

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 270(Mendoza) – As Amended June 14, 2016

*NOTE: This bill is double referred, and if passed out of this Committee, it will be referred to the Assembly Committee on Judiciary.*

**SENATE VOTE:** 29-9

**SUBJECT:** Court Reporters Board of California: civil actions: registered corporations

**SUMMARY:** Authorizes the Court Reporters Board of California (CRB) to bring a civil action, or request the Attorney General (AG) to bring an action in a superior court to enjoin any person or corporation, from arranging for court reporter services in this state without being registered with the CRB, as specified, and allows for specified penalties; requires, beginning January 1, 2018, any corporation organized under the laws of this state or under the laws of another state that arranges for the services of shorthand reporting to register with the CRB; requires the CRB to establish a registration process; authorizes the CRB to take disciplinary action against a registered corporation for acts of unprofessional conduct, as specified; requires a corporation to appoint an individual in this state to act as a designated representative and would require the designated representative to hold a valid certificate as a certified shorthand reporter in this state or to pass an examination administered by the CRB; and, authorizes the CRB to charge a fee for the registration of a corporation.

**EXISTING LAW:**

- 1) Provides for the regulation and certification of shorthand reporters by the CRB within the Department of Consumer Affairs (DCA). (Business and Professions Code (BPC) Section 8000, *et seq.*)
- 2) Prohibits a person from engaging in the practice of shorthand reporting, as specified, unless that person is the holder of a certificate in full force and effect issued by the CRB unless he or she is a salaried, full-time employee of any department or agency of the state who is employed as a hearing reporter. (BPC Section 8016)
- 3) Defines the "practice of shorthand reporting" as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court ordered hearing or arbitration or proceeding before any grand jury, referee, or court commissioner and the accurate transcription, thereof. (BPC Section 8017)
- 4) Specifies that nothing requires the use of a certified shorthand reporter when not otherwise required by law. (BPC Section 8017)
- 5) Except as specified, prohibits a person, firm or corporation from assuming or using the title "certified shorthand reported" or the abbreviation "C.S.R." or using any words or symbols indicating or tending to indicate that he, she, or it is certified. (BPC Section 8018)

- 6) Provides the CRB, in addition to its authority to conduct disciplinary proceedings, the authority to issue administrative citations or assess fines for the violation of any rules and regulations adopted by the CRB. (BPC Section 8027.5)
- 7) Defines a "shorthand reporting corporation" as a corporation which is authorized to render professional services, as specified in the Corporations Code (CORP) Section 13401, as long as that corporation and all of its shareholders, officers, directors, and employees rendering professional services who are certified shorthand reporters are in compliance with specified requirements in the Corporations Code. (BPC Section 8040)
- 8) Specifies that each director, shareholder, and officer of a shorthand reporting corporation must be a licensed shorthand reporter. (BPC Section 8044)
- 9) Prohibits a shorthand reporting corporation from doing or failing to do any act which would constitute unprofessional conduct under any statute, rule, or regulation which pertains to shorthand reporters or shorthand reporting. (BPC Section 8046)
- 10) Requires a shorthand reporting corporation in conducting its practice to observe and be bound by statutes, rules, and regulations to the same extent as a person holding a license. (BPC Sections 8046)
- 11) Requires every person under the jurisdiction of the CRB who holds a license or certificate, or temporary license or certificate, or business that renders professional services, namely shorthand reporting services, within the meaning of CORP Section 13401, to comply with professional standards of practice, as specified. (California Code of Regulations Title 16 (16 CCR) Section 2475)
- 12) Defines "professional services" to mean any type of professional service that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the BPC, the Chiropractic Act, or the Osteopathic Act. (CORP Section 13401(a))
- 13) Defines "foreign professional corporation" to mean a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the BPC for the performance of professional services by a foreign professional corporation. (CORP Section 13401(c))
- 14) Defines "professional corporation" to mean a corporation organized under the General Corporation Law, as specified, that is engaged in rendering professional services in a single profession, except as otherwise authorized, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the Osteopathic Medical Board of California, the Dental Board of California, the Dental Hygiene Committee of California, the California State Board of Pharmacy, the Veterinary Medical Board, the California Architects Board, the Court Reporters Board of California, the Board of Behavioral Sciences, the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, or the State Board of Optometry is not be required to obtain a certificate of registration in order to render those professional services. (CORP Section 13401(b))

**THIS BILL:**

- 1) Provides that on and after January 1, 2018, any corporation organized under the laws of this state or under the law of another state of the United States, that is qualified to do business in this state, may arrange for services of shorthand reporting in this state, without complying with specified requirements, if that corporation is registered with the CRB, as specified, and corporations registered with the CRB will be referred to as a "registered corporation."
- 2) Requires the CRB on and after January 1, 2018, to implement a registration process, as specified.
- 3) States that any law or regulation applicable to a licensee is also applicable to a registered corporation arranging for the services of shorthand reporting, as specified.
- 4) Considers a corporation or other entity to be arranging for the services of shorthand reporting in this state if it does any of the following:
  - a) Coordinates or performs any act that would otherwise constitute an obligation owed by a certified court reporter in the state to the parties in any reported proceeding;
  - b) Determines the amount billed to the parties in a proceeding for any court reporting services performed in this state;
  - c) Recruits a resident of this state to provide court reporting services or shorthand reporting services; or,
  - d) Performs any services related to the duties of a certified court reporter.
- 5) States that a corporation registration may be suspended, revoked, or denied and other disciplinary action may be imposed if the registered corporation or any of its officers, agents, or employees perform any act that constitutes unprofessional conduct when arranging for any services of shorthand reporting; and, specifies that unprofessional conduct includes, but is not limited to, an act contrary to the professional standards concerning confidentiality, impartiality, filing and retention of notes, the notification, availability, delivery, execution, and certification of transcripts, or any law related to the duties of a court reporter.
- 6) States that on and after January 1, 2018, it is unlawful for any corporation, whether foreign or domestic, to arrange for services of shorthand reporting, or to advertise or put out any sign, card, or other device that may indicate to the public that it is entitled to arrange for services of shorthand reporting without first registering with the CRB.
- 7) Requires a corporation registering with the CRB to file an application with the CRB on a form prescribed by the CRB.
- 8) Requires the application for registration to include, but not be limited to the following:
  - a) The federal identification number of the applicant;
  - b) The name of the individual who will be appointed as a designated representative of the applicant, and any other identifying information, as specified;

- c) Any required fee; and,
  - d) All information required to complete the application.
- 9) Requires on and after January 1, 2018, each registered corporation arranging for services of shorthand reporting to appoint an individual in this state to act as a designated representative, who may hold a valid certificate as a shorthand reporter or pass an examination administered by the CRB.
  - 10) Requires the CRB, by January 1, 2018, to administer an examination to determine whether a designated representative of a registered corporation understands the ethics and professional conduct required for the practice of court reporting in this state, the laws and regulations applicable to court reporting in this state, and the obligations owned by a certified court reporter in this state to the parties in any reported proceeding.
  - 11) Requires the CRB to issue a certificate to a designated representative.
  - 12) Authorizes the CRB to revoke the certification of a designated representative for any violation of the laws or regulations applicable to a licensee, if the certificate of an appointed designated representative is revoked, the registered corporation that appointed that designated representative is in violation.
  - 13) Permits the CRB, in addition to any other authority or remedy, to bring a civil action in a superior court to enjoin any person or corporation organized under the laws of this state or another state from arranging for court reporter services in this state without being registered with the CRB or without authorization to arrange for court reporter services, as specified, in this state, and permits the CRB to request the AG to bring an action.
  - 14) States that if a civil action is brought, the court, in addition to any other remedy authorized by law, must impose a penalty of not less than \$1,000 and no more than \$2,500 per day against the person or corporation rendering services without a license or authorization, and the court, in addition to any other restitution provided by law, may also order restitution and the return of any payments made to the person or corporation.
  - 15) Authorizes the court, in addition to any other authority or remedy, if an action is brought, to also enjoin a person or corporation from taking any action that would otherwise constitute a violation of any statute or regulation of the CRB pertaining to impartiality, including but not limited to violation of the professional standards of practice of the CRB, and provides that the court, in addition to any other penalty provided for by statute or regulation, may impose a penalty of up to \$2,500 and order restitution for any acts undertaken by any person or corporation rendering court reporter services in this state.
  - 16) Requires the court in determining the amount of the penalty referenced in 14) above, to take into consideration the frequency of the violations and the impact of those violations, as specified.
  - 17) Requires the court to award reasonable investigation and enforcement costs to the CRB or the AG if an injunction is granted, as specified, and also authorizes the court to award a portion of any unallocated penalties collected, as specified, to be used for future investigation and

enforcement, and requires any penalty awarded to the CRB to be deposited in the Court Reporter's Fund, which is subject to appropriation by the Legislature.

18) States that numbers 13)-17) above cannot be construed to change, limit, or alter any existing authority of the board, including existing injunctive authority.

19) Authorizes the CRB to establish a fee for a corporation to register with the CRB in a fixed amount not to exceed the reasonable regulatory cost of preparing and administering the registration process.

**FISCAL EFFECT:** According to the Senate Appropriations Committee Analysis dated May 18, 2015, this bill will result in "unknown additional CRB enforcement costs, dependent upon the number of complaints investigated and enforcement actions. If additional staff is needed, costs could be in the range of \$100,000 annually." This bill will also result in "unknown additional fine revenues, which are also dependent upon the number of successfully adjudicated cases. In addition, there could be reimbursements for enforcement and investigation costs that are awarded by the courts."

#### **COMMENTS:**

**Purpose.** This bill is sponsored by the California Court Reporters Association. According to the author, "[this bill] strengthens the authority of the CRB to regulate or prevent unlicensed individuals and corporations from unlawfully rendering court reporting services in California by issuing fines or injunctions for acts in violation of the CRB's professional and ethical rules for certified shorthand reporters.

Under current law, the CRB has limited authority to impose penalties on any court reporter or court reporting corporation that is rendering services without a court reporting license. However, for unlicensed entities, the CRB has had challenges in imposing fines for any violations. This has jeopardized the integrity of the court reporting profession and places at a disadvantage licensed businesses that provide court reporting services."

*Court Reporters Board.* The CRB is responsible for licensing and disciplining certified shorthand reporters. Certified shorthand reporters are responsible for reporting depositions in legal cases as well as court proceedings. Since 1972, the CRB has permitted the certification of individuals and at one time, the registration of shorthand reporting corporations. Currently, the CRB oversees approximately 7,000 certified shorthand reporters. The CRB establishes the educational requirements for certification including authorizing the minimal educational standards and approving schools. In order to qualify for licensure as a certified shorthand reporter, an individual must have a high school education, twelve months (or 1,400 hours) of full-time work experience related to making records of hearings, obtain a passing score on the California State Hearing Reporters Examination, and complete a course from an approved court-reporting school. Currently, in California, certified shorthand reporters work in two separate capacities: 1) as an "official reporter" who works as a court reporter employed by a state court, or 2) as a "freelance reporter" who is hired privately by court reporting businesses, firms, or attorneys to report depositions. Both official and freelance reporters are required to meet the same educational and examination qualifications. Currently, the CRB does not separately license or register court reporting corporations.

*Enforcement Authority.* In addition to the CRB's licensing function, the CRB is also tasked with enforcement-related activities for shorthand reporters who violate the practice act. BPC Section 8025 states that a certificate to practice as a shorthand reporter may be suspended, revoked, or denied, or other disciplinary action may be taken against a certificate holder for multiple reasons including the conviction of a misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter, fraud or misrepresentation in obtaining a certificate, unprofessional conduct, or loss or destruction of stenographic notes that prevents the production of a transcript, among others. In addition to the provisions of BPC Section 8025, the CRB specifies through regulation the professional standards of practice (16 CCR Section 2475) for professionals, which include acting without bias toward, or prejudice against, any parties and/or their attorneys; not entering into, arranging, or participating in a relationship that compromises the impartiality of the certified shorthand reporter, including but not limited to a relationship in which compensation for reporting services is based upon the outcome of the proceeding; and maintaining confidentiality of information, among others.

Under current law, the CRB has the authority to carry out its licensing and enforcement authority against any person or corporation, as defined in CORP Section 13401. According to the author, the CRB has limited authority to impose penalties on any court reporter or court reporting corporation that is rendering services without a court reporting license. While the CRB does not register or certify corporations in California, BPC Sections 8044 and 8046 provide the CRB with the explicit authority over corporations incorporated in California because each director, shareholder, and officer of a shorthand reporting corporation is required to be a licensed shorthand reporter; however, the same authority is not specified in statute for foreign corporations providing or arranging for court reporting business in California. This bill aims to increase the CRB's disciplinary reach to include those entities or corporations who may be arranging for shorthand reporting services by permitting the CRB to discipline entities who are in violation of professional standards as regulated by the CRB, or other violations of the practice act, and by establishing a certification process for corporations who are arranging for shorthand reporting services, but where each director, shareholder, or officer is not a California licensed shorthand reporter.

*Scope of Practice.* BPC Section 8017 defines shorthand reporting as the making by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner, and the accurate transcript thereof.

16 CCR Section 2403 further specifies that the practice of shorthand reporting includes services for actions in superior court such as delivering a copy of the original transcript in a computer-readable form, as specified, labeling disks of transactions with the case name and court number, and the dates of the proceedings contained on the disk, among others. For a deposition, 16 CCR Section 2403 includes making a full or partial copy of a transcription available, notifying all parties who attended a deposition of requests made by other parties for either an original copy of the transcript, or any portion thereof, and securely sealing the transcript in an envelope or package, as specified.

This bill does not alter the current practice of shorthand reporting; however, this bill requires corporations who arrange for shorthand reporting services, which may include some of the activities contained within the shorthand reporters' scope of practice, to register with the CRB.

*Professional Corporations and The Moscone-Knox Professional Corporation Act (Act)*. BPC Section 8044 specifies that each director, shareholder, and officer of a shorthand reporting corporation must be a licensed shorthand reporter. Business models for shorthand reporting corporations and other service providers vary throughout the state. While there are a number of licensee-owned corporations in California, there are a number of businesses that do not hold themselves out to be court reporting corporations. These corporations claim to be litigation service providers that only arrange for court reporting services, but are not actually responsible for the making of the written record.

There are several other regulatory entities under the DCA that have established some form of registration or a licensure programs for both foreign and domestic corporations. Those entities include the Board of Pharmacy, the Bureau of Real Estate Appraisers, and the Contractors State License Board, among others.

According to the author, the need for this bill is in response to the CRB's inability to take the appropriate disciplinary actions against a corporation who was accused of operating in violation of the CRB's professional standards of practice; specifically, 16 CCR Section 2475(b)(8) which prohibits any person or business under the jurisdiction of the CRB from either directly or indirectly giving or receiving any gift, incentive, reward, or anything of value to or from any person or entity associated with a proceeding being reported that is more than \$100.

*Court Reporters Board of California v. U.S. Legal Support, Inc., 1-11-CV197817*. In 2010, the CRB took disciplinary action against a corporation, charging it with violating 16 CCR Section 2475(b)(8) by issuing a citation and fine. The corporation argued that the CRB lacked the jurisdictional authority to issue a citation to the company, and did not pay the fine.

As a result, a formal case was brought against U.S. Legal Support, Inc. in 2012. The court held that the CRB lacked the jurisdictional authority to issue citations and fines to an out-of-state corporation rendering court reporting services in California without authorization to do so. As the court noted in its decision, although U.S. Legal Services, Inc. was rendering court reporting services in California and was in violation of the gift giving rules as defined in the CRB's regulations, there was no explicit authority in statute authorizing CRB to impose citations or fines because the corporation was not authorized to do business in California under the BPC. In addition to other legal remedies, this bill will authorize the CRB, under this new section, to bring an action or request the AG to bring an action to enjoin any unlicensed or unauthorized person, or any domestic or foreign corporation from rendering court reporter services in this state and in doing so, seek certain penalties including fines and possibly restitution.

The issue of professional conduct was raised in the CRB's *2015 Sunset Review Report*. As noted in the Committee Background Paper, according to the CRB, additional complaints have been received about overcharging for court transcripts, a violation of Government Code 69950 and is direct consumer harm; the overcharging of one party for transcripts is in practice cost-shifting, or akin to giving a large gift. This is a practice whereby a court reporting firm offers to charge the noticing party a nominal amount if the noticing party chooses to utilize the services of that firm. The costs of the transcripts are then shifted over to the defending attorney(s), who has no ability to choose the shorthand reporter and is essentially stuck with the bill presented in order to obtain a transcript. While the practice is not specifically illegal on its face, the CRB is concerned about the serious ethical considerations that arise out of this type of scenario. As a result, it is important

for the CRB to ensure that the same rules that apply to all licensees that serve to protect consumers are enforced against all entities that provide shorthand reporting services.

If a corporation is providing shorthand reporting services by way of contracting with or hiring California-licensed court reporters and violates the professional conduct standards, then this bill will specifically authorize the CRB to bring an action (or request the AG to bring an action) to enjoin a corporation, or corporation organized under another state, from rendering shorthand reporting services in California without ever being issued a license by the CRB or authorization to render court reporter services in California. In addition, this bill would authorize the CRB to collect specified penalties against corporations who may be in violation. This bill also seeks to establish a new registration process for corporations who arrange for the services of shorthand reporting in order to comply with the unprofessional conduct standards as specified through regulation.

**Current Related Legislation.** AB 2192 (Salas, Hill) of the current Legislative Session, extends the sunset date for the CRB and its executive officer. Although the bill does not address court reporting corporations, the issue was raised in the sunset review hearing on March 9, 2016. *STATUS: This bill is pending in the Senate Committee on Business and Professions.*

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

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

The California Court Reporters Association writes in support, "In response to last year's committee dialogue on this bill, SB 270 has been amended to also create a pathway for corporations to lawfully arrange for shorthand reporting services in the state. Specifically, this bill allows a corporation, either domestic or foreign, that is not headed by a licensee to register with the board before arranging for any shorthand reporting services in the state. This registration would ensure that the corporation is under the jurisdiction of the board and therefore must follow California law related to court reporting services."

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

Esquire Deposition Services, LLC, Magna Legal Services, U.S. Legal Support, Inc., Veritext Corp., and Litigation Services write in opposition, "As amended, [this bill] proposes a registration scheme for companies which 'arrange' for services of shorthand reporting in California. As drafted, this registration approach has many of the attributes of traditional licensing, but the language fails to answer basic licensing questions, such as which companies can and must register, and which activities will be subjected to regulation. There are basic terms which go undefined, transition questions not answered, an examination proposed with little detail, inaccurate descriptions of business entities and more. Read literally, the bill could require registration from an almost unlimited number of businesses."

#### **POLICY ISSUES:**



- 1) This bill seeks to create parity for licensee-owned shorthand reporting corporations and those corporations that are non-licensee owned to ensure that both types of corporations are subject to the same enforcement standards. Currently, the CRB can only take action against its licensees, which leaves shorthand reporting corporations exempt from CRB oversight. It is unclear if this bill solves the problem it is attempting to address.
- 2) BPC Section 8044 specifically requires that a shorthand reporting corporation is entirely controlled by a certified shorthand reporter or group of licensees. However, as currently drafted, it is unclear if all corporations owned by a licensee or not, would be required to register.
- 3) This bill permits a corporation to operate in California and requires it to register with the CRB if they are arranging for shorthand reporting services. As noted earlier, the scope of practice for a shorthand reporter may contain actions which may include merely arranging shorthand reporting services. However, the larger question of whether a corporation's action of arranging for shorthand reporting services is considered within the scope of practice of a certified shorthand reporter remains unanswered in this bill.

#### **IMPLEMENTATION ISSUES:**

- 1) This bill will prohibit a corporation, whether foreign or domestic, from arranging for shorthand reporting services without first registering with the CRB; and, as part of that registration process the corporation is required to appoint an individual in this state as a designated representative, which can be a licensee or a person who has passed a CRB-administered examination. As currently drafted, it is unclear what the enforcement process is for revoking, suspending or placing other probationary conditions upon a designate representative of a corporation (given they are not a licensee). If the designated representative forcibly or voluntarily leaves the corporation, can the corporation simply appoint a new representative and unprofessional conduct can continue? Additionally, if the corporation is found to have violated provisions of the practice act, is the designated representative the receiver of disciplinary action, if any? The author may wish to clarify how the designated representative can be disciplined.
- 2) As drafted, this bill refers only to court reporting corporations. It is unclear if the intent of the bill is address only corporations that provides shorthand reporting services to the courts. The author may wish to clarify if this bill is intending to capture all shorthand reporting corporations.

#### **AMENDMENTS:**

In response to concerns raised above, the author may wish to consider amending the bill to instead require all corporations to abide by the prohibition on gift giving as specified in 16 CCR Section 2475(b)(8), and other ethical guidelines as is required for all certified shorthand reporters, as follows:

- (a) Any domestic or foreign corporation that offers to arrange for or arranges for the services of shorthand reporting as defined in Section 8017, whether through an employee or an independent contractor, shall comply with all of the following:
  - (1) Act without bias toward or prejudice against any parties and their attorneys.

- (2) Not enter into, arrange, or participate in a relationship that compromises the impartiality of the certified shorthand reporter, including, but not limited to, a relationship in which compensation for reporting services is based upon the outcome of the proceeding.
- (3) (A) Except as specified in subparagraph (B), not directly or indirectly give or receive any gift, incentive, reward, or anything of value to or from any person or entity associated with a proceeding being reported, including, but not limited to, attorneys or an attorney's family members, employees of attorneys or an employee's family members, law firms as single entities, clients, witnesses, insurers, underwriters, or any agents or representatives thereof.
- (B) A corporation may:
  - (i) Receive compensation for the arrangement of shorthand reporting services
  - (ii) Give or receive items that do not exceed \$100 in the aggregate for any combination of items given or received per calendar year to or from an attorney or an attorney's family members, an employee of an attorney or an employee's family members, a law firm as a single entity, a client, a witness, an insurer, an underwriter, or any agent or representative thereof.
  - (iii) Provide services without charge or compensation for which the certified shorthand reporter reasonably expects to be reimbursed from the Transcript Reimbursement Fund, established in Section 8030.2, or otherwise for an indigent person as defined in Section 8030.4.
- (b) The board, the Director of Consumer Affairs, and the Attorney General have jurisdiction to enforce the provisions of this section.

**REGISTERED SUPPORT:**

California Court Reporters Association (sponsor)  
American Reporting Services, LLC  
Northern California Court Reporters Association  
The San Diego Superior Court Reporter Association

**REGISTERED OPPOSITION:**

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