

Date of Hearing: June 28, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 1331(Pavley) – As Amended June 20, 2016

**SENATE VOTE:** 39-0

**SUBJECT:** State Board of Guide Dogs for the Blind: membership: out-of-state schools: followup services

**SUMMARY:** Allows out-of-state personnel to provide follow-up services in California without a license, under specified conditions; revises the composition of the State Board of the Guide Dogs for the Blind (Board) to include three, instead of two, representatives of the legally blind or visually impaired community and requires one representative each from a designated consumer organization representing Californians who are blind or visually impaired, as specified; and, requires the Board to create a factsheet that provides specified information about the Board which must be made available to each licensed school which then must provide the fact sheet to every student receiving training from that school.

**EXISTING LAW:**

- 1) Establishes the Board within in the Department of Consumer Affairs for the licensing and enforcement of licensees who operate schools for the training of guide dogs and the instruction of persons who are blind and visually impaired in the use of guide dogs. (Business and Professions Code (BPC) Section 7200, *et seq.*)
- 2) Requires the Board to consist of seven members appointed by the Governor, of which one member is the Director of Rehabilitation or his or her designated representative; the remaining members are persons who have shown a particular interest in dealing with the problems of persons who are blind or visually impaired and at least two of them are persons who are blind or visually impaired who use guide dogs. (BPC Section 7200(a))
- 3) Requires a person to be eligible for examination as an instructor to have knowledge of the special problems of persons who are blind or visually impaired and how to teach them; be able to demonstrate by actual blindfold test under traffic conditions, his or her ability to train guide dogs; be suited temperamentally and otherwise to instruct persons who are blind or visually impaired in the usage of guide dogs; and, have had at least three years of actual experience comprising such number of hours as the Board may require, as an instructor, and have handled 22 person-dog units or its equivalent, as specified. (BPC Section 7209)
- 4) Defines an "instructor" to mean a person who instructs persons who are blind or visually impaired in the use of guide dogs or who engage in the business of training, selling, hiring, or supplying guide dogs for persons who are blind or visually impaired. (BPC Section 7209.5)
- 5) States that it is unlawful for any person to sell, offer for sale, give, hire, or furnish under any arrangement, any guide dog or to engage in the business or occupation of training a guide dog without a valid and unimpaired license, as specified. (BPC Section 7210)

**THIS BILL:**

- 1) Revises the composition of the Board to include at least three members, instead of two, who are blind or visually impaired and who use guide dogs, and further requires that one representative from each of the two major consumer organizations representing Californians who are blind or visually impaired and the Governor must consider the recommendations from those organizations in making those appointments.
- 2) States that notwithstanding any other law, whenever an individual has received training or instruction from a school outside of this state that is certified by the International Guide Dog Federation or a successor entity, as determined by the Board, personnel from that school may provide, in this state, any follow-up services to that individual with respect to the specific guide dog for whom training or instruction was originally provided outside of this state.
- 3) Requires personnel from the school to notify the Board on a specified form within not less than three business days, prior to the time the personnel arrives in this state of their intent to provide follow-up services, the Board must accept the form in an electronic format, and the name of the individual receiving services is not required to be provided.
- 4) States that if follow-up services are to be provided due to emergency circumstances, as determined by the school, notification may be provided within 24 hours after the personnel arrive in this state; and, specifies that emergency services include, but are not limited to, injury to a dog that requires determination as to whether it remains safe for the dog to continue working, an accident involving the dog, or certain sudden changes in behavior that imperil the safety of the handler.
- 5) Permits the Board to refuse to allow personnel to provide follow-up services if the personnel have committed any specified acts.
- 6) Subjects the personnel to the disciplinary jurisdiction of the Board including a citation or fine, during the time follow-up services are provided, as specified.
- 7) Requires the Board to prepare a fact sheet that contains the following:
  - a) A description of the purposes served by the Board;
  - b) A description of the Board's role in assisting guide dog users who are victims of alleged guide dog discrimination; and,
  - c) A description of the Board's arbitration procedures, as specified.
- 8) Requires the Board to post the factsheet on its website and provide copies to each licensed guide dog school, and requires each school to provide a copy of the factsheet to every student receiving training from that school.

**FISCAL EFFECT:** According to the Senate Committee on Appropriations, pursuant to Senate Rule 28.8, this bill will result in negligible state costs.

**COMMENTS:**

**Purpose.** This bill is sponsored by the California Council of the Blind. According to the author, "Highly trained guide dogs are vital companions for people who are blind or visually impaired. They partner with a guide dog to help them move about safely and independently. This bill seeks to improve services for those who partner with guide dogs by making a number of reforms to the Board that oversees licensing of the services dogs, which is called the state Board of Guide Dogs for the Blind. The proposed reforms include a requirement to increase representation in board membership of persons who use guide dogs, as well as provisions to improve outreach and educational efforts to make the public more aware of the board's functions and services. The bill also allows an out-of-state school to provide limited follow-up services in California, if the school provided the original training to the California resident and dog, is certified by the International Guide Dog Federation and notifies the state Guide Dog Board that they are providing follow-up services in California. The bill authorizes the Board to refuse any personnel who have committed certain violations of law and gives the board full disciplinary authority to act if a consumer is negatively impacted by an out-of-state school providing such services. To date, there had never been an adverse incident of follow-up care by an out of state school. California is the only state in the nation that requires mandatory licensing of guide dog schools and instructors. Out-of-state guide dogs schools throughout the nation receive certification by the International Guide Dog Federation."

**Background.** *The Board.* The Board was established in January 1, 1948 for the specific purpose of providing well-trained guide dogs to blind persons and training blind persons as guide dog consumers. The Board licenses: 1) guide dog schools 2) guide dog instructors, and 3) fundraising programs to open new guide dog schools. (BPC Sections 7200.5, 7210.6). The Board inspects all schools, requires new active guide dog instructors to take a legally defensible written and practical examination, and requires instructors to submit proof of eight hours of continuing education each year to remain licensed. California is the only State that has such a regulatory program. The Board's licensing population includes approximately 100 licensees and three California schools.

BPC Section 7200(a) specifies that the composition of the Board is to include seven members, all of whom are appointed by the Governor. One appointee must be the Director of Rehabilitation or his designated representative and the remaining members must include persons who have shown an interest in dealing with persons who are blind or visually impaired; two of which must be blind or visually impaired persons who use guide dogs. The author notes that the Board's current composition does not include an adequate representation of the two consumer advocacy groups whose missions are to help blind individuals gain full independence and equality. In order to address this issue, this bill will change the composition of the Board to require at least three members, instead of two, who represent the legally blind or visually impaired community. Two of those appointees must be a representative from each of the two major consumer organizations representing Californians who are legally blind. Although this bill does not specify the organization, the author notes that the California Council of the Blind and the National Federation of the Blind would presumably be the entities whose representation would be included.

*Out of State Follow-up Services.* California is the only state to license and regulate guide dog instructors and guide dog schools. As such, there may be instances when a California resident will seek guide dog training services from an unlicensed school outside of California. There are a limited number of guide dog schools across the country, and while three are licensed in California, there are a few schools outside of the state that have chosen not to obtain California

licensure. The issue arises when a California resident who obtained training from one of those out-of-state schools seeks to obtain follow-up instruction from the unlicensed school or instructor who provided the original services outside of California. Current law does not prohibit California-based residents from obtaining services from unlicensed schools or instructors outside of California. Currently, as noted on the Board's website, follow-up services or formal instruction with a client is prohibited in California without a license.

During the Board's 2013 sunset review, the committee staff background paper raised the issue of unlicensed instructors from outside of California providing follow-up services in California. In the *2013 Committee Staff Background Paper*, it was noted, "Because California is the only state that regulates guide dog schools, instructors, and fundraisers, some out-of-state guide dog schools and instructors who do not have the ability to get licenses in their home states have expressed concern that they are unable to provide guide dog training services in California without applying for a California license. The Board has clarified through regulations that "instruction," which can only be conducted by a licensed provider, includes follow-up instruction. Some guide dog users have questioned the validity of a law that prohibits unlicensed follow-up instruction in this state. As no other state licenses guide dog instructors, there is no reciprocity to establish mechanisms like practice privilege. However, individuals who meet the criteria laid out in BPC Section 7209, Qualifications for Examination as Instructor, may become licensed instructors in California even if their own training and experience occurred outside this state. The Board stated that it had not received any formal complaints from instructors or consumers, and that all feedback on this issue had been informal."

At that time, it was recommended in the *2013 Committee Staff Background Paper* that "the Committee is concerned that the Board should protect California consumers without unnecessarily restricting consumers' access to quality training services."

This bill seeks to create a pathway for those out-of-state schools and their personnel to provide follow-up services in California to individuals with respect to the specific guide dog for whom the training or instruction was initially provided outside of California. In order to provide those follow-up services, the unlicensed personnel must abide by the protocols established by this bill. In order for an unlicensed individual to provide the follow-up services, this bill will require the school to notify the Board no less than three days from the time the personnel arrive in California, and will allow the Board to refuse to allow the follow-up services if the personnel has violated BPC Section 7211.9 which includes, but is not limited to, making false statements or giving false information for a license or renewal, violating any rule or the Board, committing any acts which are grounds for denial, or being convicted of a felony or any other crime, as specified.

This bill will only permit those unlicensed school personnel to provide follow-up services if the school is certified by the International Guide Dog Federation or a successor agency. This bill also provides a mechanism for follow-up services to be provided on an emergency basis. This bill does not permit unlicensed guide dog training services to be provided in California in any other situation. In addition, this bill will require that the unlicensed personnel who are providing the follow-up services be subject to the disciplinary jurisdiction of the Board, which may include a citation or fine.

Currently, the Board's website provides information for consumers including reference material about licensees, consumer notifications, laws, link to a complaint form, Board member information, Board meeting schedule, and press releases, among others. The author notes that

guide dog handlers are often unaware of the Board, and those who do, are unclear about its purpose. In order to address the concern raised by the author, this bill will also require the Board to create a fact sheet and make it available on its website containing information about the purposes of the Board, its role in assisting guide dog users who are victims of alleged guide dog discrimination, and arbitration procedures relating to the resolution of disputes between guide dog users and guide dog schools relating to the continued physical custody and use of a guide dog. The Board is supposed to provide a copy of this fact sheet to each licensed school, and the schools will be required to provide the fact sheet to each student.

#### **ARGUMENTS IN SUPPORT:**

The California Council of the Blind writes in support, "This bill would provide that, with respect to an out-of-state school certified by the International Guide Dog Federation, a staff member of that school could come into California without a license from the Board solely to provide follow-up instruction for the guide dog handler who obtained his or her dog at the out-of-state school. It is not the intent of this bill to undermine the state licensing requirements, but merely to enable Californians who have chosen an out-of-state school and who need follow-up instruction often in emergency situations such as the dog having been attacked or been in an accident, to obtain that service."

#### **ARGUMENTS IN OPPOSITION:**

The Board of Guide Dogs for the Blind writes in opposition, "The Board feels strongly that the examination and licensure of instructors is the best way to ensure that consumers are protected. This bill allows unlicensed guide dog instruction in California and sets a precedent to allow unlicensed services by out-of-state providers in other markets. The Board continues to be very concerned with the use of the International Guide Dog Federation as a benchmark when its certification of a school is not a requirement to conduct business in any state and is fundamentally dissimilar from the Board's licensure process or its regulatory authority."

#### **POLICY ISSUES:**

In order to ensure that there is no consumer harm by permitting unlicensed personnel to provide follow-up services in California, the author should consider requiring the Board to report back to the appropriate policy committees of the Legislature, in four years, the number of consumer complaints and enforcement actions against unlicensed follow-up service providers.

#### **IMPLEMENTATION ISSUES:**

The author should consider amendments that 1) will require that personnel have fingerprints on file with the Board prior to providing follow-up services; 2) the Board has reasonable grounds for an investigation; and, 3) the out-of-state school provides information to the handler.

#### **AMENDMENTS:**

In response to the implementation issues noted above, the author should amend the bill as follows:

Page 4, Line 20, Strike out "services. The" and insert:

Services, so long as the investigation is conducted based upon reasonable grounds for determining that personnel may have provided substandard care.

(2) A. Except as provided in subparagraph B., prior to providing follow up services pursuant to paragraph (1), personnel shall have finger prints on file with the board.

B. Notwithstanding subparagraph A, if the follow up services are provided under emergency circumstances personnel shall have one business day after coming in to the state to meet the requirements of that subparagraph.

(3) Whenever follow up services are provided pursuant to paragraph (1) the out-of-state school shall provide written information to the guide dog handler concerning the provisions of this subdivision

**REGISTERED SUPPORT:**

California Council of the Blind (sponsor)

**REGISTERED OPPOSITION:**

California State Board of Guide Dogs for the Blind

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