizes the fee to be reduced to \$125.
- xxiv. Sets the fee for veterinary food-animal drug retailer license at \$610 and authorizes the fee to be increased to \$825. Sets the annual renewal fee for a veterinary food-animal drug retailer license at \$460 and authorizes the fee to be increased to \$561. Sets the fee for the temporary license at \$520 and authorizes the fee to be increased to \$732.
- xxv. Sets the fee for issuance of a retired license, as specified, at \$50 and authorizes the fee to be increased to \$100.
- xxvi. Specifies that the fee for issuance of a sterile compounding pharmacy license or a hospital satellite compounding pharmacy at \$3,875 and authorizes the fee to be increased to \$2,466. Sets the fee for a temporary license at \$1,065 and authorizes the fee to be increased to \$1,503. Sets the annual renewal fee of the license at \$4,085 and authorizes the fee to be increased to \$5,762.
- xxvii. Sets the fee for the issuance of a nonresident sterile compounding pharmacy license at \$8,500 and authorizes the fee to be increased to \$16,502. Sets the annual renewal of the license at \$8,500 and authorizes the fee to be increased to \$17,040. Sets the fee for a temporary license at \$1,500 and authorizes the fee to be increased to \$2,000.
- xxviii. Sets the fee for the issuance of an outsourcing facility license at \$25,000 and authorizes the fee to be increased to \$35,256. Sets the fee for the renewal of an outsourcing facility license at \$25,000 and authorizes the fee to be increased to \$41,366. Sets the fee for a temporary outsourcing facility license at \$4,000 and authorizes the fee to be increased to \$5,642.
- xxix. Sets the fee for the issuance of a nonresident outsourcing facility license at \$28,500 and authorizes the fee to be increased to \$43,318. Sets the fee for the renewal of a nonresident outsourcing facility license at \$28,500 and authorizes the fee to be increased to \$46,353. Sets the fee for a temporary nonresident outsourcing facility license at \$4,000 and authorizes the fee to be increased to \$5,642.

- xxx. Sets the fee for the issuance of a centralized hospital packaging license at \$3,815 and authorizes the fee to be increased to \$5,318. Sets the annual renewal of the license at \$2,912 and authorizes the fee to be increased to \$4,107.
 - xxxi. Sets the fee for the issuance of a license to a correctional facility, as specified, at \$620 and authorizes the fee to be increased to \$873. Sets the annual renewal fee for that correctional clinic license at \$400 and authorizes the fee to be increased to \$561.
 - xxxii. Specifies that the fee for the issuance of an Automated Drug Delivery System (ADDS) license to a correctional clinic, as specified, is \$500 and authorizes the fee to be increased to \$705. The annual renewal fee for the correctional clinic ADDs shall be \$400 and authorizes the fee to be increased to \$561.
 - xxxiii. Sets the fee for an ADDS license at \$525 and authorizes the fee to be increased to \$741. Sets the fee for the annual renewal of the license at \$453 and authorizes the fee to be increased to \$639.
 - xxxiv. Sets the application and initial license fee for a remote dispensing site pharmacy application at \$1,730 and authorizes the fee to be increased to \$2,440. Sets the fee for the annual renewal at \$1,025 and authorizes the fee to be increased to \$2,000. Sets the fee for a temporary license at \$890 and authorizes the fee to be increased to \$1,199.
 - xxxv. Sets the application and initial license fee to operate EMSADDS at \$150 and authorizes the fee to be increased to \$380 per machine. Sets the fee for the annual renewal at \$273 and specifies that the license fee may not be transferred to a different location if the EMSADDS is moved. Sets the application and renewal fee for a licensed wholesaler that is also an emergency medical services provider agency at \$810 and authorizes the fee to be increased to \$1,143.
 - xxxvi. Sets the fee for the application and issuance of an initial license as a designated paramedic to \$350 and authorizes the fee to be increased to \$494. Sets the biennial renewal at \$200 and authorizes the fee to be increased to \$292.
 - xxxvii. Sets the fee for an application for an advanced practice pharmacist license and renewal of advanced practice pharmacist license to be \$300 and authorizes the fee to be increased to \$418.
- 4) Makes the following change related to the Veterinary Medical Board:
- a. Deletes the provision of existing law that prohibits the VMB from issuing a veterinary assistant controlled substance permit to any applicant with a state or federal felony controlled substance conviction.

- 5) Makes the following changes to the Board of Accountancy:
- a. Deletes the provision of existing law that limits the amount of the fee that can be charged to out-of-state candidates for the certified public accountant examination.
 - b. Authorizes the Board of Accountancy to set the application fee to be charged to each applicant for the issuance of a certified public accountant certificate at an amount not to exceed \$700.
 - c. Deletes the provision of existing law that authorizes the Board of Accountancy to set the application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of an examination at an amount not to exceed \$250.
 - d. Specifies that after June 30, 2023, the fee to be charged to each applicant for registration as a partnership or professional corporation must not be less than \$250, nor more than \$2,000.
 - e. Sets the biennial renewal fee for a certified public accountant to engage in the practice of public accountancy at \$340 for permits expiring after June 30, 2024, and \$400 for permits expiring after June 30, 2026.
 - f. Sets the biennial renewal fee for a partnership or professional corporation to be \$400 for permits expiring after June 30, 2024, and \$525 for permits expiring after June 30, 2026.
 - g. Specifies that if the Board of Accountancy has unencumbered funds in an amount that is equal to more than their operating budget for the next two fiscal years, it may fix the biennial renewal fees by regulation at an amount less than those specified.
- 6) Makes the following changes to the Landscape Architects Technical Committee:
- a. Sets the application fee for reviewing an applicant's eligibility to take any section of the examination at \$100.
 - b. Sets the fee for the California Supplemental Examination at \$350. Authorizes the California Architects Board to adopt regulations to set the fee at a higher amount, up to a maximum of \$400.
 - c. Sets the fee for an original license at \$700 and authorizes the California Architects Board to adopt regulations to set the fee at a higher amount, up to a maximum of \$800.
 - d. Sets the fee for a duplicate license at \$300.
 - e. Sets the renewal fee at \$700 and authorizes the California State Board of Landscape Architects to adopt regulations to set the fee at a higher amount, up to a maximum of \$800.

- 7) Makes the following changes related to the California Council for Interior Design Certification:
- a. Defines “interior design organization” to mean the CCIDC, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code and consists of CIDs whose governing board includes representatives of the public.
 - b. Authorizes a CID to obtain a stamp from the CCIDC that identifies the individual as a CID *with commercial designation* if the CID has met specified requirements.
 - c. Specifies that CIDs, nor any other person, are precluded from submitting interior design plans for commercial or residential buildings to local building officials, except as provided in the Architects Practice Act.
 - d. Requires local building officials, when exercising discretion with respect to the acceptance of interior design plans, to reference the occupational title standard in statute in addition to the California Building Standards Code.
 - e. Clarifies that the CCIDC is established for the purpose of carrying out the responsibilities and duties specified in existing law.
 - f. Authorizes the CCIDC to do all of the following:
 - i. Take reasonable actions to carry out its responsibilities and duties, as provided in statute.
 - ii. Adopt bylaws, rules, and procedures necessary to effectuate the purposes of the CCIDC and related laws.
 - iii. Establish application fees, renewal fees, and other fees related to the regulator costs of providing services and carry out the CCIDC responsibilities and duties. Specifies that these fees may not exceed the reasonable costs to the council of providing those services and carrying out those responsibilities and duties.
 - g. Authorizes the CCIDC to issue a certification to any applicant who provides satisfactory evidence that they meet all of the requirements and who complies with the bylaws, rules, and procedures established by the CCIDC.
 - h. Codifies the CCIDC’s existing certification requirements, specifically:
 - i. Passage of an interior design examination approved by the council.
 - ii. Completion of specified education and experience pathways.
 - iii. Payment of all fees required by the CCIDC.

- i. Authorizes the CCIDC to issue a commercial designation to a CID or qualified applicant who passes additional interior design courses and examinations, as determined to be required by the council.
- j. Specifies that CID certificates are subject to renewal every two years in a manner prescribed by the CCIDC and will expire unless renewed in that manner.
- k. Authorizes the CCIDC to provide for the late renewal of a registration.
- l. Authorizes the CCIDC to require CIDs to complete continuing education specific to the practice of interior design each two-year certification cycle.
- m. Makes additional technical, non-substantive, and conforming changes.

FISCAL EFFECT: According to the Senate Appropriations Committee pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. This bill is the annual omnibus committee bill authored by the Senate Business, Professions and Economic Development Committee which consolidates a number of non-controversial provisions related to various regulatory programs and professions governed by the BPC within the DCA. Consolidating the provisions in one bill is designed to relieve the various licensing Boards, bureaus and professions from the necessity and burden of having separate measures for a number of non-controversial revisions. As noted by the author, many of the provisions in this bill are minor and technical changes which update outdated references or titles in existing law. Other provisions may be substantive consensus changes which aim to improve the efficacy of the various healing arts entities in administering and enforcing the provisions of their respective licensing laws.

Background.

Fee Increases. Within DCA there are 36 boards, bureaus, commissions, and councils responsible for licensing, regulating, and enforcing the laws and regulations pertaining to a myriad of professions in California.¹ Each entity is expected to be self-sustaining via its licensing fees and receives no financial support from the state's General Fund. This bill modifies the fee schedules of the following entities: The Board of Psychology; Board of Pharmacy; Board of Accountancy, and Landscape Architects Technical Committee. The fee changes included in this bill were deemed necessary based on fee analyses from 2022.

Code Clean Up. This bill includes the following two changes:

- 1) Existing law requires vocational nursing and psychiatric technician schools and programs seeking approval by the BVNPT to pay specified fees, including a continuing approval fee

¹ Department of Consumer Affairs. (n.d.). *DCA Boards/Bureaus*. Department of Consumer Affairs. https://www.dca.ca.gov/about_us/entities.shtml

every four years.² That fee is statutorily required to be equal to the reasonable costs incurred by the BVNPT for providing oversight and review of the school or program—up to \$5,000. However, existing law authorizes BVNPT to reduce the continuing approval fee by up to one-half of the established fee, for a program that experiences a reduction in *state funding* that directly leads to a reduction in *enrollment capacity*.³ However, the causal relationship expressed in this provision of law is inaccurate. State appropriation is based on enrollment, therefore a reduction in enrollment causes the reduction in funding. This bill clarifies that the BVNPT may reduce the continuing approval fee by up to one-half of the established fee for a program that experiences a reduction in *enrollment capacity* that directly leads to a reduction in *state funding*.

2) Existing law is conflicting in regards to whether the VBM may issue a veterinary assistant controlled substance permit to an applicant with a state or federal controlled substance conviction. Prior to the enactment of SB 1480 (Hill), Chapter 571, Statutes of 2018, the law clearly prohibited the VMB from issuing a veterinary assistant controlled substance permit to an applicant with a state or federal controlled substance conviction, if the applicant or permit holder has been convicted of a state or federal felony controlled substance violation.⁴ However, SB 1480 (Hill) authorized the VBM to issue a probationary veterinary assistant controlled substance permit, subject to terms and conditions deemed appropriate by the board.⁵ This bill would delete the outdated prohibition on issuing a controlled substance permit to an applicant with a state or federal controlled substance conviction.

California Council on Interior Design Certification (CCIDC). The current law provides for a voluntary system whereby an interior designer may become certified and obtain a “stamp” from an interior design organization (CCIDC) by demonstrating competency through education, experience, and examination.⁶ Although any person may call themselves an interior designer, only those who have become certified and obtained a stamp from the CCIDC may use the title, “Certified Interior Designer” (CID). As the entity responsible for certifying interior designers, the CCIDC is subject to the sunset review⁷ process and was reauthorized by SB 1437 (Roth), Chapter 311, Statutes of 2022, which extended the CCIDC’s sunset (repeal) date to January 1, 2027. This bill makes numerous technical changes, statutory improvements, and policy reforms raised during the CCIDC’s sunset review in 2022. For more background information about the CCIDC and a complete list of

² BPC § 2881.2(b)(3)

³ BPC § 2881.2(d)

⁴ BPC § 4836.2(c)

⁵ BPC § 4836.2(b)

⁶ BPC § 5800 *et seq.*

⁷ In order to ensure that California’s myriad of professional boards, bureaus, and councils are meeting the state’s public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity “sunsets” unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals. Legislation is subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

issues raised during their 2022 sunset review, please refer to the committee background paper available on this committee's website: <https://abp.assembly.ca.gov/jointsunsethearings>.

Prior Related Legislation.

SB 1437 (Roth), Chapter 311, Statutes of 2022, extended the sunset date for the CCIDC by four years, until January 1, 2027, and deleted an obsolete reference.

ARGUMENTS IN SUPPORT:

The *Board of Psychology* writes in support:

This bill would allow the Board to increase the application, renewal, and exam fees for psychologists and increase the application and renewal fee for registered psychological associates. The Board has not increased application and renewal fees for psychologists since 1992. Increased operating costs and the cost of living in this time has caused a structural imbalance. By increasing the fees, the Board will be able to avoid fiscal insolvency and eliminate the Board's structural imbalance, so the Board can continue in its mission of consumer protection.

The *Board of Pharmacy* writes in support:

The Board is a consumer protection agency charged with regulating the practice of pharmacy. Senate Bill 816 seeks to recast the Board's current fee structure consistent with the findings of an independent fee analysis, which demonstrated that the Board is not fully recovering its costs in many areas. An aye vote on Senate Bill 816 would address these budgetary shortfalls and ensure the Board maintains sufficient resources to continue providing vital consumer protection services to the public. The scope of the fee change varies based on the license type. For example, the intern application fee, pharmacy technician application and renewal fees and pharmacist renewal fees will be reduced. Further, several license types would not experience a fee increase based on legislation unless the Board raised fees via regulation after the statutory changes proposed by the bill become effective. As an example, the current advanced practice pharmacist application and renewal fees are \$300. As proposed the statutory minimum would remain \$300 and a new statutory maximum would be added. As another example, the veterinary food-animal drug retailer renewal fee would remain at \$610 with a new maximum range established using the model offered by the fee auditor. Other fees will be immediately increased with new minimum and maximum fees established consistent with the recommendations of the audit findings.

AMENDMENTS:

At the request of the author, amend the bill as follows to continue requiring a junk dealer or recycler to, until January 1, 2028, submit additional information regarding its junk dealer business to the Department of Food and Agriculture when applying for a weighmaster's license or a renewal license, along with the payment of additional fees for each fixed location:

On page 61, after line 19, add:

SEC. 33. Section 12703.1 of the Business and Professions Code is amended to read:

12703.1. (a) In addition to any other requirements for issuance of a license pursuant to this chapter, if the applicant is a recycler or junk dealer as defined in Section 21601, the department shall require the applicant to furnish all of the following information accurately on any application for a new license or the renewal of a license issued pursuant to this chapter:

- (1) A copy of the applicant's current business license.
 - (2) A statement indicating that the applicant has either filed an application for a stormwater permit or is not required to obtain a stormwater permit.
 - (3) A statement indicating that the applicant has the equipment necessary to comply with the photographic and thumbprinting requirements for the purchase and sale of nonferrous materials pursuant to Section 21608.5 or a statement indicating that the applicant will not be purchasing or selling nonferrous materials and is not required to comply with Section 21608.5.
 - (4) A statement indicating that the applicant has requested to receive theft alert notifications pursuant to subdivision (a) of Section 21608.7, unless that requirement does not apply pursuant to subdivision (b) of that section.
 - (5) The name or names of any deputy weighmasters.
- (b) The department shall issue a license to a junk dealer or recycler upon receipt of an application for a new license or renewal of a license that contains the information required by subdivision (a) and that is accompanied by the appropriate fee.
- (c) (1) The department shall make a thorough investigation of all the information contained in the application required by subdivision (a) within 90 days for a new license, and within one calendar year for a renewal of a license.
- (2) Notwithstanding Section 12708, if the department determines that the information submitted pursuant to subdivision (a) is materially inaccurate, the department shall revoke the license issued to a junk dealer or recycler unless the junk dealer or recycler complies with the requirements of subdivision (a) within 14 days of notice from the department of a proposed revocation pursuant to this subdivision.
- (3) A junk dealer or recycler whose license has been revoked pursuant to this subdivision is entitled to a hearing conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (d) The secretary may enter into a cooperative agreement with any county sealer to carry out the provisions of this section.

(e) This section shall not apply to a pawnbroker licensed pursuant to Chapter 3 (commencing with Section 21300) of Division 8 of the Financial Code and a secondhand dealer licensed pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8.

(f) This section shall remain in effect only until January 1, 2024, 2028, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2024~~, 2028, deletes or extends that date.

SEC. 34. Section 12704 of the Business and Professions Code is amended to read:

12704. (a) A weighmaster shall pay to the department the following license fee for each license year as applicable to the operation:

- (1) Seventy-five dollars (\$75) if the weighmaster is operating at a fixed location.
- (2) Thirty dollars (\$30) for each additional fixed location at which the weighmaster is operating.
- (3) Two hundred dollars (\$200) if the weighmaster is operating at other than a fixed location.
- (4) Twenty dollars (\$20) for each deputy weighmaster.

(b) In addition to the license fees set forth in subdivision (a), a weighmaster who is a recycler or a junk dealer as defined in Section 21601 or is performing services on behalf of a recycler or junk dealer shall also pay to the department the following license fee for each license year as applicable to the operation:

- (1) Five hundred dollars (\$500) if the weighmaster is operating at a fixed location.
- (2) Five hundred dollars (\$500) for each additional fixed location at which the weighmaster is operating.
- (3) Five hundred dollars (\$500) if the weighmaster is operating at other than a fixed location.

(c) "License year" means the period of time beginning with the first day of the month the weighmaster is required to be licensed in this state, and ending on the date designated by the secretary for expiration of the license, or yearly intervals after the first renewal.

(d) "Location" means a premise on which weighing, measuring, or counting devices are used.

(e) This section shall remain in effect only until January 1, ~~2024~~, 2028, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2024~~, 2028, deletes or extends that date.

SEC. 35. Section 12704 of the Business and Professions Code is amended to read:

12704. (a) A weighmaster shall pay to the department the following license fee for each license year as applicable to the operation:

- (1) Seventy-five dollars (\$75) if the weighmaster is operating at a fixed location.
 - (2) Thirty dollars (\$30) for each additional fixed location at which the weighmaster is operating.
 - (3) Two hundred dollars (\$200) if the weighmaster is operating at other than a fixed location.
 - (4) Twenty dollars (\$20) for each deputy weighmaster.
- (b) “License year” means the period of time beginning with the first day of the month the weighmaster is required to be licensed in this state, and ending on the date designated by the secretary for expiration of the license, or yearly intervals after the first renewal.
- (c) “Location” means a premise on which weighing, measuring, or counting devices are used.
- (d) This section shall become operative on January 1, ~~2024~~, 2028.

SEC. 36. Section 12709 of the Business and Professions Code is amended to read:

12709. (a) All license fees collected pursuant to this chapter shall be deposited in the Department of Food and Agriculture Fund to be expended by the department

for the administration and enforcement of this chapter, except as provided in subdivision (b).

(b) License fees collected pursuant to subdivision (b) of Section 12704 shall be deposited in a special account in the Department of Food and Agriculture Fund to be expended by the department for the administration and enforcement of Section 12703.1.

(c) This section shall remain in effect only until January 1, ~~2024~~, 2028, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2024~~, 2028, deletes or extends that date.

SEC. 37. Section 12709 of the Business and Professions Code is amended to read:

12709. (a) All license fees collected pursuant to this chapter shall be deposited in the Department of Food and Agriculture Fund to be expended by the department for the administration and enforcement of this chapter.

(b) This section shall become operative on January 1, ~~2024~~, 2028.

~~SEC. 33.~~ *SEC. 38.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

REGISTERED SUPPORT:

California Board of Psychology
California State Board of Pharmacy
International Interior Design Association Northern California Chapter
International Interior Design Association Southern California Chapter
One individual

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 817 (Roth) – As Introduced February 17, 2023

SENATE VOTE: 39-0

SUBJECT: Barbering and cosmetology: application, examination, and licensing fees

SUMMARY: Recasts provisions of law authorizing the State Board of Barbering and Cosmetology (BBC) to charge a hairstylist license application and examination fee to require that the fee be the actual cost to the BBC, not to exceed \$50.

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) 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)
- 3) Provides that the practice of hairstyling consists of one or both 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))
- 4) Provides that the BBC shall allow an applicant for licensure as a hairstylist to take the license examination if they submit an application, pay the required fee, and meet certain criteria. (BPC § 7322)
- 5) Requires every application for admission to examination and licensure to be accompanied by the required fee and to contain proof of the applicant's qualifications. (BPC § 7337)
- 6) Requires all fees set by the BBC to reflect the amounts necessary to cover the expenses of the board in performing its duties. (BPC § 7421)
- 7) Provides that the hairstylist application and examination fee shall be either \$50, or a fee in an amount as determined by the BBC, not to exceed the reasonable cost of developing, purchasing, grading, and administering the examination, not to exceed \$50. (BPC § 7423(h))

THIS BILL:

- 1) Requires the hairstylist application and application fee to be the actual cost to the board for developing, purchasing, grading, and administering the examination.
- 2) Prohibits the hairstylist's initial license fee from exceeding \$50.

FISCAL EFFECT: Pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

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

“This bill is necessary to ensure that BBC does not charge more than \$50 to an individual who seeks to become a hairstylist. As currently written, the law leaves open the potential for BBC to charge over this amount, and more than it charges other professionals like cosmetologists and barbers.”

Background.

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 its last sunset review, including over 250,000 active cosmetology licenses. Annually, the BBC issues approximately 25,000 new licenses each year and administers over 28,000 written examinations (initial and retake examinees). Each profession has its own scope of practice, entry-level requirements, and professional settings, with overlap in some areas.

During the BBC's most recent sunset review in 2021, a number of reforms were passed through the BBC's sunset extension vehicle (SB 803, Roth). These included adding further specificity to the composition of the BBC, recasting the scope of practice for skincare, and authorizing cosmetology students to obtain more clock hours through paid externships. The BBC's sunset bill also created a new hairstylist license, which allows licensees to provide certain basic hair services after meeting lower education and training requirements than are needed for barbering or cosmetology license.

The Barbering and Cosmetology Act generally prohibits the BBC from charging fees beyond what is necessary to cover the expenses of the board in performing its duties. SB 803 authorized the BBC to charge an application and examination fee to individuals seeking licensure as hairstylists. Statute currently provides the BBC with two options: they can either charge \$50, or they can charge a different amount that does not exceed either \$50 or the reasonable cost of developing, purchasing, grading, and administering the examination. This bill would remove the BBC's authority to charge \$50 if that is not the amount that it determines to be its actual costs; however, the fee would still ultimately be capped at \$50.

Current Related Legislation.

AB 1328 (Gipson) would enact the Cosmetology Licensure Compact to facilitate California's participation in a multistate licensing program.

Prior Related Legislation.

AB 2196 (Maienschein, Chapter 527, Statutes of 2022) clarified the scope of practice for a hairstylist and made other technical amendments to the BBC's prior sunset bill.

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 both barbering and cosmetology to 1,000 hours.

AB 181 (Bonilla, Chapter 430, Statutes of 2015) extended the operation of the BBC and required the BBC to conduct a review of its current 1,600-hour curriculum requirements for the cosmetologist license.

ARGUMENTS IN SUPPORT:

The **State Board of Barbering and Cosmetology** (BBC) supports this bill, writing: "On April 17, 2023 the [Board] voted to take a SUPPORT position SB 817 (Roth), which would clarify the application and examination fee and the initial license fee for the new hairstylist license type. This bill would authorize the Board to establish an application and examination fee based on the actual cost to develop, purchase, grade, and administer the examination. This bill would also set the hairstylist's initial license fee to \$50.00."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

State Board of Barbering and Cosmetology

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

SB 887 (Committee on Business, Professions and Economic Development) – As Amended April 20, 2023

SENATE VOTE: 39-0

SUBJECT: Consumer affairs

SUMMARY: Makes various technical corrections, clarifying amendments, and nonsubstantive changes to provisions of law governing boards, bureaus, and programs under the Department of Consumer Affairs (DCA) as well as the Department of Real Estate (DRE).

EXISTING LAW:

- 1) Establishes the DRE within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) §§ 10004 *et seq.*)
- 2) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (BPC §§ 100 *et seq.*)
- 3) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA's jurisdiction. (BPC § 101)
- 4) Defines "board" as also inclusive of "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency" as applicable (BPC § 22)
- 5) Requires the DCA to compile information on military, veteran, and spouse licensure into an annual report for the Legislature. (BPC § 115.8)
- 6) Places the DCA under the control of the Director of Consumer Affairs, who is appointed by the Governor and may investigate the work of boards under the DCA. (BPC §§ 150 *et seq.*)
- 7) Establishes the Speech Language Pathology, Audiology, and Hearing Aide Dispensers Board (SLPAHAD) to license and regulate speech-language pathologists, audiologists, and hearing aid dispensers. (BPC §§ 2530 *et seq.*)
- 8) Establishes the Board of Registered Nursing (BRN) to license and regulate registered nurses and advanced practice registered nurses. (BPC §§ 2700 *et seq.*)
- 9) Establishes the Board of Psychology to license and regulate psychologists, psychologist assistants, and registered psychologists. (BPC §§ 2900 *et seq.*)
- 10) Establishes the California State Board of Pharmacy to license and regulate the pharmacy profession. (BPC §§ 4000 *et seq.*)

- 11) Establishes the Veterinary Medical Board (VMB) to license and regulate veterinarians, registered veterinary technicians, veterinary assistant substance controlled permits, and veterinary premises. (BPC §§ 4800 *et seq.*)
- 12) Establishes the Board of Behavioral Sciences (BBS) to license and regulate marriage and family therapists, educational psychologists, clinical social workers, and professional clinical counselors. (BPC) §§ 4980 *et seq.*)
- 13) Establishes the California Board of Accountancy (CBA) to license and regulate certified public accountants (CPAs). (BPC §§ 5000 *et seq.*)
- 14) Establishes the California Architects Board (CAB) to license and regulate professional architects. (BPC §§ 5500 *et seq.*)
- 15) Establishes the Cemetery and Funeral Bureau (CFB) to license and regulate cemeteries, mortuaries, crematories, and hydrolysis facilities. (BPC §§ 7611 *et seq.*)
- 16) Requires the DCA to establish a certification program for third-party dispute resolution process used for the arbitration of disputes. (BPC § 472.1)
- 17) Defines “secondhand dealer” to mean any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property, excluding coin dealers or participants at gun shows. (BPC § 21626(a))
- 18) Requires secondhand dealers to report all secondhand tangible personal property acquisitions to the California Pawn and SecondhandDealer System (CAPSS) database and make certain information available to law enforcement. (BPC § 21628)
- 19) Establishes the Bureau for Private Postsecondary Education (BPPE) within the DCA to license and regulate private postsecondary educational institutions. (Education Code §§ 94800 *et seq.*)

THIS BILL:

- 1) Changes the timeline for the DCA to report to the Legislature on military and military spouse licensure from each calendar year to each fiscal year and makes other technical changes.
- 2) Authorizes the DCA’s inspections of qualified third-party dispute resolution processes to be conducted either onsite or virtually.
- 3) Requires the BRN to send special meeting notices electronically, repeals the notice requirement for terminating an interim permit or temporary certificate, requires the BRN’s to incorporate the National Organization of Nurse Practitioner Faculties’ Nurse Practitioner Role Core Competencies, and creates a Nursing Education and Workforce Advisory Committee to study and recommend nursing education standards and workforce solutions.
- 4) Authorizes an applicant for licensure under the Board of Psychology to show completion of training requirements by submitting a transcript indicating completion of coursework.

- 5) Changes the due date for the Board of Pharmacy to submit a report on the regulation of automated drug delivery system (ADDS) units from January 1, 2024 to January 1, 2025.
- 6) Allows the VMB to verify licenses through electronic means, requires wellness evaluation committees to include at least one veterinarian, authorizes the VMB to issue citations, and removes the requirement that a veterinarian who reviews and investigates alleged violations be licensed or employed by the state and not out of practice for more than 4 years.
- 7) Authorizes a person to rely on the BBS's internet website for purposes of verifying licenses and registrations and applies the definition of "educationally related mental health services" for purposes of supervising associate licensees under the BBS to the supervision of marriage and family therapist trainees.
- 8) Repeals the CBA's authority to establish an advisory continuing education committee and repeals the annual fee for a practice privilege.
- 9) Provides that a candidate for licensure under the CAB who has received full credit for all divisions of the Architect Registration Examination (ARE) before May 1, 2023, shall be deemed to have passed the ARE.
- 10) Updates the Cemetery and Funeral Act to include references to hydrolysis and reduction and revises the required statement that must appear on the first page of a contract.
- 11) Allows for applications for recovery from the Consumer Recovery Account within the DRE's special fund to be delivered electronically.
- 12) Exempts personal property pledged to a pawnbroker with respect to the redemption of personal property by the pledger exempt from the CAPSS holding period.
- 13) Repeals the authorization of an institution that has been granted approval to operate by the BPPE to indicate that the institution is licensed or licensed to operate.
- 14) Requires an audiologist to suggest that an individual consult a physician specializing in diseases of the ear if certain conditions are found to exist.
- 15) Makes various other technical, clarifying, and nonsubstantive changes.

FISCAL EFFECT: Pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author: "This bill is the annual "committee bill" authored by the Business, Professions, and Economic Development Committee, which is intended to consolidate a number of non-controversial provisions related to various regulatory programs and professions governed by the BPC. Consolidating the provisions in one bill aims to relieve the various licensing boards, bureaus, professions, and other regulatory agencies from the necessity and burden of having separate measures for a number of non-controversial revisions. Many of the provisions of this bill are minor, technical, and updating changes."

Background.

Military and Military Spouse Licensure. Currently, statute provides for several accommodations of both military family and veteran license applicants. Boards are required to inquire about the military status of each of their applicants so that military experience may potentially be applied toward licensure training requirements. Boards are also required to expedite licensure for military veterans as well as the spouses and partners of active duty military. Statute also provides that temporary licenses be provided to military spouses and partners in specified occupations and professions. The DCA is required to compile information on military, veteran, and spouse licensure into an annual report for the Legislature, which requires information to be reported by calendar year. This bill would change that timeline to require the information to be reported by fiscal year and makes other technical and conforming changes.

Third Party Dispute Resolution Processes. Statute requires the DCA to establish a program for certifying each third-party dispute resolution process used for the arbitration of disputes. This process is provided by manufacturers to buyers or lessees of new motor vehicles. As part of this certification program, the DCA is required to conduct onsite inspections of each qualified third-party dispute resolution process not less frequently than twice annually. This bill would allow for those inspections to be conducted virtually.

Board of Registered Nursing. The BRN is responsible for administering and enforcing the Nursing Practice Act, which outlines the regulatory framework for the practice, licensing, education, and discipline of registered nurses, and advanced practice registered nurses, which includes certified nurse-midwives, nurse anesthetists, nurse practitioners, and clinical nurse specialists. Current law requires the BRN to establish categories of nurse practitioners and standards for nurses to hold themselves out as nurse practitioners in each category and requires the BRN to take into account the types of advanced levels of nursing practice that are or may be performed and the clinical and didactic education; this bill would require the BRN to incorporate the nurse practitioner curriculum core competencies specified in the National Organization of Nurse Practitioner Faculties' Nurse Practitioner Role Core Competencies in that determination. This bill would also create a Nursing Education and Workforce Advisory Committee within the BRN to study and recommend nursing education standards and solutions to workforce issues, and would require the BRN to send special meeting notices electronically and would repeal the notice requirement for terminating an interim permit or temporary certificate.

Board of Psychology. The Board of Psychology licenses and regulates psychologists under the Psychology Licensing Law. Statute currently requires an applicant for licensure as a psychologist to show that they have completed a minimum of six hours of coursework or applied experience under supervision in suicide risk assessment and intervention, as well as six contact hours of coursework or applied experience in aging and long-term care. This bill would allow for proof having met these requirements to be verified through the submission of a transcript indicating completion of this coursework.

Board of Pharmacy. The Board of Pharmacy is responsible for licensing and regulating professionals, premises, and devices used in the practice of pharmacy. This includes the licensure of Automated Drug Delivery Systems, or ADDs. An ADDS is a mechanical system controlled remotely by a pharmacist that performs operations or activities relative to the storage, dispensing, or distribution of prepackaged dangerous drugs or devices in certain settings.

Current law requires the Board of Pharmacy to submit a report to the Legislature on the regulation of ADDS units on or before January 1, 2024 as part of its sunset evaluation process; however, the Board of Pharmacy's sunset review has been moved to 2025. This bill would reconcile those timelines by changing the due date for the ADDS report until January 1, 2025.

Veterinary Medical Board. The VMB licenses and regulates veterinarians, registered veterinary technicians, veterinary assistant controlled substances permit holders, veterinary schools, and veterinary premises. The VMB derives its authority through the enforcement of the Veterinary Medicine Practice Act, which requires an applicant for licensure to disclose each state, Canadian province, or United States territory in which the applicant currently holds or has ever held a license to practice veterinary medicine. Statute requires that license verification, including any disciplinary or enforcement history, be submitted to the VMB directly from each state, province, or territory. This bill would allow that verification to be confirmed through either electronic means or direct submission. Current law also provides for the establishment of wellness evaluation committees within the VMB; this bill would change the composition of these committees and require that their membership include at least one veterinarian, one registered veterinary technician, and two public members.

Board of Behavioral Sciences. The BBS licenses and regulates healing arts professionals engaged in the practice of providing behavioral health services. Specifically, the BBS provides for the oversight of Licensed Marriage and Family Therapists (LMFTs); Licensed Clinical Social Workers (LCSWs); Licensed Professional Clinical Counselors (LPCCs); and Licensed Educational Psychologists (LEPs). The BBS also oversees associates completing supervised training requirements for full licensure as an LMFT, LCSW, LEP, or LPCC. Currently statute defines "educationally related mental health services" for purposes of these associates; this bill would extend that same definition to marriage and family therapist trainees. This bill would also provide that a person may rely upon the licensing and registration information as it is displayed on the BBS's internet website.

California Board of Accountancy. Existing law establishes the CBA in the DCA for the purpose of licensing and regulating the accounting profession. The CBA regulates over 100,000 licensees, including individuals and CPA firms. Current law authorizes the CBA to establish an advisory committee to perform specified duties, including the evaluation of educational courses offered by professional accounting societies shall be accepted by the board as qualifying if the courses are approved by the committee as meeting the profession's continuing education requirements. This advisory committee is no longer active, and this bill would repeal it from statute. This bill would also replace the term "substandard" with the more consistent term "fail" on peer reviewed reports for purposes of accounting firms that have not met certain professional standards to align with national standards.

California Architecture Board. The CAB licenses architects in California, who are required to take and pass the national ARE, an exam administered by the National Council of Architecture Registration Boards (NCARB) that consists of five divisions. The NCARB recently updated its timeframe pertaining to how long the scores count when a person passes a section, and the CAB has reconciled its regulations to these timeframes; however, those regulations will become outdated. This bill would provide that a candidate who received full credit for all divisions of the ARE prior to May 1, 2023, shall be deemed to have passed the ARE.

Cemetery and Funeral Bureau. The CFB licenses and regulates more than 13,000 licensees in 13 different licensing categories, including embalmers, cemetery managers, crematories, and funeral directors. In 2017, legislation was enacted to require the CFB to license and regulate hydrolysis facilities and hydrolysis facilities managers beginning July 1, 2020. Alkaline hydrolysis is a process using heat or heat and applied pressure, water, and potassium hydroxide or sodium hydroxide in a hydrolysis chamber to reduce the body of a deceased person to its essential organic components and bone fragments. This bill would add references to hydrolysis in provisions of law informing consumers of when to contact the CFB, beginning January 1, 2027.

Department of Real Estate. The DRE is the entity currently charged with responsibility to enforce the Real Estate Law, the Subdivided Lands Act, and the Vacation Ownership and Time-share Act of 2004. The DRE currently licenses 421,624 persons in California. The DRE is also responsible for administering a victim's fund, known as the Consumer Recovery Account, funded from a portion of license fees. To receive payment from the Consumer Recovery Account, an applicant must have obtained a final civil judgment or arbitration award, or a criminal restitution order against a licensee based on intentional fraud or conversion of trust funds in connection with a transaction requiring a real estate license. Since 1964, the DRE has paid more than \$65,000,000 to members of the public from the Consumer Recovery Account. Current law requires an application for payment to be delivered in person or by certified mail; this bill would allow the application to be delivered electronically in a manner prescribed by the DRE.

Secondhand Dealers. California has long regulated sellers of secondhand goods. In 1937, a law was enacted to require secondhand dealers to report new acquisitions of property to law enforcement so that these items could potentially be matched with stolen goods. Current law requires a seven-day holding period for all tangible personal property received by a secondhand dealer or cold dealer, during which time the property must be produced for inspection by law enforcement. There are several exemptions to this holding requirement; this bill would add an additional exemption for personal property pledged to a pawnbroker with respect to the redemption of personal property by the pledgor.

Bureau for Private Postsecondary Education. The BPPE is responsible for oversight of private postsecondary educational institutions that have a physical presence in California and enforcing the California Private Postsecondary Education Act, which prohibits false advertising and inappropriate recruiting and requires disclosure of specific information about the educational programs being offered, graduation and job placement rates, and licensing information. Specifically, the Act directs BPPE to, in part, review and approve private postsecondary educational institutions; establish minimum operating standards to ensure educational quality; provide an opportunity for student complaints to be resolved; and ensure private postsecondary educational institutions offer accurate information to prospective students about school and student performance. Current law authorizes an institution that has been granted approval to operate by the BPPE to indicate that the institution is licensed or licensed to operate; this bill would repeal that authorization and make other technical changes.

Speech Language Pathology and Audiology, and Hearing Aide Dispensers Board. This board licenses and regulates speech-language pathologists, audiologists, and hearing aid dispensers.

Current law requires a licensee of the board who either observes or is informed of the existence certain health conditions in a hearing aid user—such as deformities, drainage, hearing loss, or dizziness—that it would be in the user’s best interest to consult with a physician specializing in diseases of the ear, or any other physician. This bill would update the statutory language establishing this requirement and make other technical changes.

Replacement of Gendered Terms. This bill additionally replaces gendered terms with gender-neutral language in various statutes in accordance with Assembly Concurrent Resolution 260 (Low, Res. Chapter 190, Statutes of 2018).

ARGUMENTS IN SUPPORT:

The **Board of Psychology** supports this bill, writing: “This bill would streamline the application process to allow verification following review of a transcript that clearly indicated in the course title that the specified coursework had been completed. Additionally, the Board believes that to allow the department chair to act as an additional entity who could provide written certification would be an added convenience for applicants, in cases where the course title did not adequately indicate the coursework completed.”

The **Veterinary Medical Board** also supports this bill, writing: “This bill would, among other things, authorize the Board to receive out-of-state license verification of license applicants through electronic means, revise the Board’s Wellness Evaluation Committee composition to require at least one licensed veterinarian, at least two public members, and at least one registered veterinary technician, and delete the provision related to the criteria for a subject matter expert in citation cases. The Board supports these changes to the Practice Act in SB 887, as these amendments were requested by the Board this legislative session to improve the Practice Act.”

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Board of Registered Nursing
California Board of Accountancy
California Board of Psychology
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
Veterinary Medical Board

REGISTERED OPPOSITION:

None on file.

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