California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

1020 N Street, Room 379
(916) 319-3301
FAX: (916) 319-3306

AGENDA

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

BILLS HEARD IN FILE ORDER

1.	AB 332 *	Lee	Rabies control data.
2.	AB 336	Cervantes	Contractors: workers' compensation insurance.
3.	AB 374	Haney	Cannabis: local control: cannabis consumption.
4.	AB 537	Berman	Short-term lodging: advertising: rates.
5.	AB 595	Essayli	Animal shelters: 72-hour public notice: euthanasia: study.
6.	AB 663	Haney	Pharmacy: mobile units.
7.	AB 765	Wood	Physicians and surgeons.
8.	AB 766	Ting	Cannabis: invoices: payment.
9.	AB 1021	Wicks	Controlled substances: rescheduling.
10.	AB 1070	Low	Physician assistants: physician supervision: exceptions.
11.	AB 1111	Pellerin	Cannabis: small producer event sales license.
12.	AB 1126 *	Lackey	Cannabis: citation and fine.
13.	AB 1171	Blanca Rubio	Cannabis: private right of action.
14.	AB 1369	Bauer-Kahan	Out-of-state physicians and surgeons: telehealth: license exemption.
15.	AB 1383	Ortega	Contractors: discipline: noncompliance with child support obligations.
16.	AB 1448	Wallis	Cannabis: enforcement by local jurisdictions.
17.	AB 1557 *	Flora	Pharmacy: electronic prescriptions.
18.	AB 1564 *	Low	Master of Divinity: physician and surgeon: title.
19.	AB 1616 *	Lackey	California Cannabis Tax Fund: Board of State and Community Corrections grants.
20.	AB 1703	Wendy Carrillo	State Athletic Commission: boxing.
21.	AB 1707	Pacheco	Health professionals and facilities: adverse actions based on another state's law.
22.	AB 1731 *	Santiago	CURES database: buprenorphine.

** Proposed Consent*

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 332 (Lee) – As Introduced January 30, 2023

SUBJECT: Rabies control data.

SUMMARY: Requires the California Department of Public Health (CDPH) to collect specified data from public animal shelters as part of their annual rabies control activities reporting.

EXISTING LAW:

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

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

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

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

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

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

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

   (FAC § 32003)

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

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

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

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

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

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

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

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

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

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

13) Requires the governing body of each city, city and county, or county to maintain or provide for the maintenance of an animal shelter system and a rabies control program. (HSC § 121690(e)(1))

THIS BILL:

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

   a) Total number of dogs and cats licensed.

   b) Citations issued for dog and cat license violations.

   c) Number of public vaccination clinics held.

   d) Total number of dogs and cats vaccinated or licensed at public clinics.

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

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

g) Animal bite data deemed necessary by the department.

h) Animal rabies quarantine data deemed necessary by the department.

i) Any other data deemed necessary by the department.

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

COMMENTS:

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

> "The official state pet is the 'Shelter Pet.' AB 332 will help provide important data about shelter animals so that resources are better optimized to find more pets their forever homes. State, local jurisdictions, and nonprofits invest hundreds of millions of dollars in our shelter system to save animals' lives. Yet the data these entities rely on to direct these resources is no longer available. This transparency will ensure that the state and other entities are able to direct funding efficiently to shelters with the greatest need, while also giving policymakers a more complete picture of the pet overpopulation problem to make informed policy decisions."

Background.

Rabies Control Data Collection. The CDPH collects and analyzes data in order to monitor the prevalence and distribution of rabies in California and develop strategies to prevent and control its spread. The CDPH collects rabies control data through several mechanisms. Veterinarians, animal control agencies, and laboratories are required to report any suspected or confirmed cases of rabies to the CDPH. Additionally, the CDPH requires that all dogs over the age of four months be vaccinated against rabies and that the vaccination be kept up-to-date. Veterinarians are required to report rabies vaccination information to the CDPH, including the name and address of the owner, the date of vaccination, and the type of vaccine used. Health care providers, animal control agencies, and law enforcement are also required to report any animal bite incidents to the CDPH.

From 1995 through 2016, the CDPH requested a variety of data from city and county animal shelters as part of its annual rabies control activities reporting. Much of the data was considered useful to advocates and policymakers, who used the information to identify regions of the state where certain program support was needed to reduce euthanasia rates and other adverse outcomes for animals in shelters. The author argues that the data was particularly valuable for prioritizing funding.

However, the CDPH reduced the categories of data it collects from public animal shelters beginning in 2017, excluding information pertaining to animals received and discharged. The intent of this bill is to restore the collection of the data. This would include data specifically relating to dog and cat licensing, vaccinations, and certain dog bite and quarantine data. The CDPH would also be required to collect data on the number of domestic dogs and cats discharged by local animal control authorities, including, but not limited to, number reclaimed by owner, adopted, relinquished to a rescue organization, euthanized, died, or transferred to another shelter.

The author believes that by pinpointing geographically where the highest need and overpopulation exists, the CDPH will have a tool for local and state policymakers to manage existing resources. The information previously reported to the state provided helpful data and illustrated exactly where certain activities were taking place. By sharing the data with the CDPH, city and county shelters, along with their vast network of California's rescue community, are able to best appropriate their resources to areas in most need.

Current Related Legislation.

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

AB 1399 (Friedman) would expand the authority of a licensed veterinarian to practice through telehealth. T*his bill is pending in this committee.*

Prior Related Legislation.

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

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

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

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

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

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

ARGUMENTS IN SUPPORT:

This bill is supported by the **Social Compassion in Legislation** (SCIL). According to the SCIL: "AB 332 will give the state, local jurisdictions, and philanthropic organizations critical visibility into shelter needs to ensure funds are most effectively and efficiently targeted, while giving lawmakers a complete picture of animal intakes and outcomes by region as they propose legislative solutions."

This measure is also supported by the **Do Good International, Faith Action for All, Grassroots Coalition, Outta the Cage, Take Me Home, The Animal Rescue Mission, TippedEars, Vegan Flag,** and **Women United For Animal Welfare**. According to the groups listed above: "We write in support of AB 332 and to thank you for authoring this important legislation. The bill would require the Department of Public Health to resume collecting specified data, including intake figures and categories of outcomes such as adoptions and euthanasia, from public animal shelters as part of their annual rabies control activities reporting."

ARGUMENTS IN OPPOSITION:

None on file.

AMENDMENTS:

At the request of the author, narrow the scope of the bill by amending the proposed language in (e)(3) as follows:

(3) Rabies control program data collected shall include all of the following:

(A) Total number of dogs and cats licensed.

~~(B) Citations issued for dog and cat license violations.~~

~~(C)~~*(B)* Number of public ~~vaccination clinics held.~~ *rabies vaccinations administered.*

~~(D) Total number of dogs and cats vaccinated or licensed at public clinics.~~

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

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

~~(G) Animal bite data deemed necessary by the department.~~

~~(H) Animal rabies quarantine data deemed necessary by the department.~~

~~(I)~~*(E)* Any other data deemed necessary by the department.

REGISTERED SUPPORT:

Social Compassion in Legislation *(Sponsor)*
Compassionate Bay
Do Good International
Faith Action for All
Grassroots Coalition
Humane Decisions
In Defense of Animals
Los Angeles Alliance for Animals
Los Gatos Plant-based Advocates
Our Honor
Outta the Cage
Project Minnie
San Diego Humane Society and SCPA
Start Rescue
Take Me Home
The Animal Rescue Mission
Tippedears
Vegan Flag
Women United for Animal Welfare
128 Individuals

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 336 (Cervantes) – As Amended March 23, 2023

SUBJECT: Contractors: workers' compensation insurance.

SUMMARY: Requires contractors, at the time of license renewal, to report their workers' compensation insurance classification code or codes as a condition of licensure.

EXISTING LAW:

1) Establishes the Division of Labor Standards Enforcement, also known as the Labor Commissioner's Office, within the Department of Industrial Relations, which is required to enforce the state's labor laws. (Labor Code (LAB) §§ 79-107)

2) Requires an employer to carry workers' compensation insurance. (LAB §§ 3700-3709.5)

3) Establishes the Contractors' State License Board (CSLB or board) within the Department of Consumer Affairs (DCA) to license and regulate contractors and home improvement salespersons. (Business and Professions Code (BPC) §§ 7000-7191)

4) Requires the CSLB in consultation with the director of DCA to appoint a registrar of contractors (registrar) and sunsets the CSLB and its authority to appoint a registrar on January 1, 2025, as specified. (BPC § 7011)

5) Requires as a condition of initial licensure, reinstatement, reactivation, renewal, or continued maintenance of a license, that an applicant or licensee have on file at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance in the applicant's or licensee's business name. (BPC § 7125(a))

6) Exempts, until January 1, 2026, any applicant or licensee from the requirement to have on file at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance if they meet both of the following conditions:

   a) Has no employees and files a statement with the CSLB certifying that they do not employ any person in any manner subject to the workers' compensation laws or California; and

   b) Does not hold a C-8 (Concrete), C-20 (Heating, Ventilating, and Air Conditioning), C-22 (Asbestos Abatement), C-39 (Roofing), or D-49 (Tree Service) license, as specified. (BPC § 7125(a),(b))

7) Specifies that an applicant or licensee organized as a joint venture that has no employees is also exempt from the requirement to have on file at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, provided that the applicant or licensee files a statement with the CSLB certifying that they do not employ any person in any manner subject to the workers' compensation laws of California. (BPC § 7125(c))

8) Specifies that a Certificate of Workers' Compensation Insurance, Certification of Self-insurance, or exemption certificate is not required of a holder of an inactive license. (BPC § 7125(d))

9) Requires a Certificate of Workers' Compensation Insurance to be issued and filed, electronically or otherwise, by an insurer duly licensed to write workers' compensation insurance in this state. (BPC § 7125(a))

10) Requires a Certification of Self-Insurance to be issued and filed by the Director of Industrial Relations. (BPC § 7125(a))

11) Requires an insurer, including the State Compensation Insurance Fund, to report to the registrar the name, license number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if applicable (BPC § 7125(e)(1)).

12) Requires a workers' compensation insurer to report to the registrar a licensee whose workers' compensation insurance policy is canceled by the insurer if specified conditions are met. (BPC § 7125(e)(2))

13) States that willful or deliberate disregard and violation of workers' compensation insurance laws constitutes a cause for disciplinary action by the registrar against the licensee. (BPC § 7125(e)(3))

14) Requires the registrar, until January 1, 2026, to remove from any license that is active and includes a C-39 classification in addition to any other classification to remove the C-39 classification from the license unless a valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance is received by the registrar. (BPC § 7125(f)(1))

15) Requires, until January 1, 2026, automatic suspension of a license held by a licensee who has had a C-39 classification removed and is found by the registrar to have employees and to lack a valid Certificate of Workers Compensation Insurance or Certification of Self-Insurance (BPC § 7125(f)(2)).

16) Requires the registrar, from July 1, 2023, until January 1, 2026, to remove from any license that is active and includes a C-8 (Concrete), C-20 (Heating, Ventilating, and Air Conditioning), C-22 (Asbestos Abatement), or D-49 (Tree Service) classification, in addition to any other classification, to remove the C-8 (Concrete), C-20 (Heating, Ventilating, and Air Conditioning), C-22 (Asbestos Abatement), or D-49 (Tree Service) classification unless a valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance is received by the registrar. (BPC § 7125(g)(1))

17) Requires the registrar, from July 1, 2023, until January 1, 2026, to automatic suspension of a license held by a licensee who has had a C-8 (Concrete), C-20 (Heating, Ventilating, and Air Conditioning), C-22 (Asbestos Abatement), or D-49 (Tree Service) classification removed and is found by the registrar to have employees and to lack a valid Certificate of Workers Compensation Insurance or Certification of Self-Insurance (BPC § 7125(g)(2)).

18) Requires the registrar to accept a Certificate of Workers Compensation Insurance or Certification of Self-Insurance as of the effective date shown on the certificate, if the Certificate of Workers Compensation Insurance or Certification of Self-Insurance is received

by the registrar within 90 days after that date, and shall reinstate the license to which the Certificate of Workers Compensation Insurance or Certification of Self-Insurance pertains, if otherwise eligible, retroactive to the effective date of the Certificate of Workers Compensation Insurance or Certification of Self-Insurance, unless the failure to have a Certificate of Workers Compensation Insurance or Certification of Self-Insurance on file was due to the circumstances beyond the control of the licensee. (BPC § 7125.1)

19) Specifies that the failure of a licensee to obtain or maintain worker's compensation insurance coverage, if required, shall result in the automatic suspension of the license, effective upon the earlier of either of the following:

    a) On the date that the relevant workers' compensation insurance coverage lapses.

    b) On the date that workers' compensation coverage is required to be obtained.

    (BPC § 7125.2(a))

20) Requires the registrar to provide to a licensee whose license is suspended a notice with specified information. (BPC § 7125.2(b))

21) Specifies that a license may be reinstated at any time following the suspension by showing proof of compliance. (BPC § 7125.2(c))

22) Authorizes the registrar to issue a citation to an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the Contractors State License Law for failure to comply and to maintain workers' compensation insurance.

23) Specifies that the filing of an exemption certificate for workers' compensation that is false, or the employment of a person subject to coverage under the workers' compensation laws after the filing of an exemption certificate without first filing a Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, or the employment of a person subject to coverage requirements without maintaining coverage is cause for disciplinary action, as specified. (BPC § 7125.4(a))

24) Specifies that any qualifier for a license who is responsible for assuring that a licensee complies with the Contractors State License Law is also guilty of a misdemeanor for committing or failing to prevent the commission of any of the acts that are cause for disciplinary action. (BPC § 7125.4(b))

25) Requires all active licensees with an exemption for workers' compensation insurance on file with the board to recertify the licensee's exemption by completing a recertification statement on the license renewal form, as provided by the board, or provide a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, whichever is applicable. (BPC § 7125.5(a))

26) Specifies that a license shall not be renewed unless a licensee with an exemption for workers' compensation insurance on file with the board recertified the exemption status or provides a current and valid Certificate of Workers' Compensation Insurance of Certification of Self-Insurance in conjunction with the license renewal. (BPC § 7125.5 (b))

27) Specifies that if a licensee completes a recertification statement on the license renewal form, as provided by the board, or provides a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, within 30 days after notification by the board of the renewal rejection, the registrar shall grant a retroactive renewal back to the date of the postmark of the otherwise acceptable renewal. (BPC § 7125.5(c))

28) Specifies that a renewal that is still incomplete for any reason after 30 days after notification of rejection is not eligible for retroactive renewal. (BPC § 7125.5(c))

29) Specifies that any licensee, or agent or officer thereof, or any unlicensed individual acting as a contractor, who violates, or omits to comply with, any of the provisions above is guilty of a misdemeanor. (BPC § 7127)

THIS BILL:

1) Repeals and recasts, with nonsubstantive changes, the following provisions of existing law on July 1, 2024:

    a) A requirement for a renewing licensee with an exemption from workers' compensation insurance on file with the board to either recertify the licensee's exemption by completing a recertification statement on the license renewal form, as provided by the board, or provide a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, whichever is applicable.

    b) A prohibition on CSLB renewing a license unless the licensee complies with the recertification requirements.

    c) A requirement for the registrar to grant retroactive renewal back to the date of the postmark of the otherwise acceptable renewal if the required documentation and information is not provided with the license renewal form but is received within 30 days after notification by the board of the renewal rejection.

    d) A declaration that a renewal that is still incomplete for any reason after 30 days after notification of rejection shall not be eligible for retroactive renewal.

2) Requires the following, beginning July 1, 2024:

    a) Requires, at the time of renewal, all active licensees who have on file a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, or who are required to provide those certificates, to additionally certify on the license renewal form the workers' compensation classification codes that are endorsed on the licensee's policy for the three classification codes for which the highest estimated payroll is reported on the policy. If the licensee has fewer than three classification codes reported on the policy, the licensee shall provide all the classification codes reported on the policy.

    b) Requires CSLB to include the classification code or codes provided by licensees on CSLB's website, as specified.

3) Makes various conforming changes.

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

COMMENTS:

Purpose. This bill is sponsored by the *District Council of Iron Workers of California*. According to the author:

> Current law does not require the Contractors State License Board (CSLB) to publicly post which of three workers' compensation classifications their licensee contractors are in. This lack of transparency incentivizes intentional misclassification by unscrupulous contractors so they can purchase workers' compensation insurance that is not appropriate for the kind of work that their employees do. This could provide these bad actors with a competitive advantage over contractors who play by the rules. [This bill] will require all contractor licensees to report to the CLSB their workers' compensation classification code as a condition of licensure. It will also require CSLB to post each licensee contractor's classification code on its website. This will ensure that licensee contractors provide their employees with the proper level of workers' compensation insurance, and create a level playing field for contractors that no longer rewards bad actors.

Background.

Contractors and the CSLB. The board was established in 1929 to regulate the construction industry in California and to protect consumers from unscrupulous contractors.[1] It is responsible for implementing and enforcing the Contractors State License Law and related regulations pertaining to the licensure, practice, and discipline of the construction industry in California. Notably, the law requires, in part, that any person or business that constructs or alters, or offers to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California be licensed by CSLB if the total cost of labor and materials for one or more contracts on the project is $500 or more.[2]

CSLB issues licenses to sole proprietors and legal business entities such as a partnership, corporation, limited liability company, or joint venture.[3] Every license is required to have a qualifying individual (also referred to as a "qualifier") who is the person listed in CSLB records that satisfies the experience and examination requirements for a license.[4]

CSLB issues four (4) license types: "A" General Engineering Contractor; "B" General Building Contractor; "B-2" Residential Remodeling Contractor; and "C" Specialty Contractor of which there are 42 specialty contractor classifications (e.g., electrical, drywall, painting, plumbing, roofing, and fencing).[5] Certain license holders are eligible to additionally obtain an asbestos or

---

[1] Contractors State License Board. (n.d.). *History and Background*. Contractors State License Board. Retrieved April 2, 2023, from https://www.cslb.ca.gov/About_Us/History_and_BackGround.aspx
[2] BPC § 7027.2
[3] Contractors State License Board. (2018, December). *Contractors State License Board Sunset Review*. Contractors State License Board. Retrieved April 2, 2023, from https://www.cslb.ca.gov/Resources/Reports/Sunset/SunsetReviewReport2018.pdf
[4] Ibid.
[5] Contractors State License Board. (n.d.). *CSLB Licensing Classifications*. Contractors State License Board. Retrieved April 2, 2023, from https://www.cslb.ca.gov/About_Us/Library/Licensing_Classifications/

hazardous substance removal certification issued by CSLB.[6] As of March 1, 2023, there are 285,179 licensed contractors and 27,904 registered home improvement salespersons.

Workers' Compensation Insurance. California law requires employers to have workers' compensation insurance. Workers' compensation insurance provides essential benefits for employees who get injured or sick because of work, including medical care, temporary disability benefits, permanent disability benefits, supplemental job displacement benefits and a return-to-work supplement, and death benefits.[7] As a condition of licensure by CSLB, applicants and active licensees must have workers' compensation insurance unless 1) they do not have any employees and file a statement with the board attesting to that fact, and 2) are not a C-8 (Concrete), C-20 (Heating, Ventilating, and Air Conditioning), C-22 (Asbestos Abatement), C-39 (Roofing), or D-49 (Tree Service) license holder.[8] These specialty contractor license holders are currently required to carry workers' compensation insurance regardless of whether they have any employees. Beginning January 1, 2026, every licensee other than those that are joint ventures will be required to have workers' compensation insurance even if they do not have any employees.[9] Inactive license holders are not required to have workers' compensation insurance.[10] Willful or deliberate disregard and violation of workers' compensation insurance laws constitutes a cause for disciplinary action against the licensee.[11]

Employers have the option to buy workers' compensation insurance from a licensed insurance company or through the State Compensation Insurance Fund.[12] Employers may choose to insure themselves, but doing so requires state approval, a net worth of $5 million minimum, a net income of $500,000 annually, and the posting of a security deposit.[13]

The state does not regulate workers' compensation insurance premium rates. The Workers' Compensation Insurance Rating Bureau (WCIRB) recommends rates, and insurance companies must disclose their rates to the California Department of Insurance (CDI), but rates can vary among insurance companies.[14] Annual premiums are determined by a variety of factors, including industry classification.[15]

Classification codes for specific occupations, industries, or businesses are assigned by WCIRB and approved by the Insurance Commissioner.[16] Insurance companies have to option to create

---

[6] Ibid.
[7] Contractors State License Board. (n.d.). *Workers' Compensation Requirements*. Contractors State License Board. Retrieved April 2, 2023, from https://www.cslb.ca.gov/contractors/maintain_license/workers_compensation.aspx
[8] BPC § 7125(a)(b)
[9] Ibid.
[10] BPC § 7125(d)
[11] BPC § 7125(e)(3)
[12] California Department of Insurance. (n.d.). *Workers Compensation*. California Department of Insurance. Retrieved April 2, 2023, from http://www.insurance.ca.gov/01-consumers/105-type/95-guides/09-comm/WorkersCompensation.cfm#howisworkerscompensationinsurance
[13] Department of Industrial Relations. (2023, March). *Answers to frequently asked questions about workers' compensation for employers*. Department of Industrial Relations. Retrieved April 2, 2023, from https://www.dir.ca.gov/dwc/faqs.html
[14] Ibid.
[15] Ibid.
[16] California Department of Insurance. (n.d.). *Workers Compensation*. California Department of Insurance. Retrieved April 2, 2023, from http://www.insurance.ca.gov/01-consumers/105-type/95-guides/09-comm/WorkersCompensation.cfm#howisworkerscompensationinsurance

their own classification system and submit it to CDI for approval, but typically use the WCIRB's classifications. Insurance companies do, however, assign a specific rate to each classification code, subject to approval by the Insurance Commissioner. The classification codes and related rates are used to calculate the base rate of the workers' compensation insurance premium.[17]

Insurance companies are currently required to provide CSLB with specific information about an applicant's or licensee's workers' compensation insurance policy, including the name, license number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if applicable.[18] This information is available on CSLB's website.

Applicants and licensees who are required to have workers' compensation insurance are required to have on file with CSLB at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance.[19] Current law requires a Certificate of Workers' Compensation Insurance to be issued and filed by an insurer duly licensed to write workers' compensation insurance in this state and a Certification of Self-Insurance to be issued and filed by the Department of Industrial Relations.[20]

This bill would require licensed contractors to provide their workers' compensation insurance classification codes at the time of license renewal. The author and sponsors contend that this bill will level the playing field between contractors and reduce workers' compensation insurance fraud, thereby protecting construction workers in California, approximately 67.4% of whom identify as Hispanic, according to American Community Survey data from 2021.[21] The author and sponsors have

Prior Related Legislation.

AB 2894 (Cooper) of 2022 was substantially similar to this bill. *Held on the Senate Appropriations Committee Suspense File.*

SB 216 (Dodd), Chapter 978, Statutes of 2022, required asbestos abatement contractors; concrete contractors; heating, ventilation, and air conditioning (HVAC) contractors; and tree service contractors to have workers' compensation insurance regardless of whether they have employees until January 1, 2026, at which time all contractors are required to have workers' compensation insurance regardless of whether they have employees.

SB 1064 (Newman) Chapter 190, Statutes of 2022, prohibited the Structural Pest Control Board from issuing, reinstating, or continuing to maintain any company registration unless the applicant or existing company has filed a current and valid Certificate of Workers' Compensation Insurance with the Structural Pest Control Board.

---

[17] Ibid.
[18] BPC § 7125(e)(1)
[19] BPC § 7125(a)
[20] Ibid.
[21] United States Census Bureau. (n.d.). *2021 American Community Survey Sex by Occupation for the Civilian Employed Population 16 Years and Over (Hispanic or Latino)*. United States Census Bureau. Retrieved April 2, 2023, from https://data.census.gov/table?t=Occupation%3ARace%2Band%2BEthnicity&g=010XX00US_040XX00US06&tid=ACSDT1Y2021.B24010I

AB 2705 (Holden) Chapter 323, Statutes of 2018, subjected an unlicensed person acting as a contractor to the existing criminal penalties that apply to licensed contractors for not securing the required workers' compensation insurance and made this crime subject to the same two-year statute of limitations as for licensees.

AB 996 (Cunningham and Brough) of 2018 would have required the CSLB to adopt an enhancement feature on its website to allow consumers to monitor the status and progress of a workers' compensation certification, as specified, and view the time elapsed from when the CSLB received the certification until a final disposition has been approved. *Held on the Senate Appropriations Committee Suspense File.*

*SB 560 (Monning), Chapter 389, Statutes of 201*5, authorized CSLB special investigators to issue a written notice to appear (NTA) to individuals who fail to secure workers' compensation insurance. (An NTA is a court order mandating an individual's presence at a hearing to answer to a misdemeanor charge.)

AB 878 (Berryhill), Chapter 686, Statutes of 2011, required a workers' compensation insurer to report to the CSLB a licensed contractor whose insurance policy it cancels, as specified.

AB 397 (Monning) Chapter 546, Statutes of 2011, required a licensed contractor with an exemption for workers' compensation insurance to recertify the exemption upon license renewal or provide proof of workers' compensation insurance coverage.

AB 881 (Emmerson and Sharon Runner), Chapter 38, Statutes of 2006, required all licensed roofers to have workers' compensation insurance, authorized the Registrar to remove the roofing classification from a contractor license for failure to maintain workers' compensation insurance, and required insurers who issue workers' compensation policies to roofing contractors to perform annual audits of these policyholders.

ARGUMENTS IN SUPPORT:

According to the *State Building and Construction Trades Council of California*:

> Unfortunately, some unscrupulous contractors do not purchase the appropriate workers' compensation policies for the type of work they are performing. This allows for unfair competition as law-abiding contractors carry the burden of this unfunded liability on the workers' compensation program and put in jeopardy the ability of a worker to be properly compensated if an injury or illness at work debilitates them and takes them off the job. Listing the classification code alongside the CSLB license number and the policy number will help prevent fraud and stress on the workers' compensation system and ensure that workers know that contractors hiring them have their interests in mind.

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

Enforcement of Insurance Fraud. The author, sponsor, and supporters of this bill contend that unscrupulous contractors do not purchase the appropriate workers' compensation policies for the type of work they do. In an effort to curb that unlawful practice, this bill would require CSLB to collect a licensee's workers' compensation insurance classification codes at the time of license renewal. Although workers' compensation insurance is a condition for licensure for those contractors who have employees—and soon to be all contractors regardless of the number of employees—CSLB is not responsible for enforcing the state's labor laws and therefore does not verify that contractors have an appropriate workers' compensation insurance policy for the work that their employees do. Consequently, this bill is unlikely to affect enforcement. Any reduction in insurance fraud is likely to be contingent upon any deterrent effect created by this bill.

Usefulness to consumers. Although this bill would make licensees' workers' compensation insurance classification codes available to consumers by posting them online, this additional information is not likely to be helpful to the average consumer with limited knowledge of the construction industry, workers' compensation insurance, or industry-specific classification codes. The following are examples of workers' compensation insurance classification codes:

- 5467 – "GLAZIERS — away from shop — employees whose regular hourly wage does not equal or exceed $36.00 per hour"
- 5474(3) – "PAINTING — water, oil or gasoline storage tanks — including shop, yard or storage operations — employees whose regular hourly wage does not equal or exceed $31.00 per hour"
- 5484 – "PLASTERING OR STUCCO WORK — employees whose regular hourly wage does not equal or exceed $36.00 per hour"[22]

IMPLEMENTATION ISSUES:

Liability for CSLB. This bill would require CSLB to post workers' compensation insurance classification codes self-reported by licensees on its website even though CSLB cannot verify that the classification codes have been reported correctly or that the appropriate classification codes were used to obtain workers' compensation insurance in the first place. As a result, CSLB may be held responsible for posting incorrect information (i.e., classification codes) that it cannot verify.

Clarity. This bill would, on July 1, 2024, repeal BPC § 7125.5 and reinstate that section with its current provisions, along with the new requirements for CSLB. The reason for this is to allow the existing law to persist until the new requirements take effect. However, the existing provisions are not being amended, and the new requirements are unrelated to the provisions in BPC § 7125.5. Therefore, it may be clearer to create a new section, rather than repeal existing provisions that are not being amended.

---

[22] Workers' Compensation Insurance Rating Bureau of California. (n.d.). *Classification Search*. WCIRB California. Retrieved April 5, 2023, from https://www.wcirb.com/class-search?search_api_views_fulltext=&search_api_aggregation_3=Construction%2Band%2BErection&Submit=Submit

AMENDMENTS:

This bill should be amended as follows to do all of the following:

1) Relocate the proposed new requirements in a new section, and reword various provisions for clarity.

2) Clarify that CSLB is not responsible for verifying or investigating the accuracy of classification codes provided by licensees.

3) Clarify that CSLB shall not be held liable for posting on its website any classification codes that are misreported by licensees.

SECTION 1. Section 7125.5 of the Business and Professions Code is amended to read:

7125.5. (a) At the time of renewal, an active licensee with an exemption for workers' compensation insurance on file with the board, submitted pursuant to subdivision (b) of Section 7125, shall either recertify the licensee's exemption by completing a recertification statement on the license renewal form, as provided by the board, or shall provide a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, whichever is applicable.

(b) The license shall not be renewed unless a licensee with an exemption for workers' compensation insurance on file with the board recertifies the exemption status or provides a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance in conjunction with the license renewal.

(c) If the documentation required by subdivision (a) is not provided with the license renewal form but is received within 30 days after notification by the board of the renewal rejection, the registrar shall grant a retroactive renewal pursuant to Section 7141.5 back to the date of the postmark of the otherwise acceptable renewal. A renewal that is still incomplete for any reason after 30 days after notification of rejection shall not be eligible for retroactive renewal under this subdivision.

~~(d) This section shall remain in effect only until July 1, 2024, and as of that date is repealed.~~

~~**SEC. 2.** Section 7125.5 is added to the Business and Professions Code, to read:~~

~~**7125.5.** (a) At the time of renewal, an active licensee with an exemption for workers' compensation insurance on file with the board, submitted pursuant to this article, shall either recertify the licensee's exemption by completing a recertification statement on the license renewal form, as provided by the board, or shall provide a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, whichever is applicable.~~

~~(b) At the time of renewal, all active licensees who have on file a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, or who are required to provide those certificates pursuant to subdivision (a), shall certify on the license renewal form the workers' compensation classification code or codes developed by the Workers' Compensation Insurance Rating Bureau or otherwise approved by the Insurance Commissioner, endorsed on the licensee's policy for the three classification codes for which the highest estimated payroll is~~

~~reported on the policy. If the licensee has fewer than three classification codes reported on the policy, the licensee shall provide all the classification codes reported on the policy.~~

~~(c) (1) Except as provided in subdivision (b), a license shall not be renewed unless the licensee complies with this section.~~

~~(2) If the documentation and information required by subdivisions (a) and (b) is not provided with the license renewal form but is received within 30 days after notification by the board of the renewal rejection, the registrar shall grant a retroactive renewal pursuant to Section 7141.5 back to the date of the postmark of the otherwise acceptable renewal. A renewal that is still incomplete for any reason after 30 days after notification of rejection shall not be eligible for retroactive renewal under this subdivision.~~

~~(d) When the board updates the public license detail on its internet website for an active renewal submitted by a licensee pursuant to this section, the update shall include the classification code or codes certified by the licensee pursuant to subdivision (b).~~

~~(e) This section shall become operative on July 1, 2024.~~

SEC. 2. Section 7125.6 is added to the Business and Professions Code, to read:

*(a)**(1)** At the time of renewal, all active licensees who have on file a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, or who are required to provide those certificates pursuant to subdivision (a) **of Business and Professions Code § 7125**, shall certify on the license renewal form the **three** workers' compensation **insurance classification** ~~code or~~ **codes** ~~developed by the Workers' Compensation Insurance Rating Bureau or otherwise approve by the Insurance Commissioner, endorsed on the licensee's policy for the three classification codes~~ for which the highest estimated payroll is reported on the licensee's workers' compensation insurance policy. If the licensee has fewer than three classification codes reported on the policy, the licensee shall provide ~~at all~~ **every** classification code~~s~~ reported on the policy.*

(2) The board shall not be required to verify or investigate the accuracy of the licensee's classification code or codes.

(b)(1) Except as provided in paragraph (2), a license shall not be renewed unless the licensee complies with this section.

*(2) If the documentation and information required by subdivision (a) is not provided with the license renewal form but is received within 30 days after notification by the board of the renewal rejection, the registrar shall grant a retroactive renewal pursuant to Section 7141.5 back to the date of the postmark of the otherwise acceptable renewal. A renewal that is still incomplete for any reason ~~after~~ **more** than 30 days after notification of rejection shall not be eligible for retroactive renewal under this subdivision.*

*(c)**(1)** When the board updates the public license detail on its internet website for an active renewal submitted by a licensee pursuant to this section, the update shall include the classification code or codes certified by the licensee pursuant to subdivision (b).*

(2) The board shall not be held liable for any classification code or codes misreported by a licensee.

(d) This section shall become operative on July 1, 2024.

REGISTERED SUPPORT:

District Council of Iron Workers of the State of California *(Sponsor)*
American Subcontractors Association of California
California Labor Federation
International Union of Operating Engineers, California-Nevada Conference
State Building and Construction Trades Council of California

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 374 (Haney) – As Introduced February 1, 2023

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

SUBJECT: Cannabis: local control: cannabis consumption.

SUMMARY: Authorizes local jurisdictions to allow cannabis retailers to conduct business activities unrelated to cannabis on their premises, including, but not limited to, non-cannabis food and beverage sales and live musical or other performances.

EXISTING LAW:

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

2) Establishes the Department of Cannabis Control (Department) within the Business, Consumer Services, and Housing Agency (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) Provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness. (BPC § 26050)

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

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

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

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

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

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

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

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

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

   (BPC § 26200(g))

THIS BILL:

1) Authorizes a local jurisdiction to allow a licensed cannabis retailer or microbusiness to conduct any other business activities on its premises in addition to consuming cannabis or cannabis products, with the exception of selling alcohol or tobacco.

2) Specifically authorizes a local jurisdiction to allow a licensed cannabis retailer or microbusiness to sell non-cannabis-infused food and nonalcoholic beverages on its premises.

3) Specifically authorizes a local jurisdiction to allow a licensed cannabis retailer or microbusiness to allow for, and sell tickets for, live musical or other performances.

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

COMMENTS:

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

> "California is known worldwide as the birthplace of cannabis culture—but California's small cannabis businesses are struggling. Issues like over-saturation, high taxes, and the thriving black market are hurting cannabis businesses who follow the rules and pay taxes. California's decade of medical marijuana-only policies has led to pharmacy-like cannabis 'dispensaries' that encourages customers to buy cannabis and leave. Other cities, like Amsterdam, are known for their social, community style cannabis cafés. While consuming cannabis on-site is technically legal in California, selling non-cannabis-infused products is not. AB 374 legalizes cannabis cafes by allowing the sale of non-cannabis food and soft drink, allowing small cannabis retailers to diversify their business and move away from the limiting dispensary model."

Background.

Brief History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. This regulatory scheme was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program. After several years of lawful cannabis cultivation and

consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis's continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. Threat of action by the federal government created apprehension within California's cannabis community.

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

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

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

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

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

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

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

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

However, MAUCRSA law does not expressly allow for licensees to sell non-cannabis food or beverages within a consumption lounge. The law also does not speak to the legality of selling tickets to performances held on the premises. However, Section 15407 in the Department's regulations states: "In addition to cannabis goods, a licensed retailer may sell only cannabis accessories and the branded merchandise of any licensee."[1] This regulation historically prohibited cannabis retailers from selling food or beverages not infused with cannabis, including on the premises of a consumption lounge.

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

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

---

[1] Identical language was previously included in regulations promulgated by the Bureau of Cannabis Control.

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

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

Current Related Legislation. SB 285 (Allen) would authorize a local jurisdiction to allow for the preparation or sale of noncannabis food or beverage products by a cannabis retailer in the area where the consumption of cannabis is allowed. *This bill is pending in the Senate Committee on Business, Professions and Economic Development.*

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

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

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

ARGUMENTS IN SUPPORT:

The **California Nightlife Association** is sponsoring this bill, writing: "Allowing cannabis lounges the commonsense option to sell food and beverage that isn't 'prepackaged' and giving them flexibility to provide entertainment will give a much-needed lifeline to legal cannabis retailers who are struggling mightily to survive in the industry. Additionally, this bill will give our communities new, exciting opportunities to offer arts and entertainment in spaces where it was previously impossible to do so economically."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

As drafted, this bill would not be limited to the sales of non-cannabis food and beverages and tickets to live performances. The language of the bill explicitly says that its provisions are "not limited to" the explicitly provided examples of authorized activity. If the intent of the author is specifically to allow for consumption lounges to prepare and/or serve non-cannabis food and beverages, and to allow for live performances to occur on site with the option of selling tickets to those performances, the author may wish to amend the bill to more narrowly address those commercial activities.

AMENDMENTS:

To narrow the bill to specifically authorize the sale of non-cannabis food and beverages and ticketed live performances on the premises of a consumption lounge, the proposed paragraph (2) of subdivision (g) in the bill should be amended as follows:

(2) In exercising its authority under paragraph (1), a local jurisdiction may allow the retailer or microbusiness to conduct the following business activities on the premises in addition to ~~other than~~ the smoking, vaporizing, and ingesting of cannabis or cannabis products~~, including, but not limited to, any of the following~~:

(A) ~~Selling non-cannabis infused food.~~ Preparing or selling noncannabis food or beverage products in compliance with all applicable provisions of the California Retail Food Code (Chapter 1 (commencing with Section 113700) of Part 7 of Division 104 of the Health and Safety Code) by a retailer or microbusiness licensed under this division in the area where the consumption of cannabis is allowed.

(B) ~~Selling nonalcoholic beverages.~~

~~(C)~~ Allowing, and selling tickets for, live musical or other performances.

REGISTERED SUPPORT:

California Nightlife Association *(Sponsor)*
California Cannabis Industry Association
California NORML
Greater Los Angeles Hospitality Association
Harvest Law
Lompoc Valley Cannabis Association, Santa Barbara County
San Francisco Cannabis Retailers Association
The Parent Company
United Cannabis Business Association

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 537 (Berman) – As Introduced February 8, 2023

SUBJECT: Short-term lodging: advertising: rates.

SUMMARY: Prohibits a place of short-term lodging, as defined, from advertising or offering a room rate that does not include all taxes and fees required to book or reserve the short-term lodging.

EXISTING LAW:

1) Establishes the Unfair Competition Law, which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Business and Professions Code (BPC) § 17200 et seq.)

2) Consumer Legal Remedies Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result, or which results in, the sale or lease of goods or services to any consumer. (Civil Code § 1750 et seq.)

3) Provides remedies for individuals who have suffered damages as a result of fraud or deceit, including situations involving fraudulent misrepresentations. (Civil Code §§ 1709-1710, 1572-1573.)

4) Establishes the False Advertising Law, which makes it a crime for a person or a firm, corporation, or association or any employee thereof, to engage in specified false or misleading practices, punishable by imprisonment in county jail for up to six months and a fine not to exceed $2,500. (BPC §§ 17500-17509)

5) Defines "room rate" as rates at which rooms or other accommodations are rented to occupants. (BPC § 17561)

THIS BILL:

1) Specifies that a place of short-term lodging shall not advertise or offer a room rate, as defined, that does not include all taxes and fees required to book or reserve the short-term lodging.

2) Prohibits a website, application, or other similar centralized online platform whereby rental of a place of short-term lodging is advertised or offered, from advertising or offering a room rate, as defined, that does not include all taxes and fees required to book or reserve the short-term lodging.

3) Defines "short-term lodging" to mean any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment. Specifies that "short-term lodging" also includes a short-term rental or a residential property that is rented to a visitor for fewer than 30 days

through a centralized online platform whereby the rental is advertised or offered and payments for the rental are securely processed.

4) Establishes that an entity that knowingly violates this section shall be subject to a civil penalty not exceeding $10,000 for each violation.

5) Authorizes an action to enforce this section to be brought by a city attorney, district attorney, or the Attorney General.

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

COMMENTS:

Purpose. This bill is sponsored by the *Consumer Federation of California*. According to the author:

> Over the last few years, deceptive advertising in the short-term lodging industry has significantly increased with mandatory fees not being disclosed in advance. We have all experienced it. A consumer goes to a website, enters the dates of their stay, picks a room for a certain price, and then at the last minute fees are tacked on once most consumers have committed to the property. Worse yet, there are times when the fee is not disclosed until you arrive at your destination or even as you are leaving. It is time to take action on behalf of consumers and crack down on these hidden fees. [This bill] would prohibit hidden fees by ensuring that the advertised or offered cost of the stay be disclosed in the upfront price. Consumers should know what they are getting and the complete price when they decide when and where they want to travel.

Background.

Junk Fees. In 2022, the Biden Administration announced that it would seek to end the prolific imposition of "junk fees"—hidden fees, charges, and add-ons for goods and services—that increase costs for consumers.[1] The following are examples of junk fees:

- Fraudulent fees such as those charged for a bank account that was advertised as having no fees;
- Exploitative or predatory fees such as bank overdraft fees and termination fees that often take advantage of consumers who are economically vulnerable or locked into the product or service;
- Surprise fees that consumers do not expect such as surprise hospital bills from out-of-network doctors at an in-network hospital and family seating fees charged by airlines if parents want to ensure that they are seated with their children; and
- Mandatory fees such as processing fees or resort fees that are tacked on to the price of the goods or services at checkout.[2]

---

[1] Deese, B., Mahoney, N., & Wu, T. (2022, October 26). *The President's Initiative on Junk Fees and Related Pricing Practices*. The White House. Retrieved April 8, 2023, from https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/

[2] Ibid.

The practice of advertising low prices and then adding mandatory fees to the total in the final stages of a purchase is known as "drip pricing" and has been found to cause consumers to underestimate the total price and spend more than they planned.[3] One study indicated that drip pricing led consumers to spend more than they would if businesses were required to provide pricing inclusive of all fees.[4]

Resort Fees. Estimates indicate that junk fees account for billions of dollars in revenue in many industries. Bjorn Hanson, PhD, an adjunct professor at the NYU School of Professional Studies Jonathan M. Tisch Center for Hospitality and Tourism, estimated that hotel resort fees would generate $2.93 billion in 2018.[5] Resort fees are per-room, per-night, mandatory fees charged by some hotels and are intended to cover the cost of resort amenities such as swimming pools and gyms.[6] [7] Forbes Magazine reports that a 2022 OTA Insight analysis for the American Hotel and Lodging Association indicated that approximately 6 percent of hotels charge resort fees at an average cost of $26 per day, an amount cheaper than if consumers were required to pay for amenities individually.[8] [9] NerdWallet found the average resort fee to be $42.41 per night (roughly 10.76% of the room's overall nightly cost) of the more than 100 U.S. hotels that it analyzed with January 2023 check-in dates.[10]

The current policy debate on resort fees centers on the disclosure of the fees themselves. Consumers and advocacy groups argue that the fees are deceptive and misleading because they are not included in the basic room rate, but hotels and lodging groups contend that the industry is transparent about the fees it charges by breaking them out separately to provide clarity and disclosing the amount prior to completing a reservation or booking.[11] Hotels and lodging groups have also indicated that resort fees help lower the commission fees they pay to online travel agents.[12]

From 2012 to 2013, the FTC issued 45 warning letters to several hotel chains and online travel agents for not adequately disclosing resort fees on reservation websites, noting that such

---

[3] Ibid.
[4] Ibid.
[5] Bjorn Hanson. (2018, August 27). *U.S. Lodging Industry Fees and Surcharges Forecast to Increase to a New Record Level in 2018 – $2.93 Billion, and Another Record Anticipated for 2019 – the Newest Emerging Category is "Resort Fees" for Urban Luxury and Full Service Hotels*. Bjorn Hanson, LLC. Retrieved April 8, 2023, from https://bjornhansonhospitality.com/fees-%26-surcharges
[6] Sullivan, M. W. (2017, January). *Economic Analysis of Hotel Resort Fees*. Federal Trade Commission. Retrieved April 8, 2023, from https://www.ftc.gov/reports/economic-analysis-hotel-resort-fees
[7] Braverman, B. (2019, May 29). *Avoid sneaky hotel fees on your next vacation*. Consumer Reports. Retrieved April 8, 2023, from https://www.consumerreports.org/fees-billing/how-to-avoid-sneaky-hotel-fees/
[8] American Hotel and Lodging Association. (n.d.). Get the Facts on Mandatory Resort Fees . American Hotel and Lodging Association.
[9] Goldstein, M. (2023, February 21). *Biden takes on hotel industry, calls resort fees 'junk'*. Forbes. Retrieved April 8, 2023, from https://www.forbes.com/sites/michaelgoldstein/2023/02/21/did-president-biden-just-take-on-the-hotel-industry-over-resort-fees/?sh=51f15cd77ee7
[10] French, S. (2023, March 19). *Americans prefer to know hotel costs upfront - fees and all*. NerdWallet. Retrieved April 8, 2023, from https://www.nerdwallet.com/article/travel/americans-prefer-to-know-hotel-costs-upfront-fees-and-all
[11] Sullivan, M. W. (2017, January). *Economic Analysis of Hotel Resort Fees*. Federal Trade Commission. Retrieved April 8, 2023, from https://www.ftc.gov/reports/economic-analysis-hotel-resort-fees
[12] Ibid.

practices may be considered deceptive marketing and in violation of federal law.[13] In those letters, the FTC wrote: "We believe that online hotel reservation sites should include in the quoted total price any unavoidable and mandatory fees, such as resort fees, that consumers will be charged to stay at the hotel. While a hotel site may break down the components of the reservation estimate (e.g., room rate, estimated taxes, and any mandatory, unavoidable fees), the most prominent figure for consumers should be the total inclusive estimate."[14] Several years later, Consumer Reports followed up with the hotels and online travel agencies that were sent warning letters by the FTC and found that none of the 31 hotels that still charge hotel fees include those fees in the initial prices advertised to consumers.[15] According to Consumer Reports, "the hotels show only the base cost of the room on the first pricing page, without including additional mandatory charges, though some mentioned the existence of fees in small print or via a hyperlink, [but] Customers have to make multiple clicks to arrive at a checkout page to see the total costs, including fees."[16]

Recent Legal Action. In 2019, the Attorney General for Nebraska filed a lawsuit against Hilton, alleging that the hotel chain hid the true price of hotel rooms, failed to clearly disclose all booking fees, and misled consumers on what resort fees actually pay for.[17] A similar lawsuit was filed by the Attorney General for the District of Columbia against Marriott, adding to the allegations that the chain also misrepresented resort fees as imposed by the government, by labeling them "taxes and fees."[18] In the press release announcing the lawsuit, the District of Columbia Attorney General indicates that the effort "follows an investigation into the hotel industry's pricing practices by the Attorneys General in all 50 states."[19]

This bill would prohibit a place of short-term lodging from advertising a room rate that does not include all of the taxes and fees required to be paid in order to book or reserve the short-term lodging. Moreover, this bill would apply the same price transparency standards it enacts on hotels to online travel agents (e.g., Expedia), short-term rental platforms (e.g., AirBnb), and other online aggregators (e.g. Google). Specifically, the bill would apply to any internet website, application, or other similar centralized online platform on which a rental of a place of short-term lodging is advertised, even if the website, application, or platform does not facilitate any reservations or bookings. The author contends that while all Californians would benefit from greater price transparency, this bill would be particularly impactful for low-income Californians who are most impacted by junk fees.

---

[13] Engle, M. K. (2012-2013). WARNING LETTER. Washington, DC; United States Federal Trade Commission. Retrieved April 8, 2023, from https://www.ftc.gov/system/files/documents/foia_requests/2016-00453_warning_letters_93_pgs.pdf

[14] Ibid.

[15] Wang, P. (2019, August 7). *The Sneaky Ways Hotels Are Hiding Their Resort Fees*. Consumer Reports. Retrieved April 8, 2023, from https://www.consumerreports.org/fees-billing/the-sneaky-ways-hotels-are-hiding-their-resort-fees/

[16] Ibid.

[17] Nebraska Attorney General. (2019, July 23). AG Peterson Sues Hilton on Behalf of Nebraska Consumers. *Nebraska Attorney General*. Retrieved April 8, 2023, from https://ago.nebraska.gov/news/ag-peterson-sues-hilton-behalf-nebraska-consumers

[18] Office of the Attorney General for the District of Columbia. (2019, July 9). AG Racine Sues Marriott for Charging Deceptive Resort Fees and Misleading Tens of Thousands of District Consumers. *Office of the Attorney General for the District of Columbia*. Retrieved April 8, 2023, from https://oag.dc.gov/release/ag-racine-sues-marriott-charging-deceptive-resort

[19] Ibid.

Current Related Legislation.

SB 683 (Glazer) would require advertised rates for hotel rooms or short-term rentals to include all mandatory fees, as defined, that a consumer will be charged in order for the consumer to stay in the hotel room or short-term rental. The bill would require a hotel or short-term rental to clearly and conspicuously disclose on its website a list of all mandatory fees and credit card surcharges imposed on consumers. Additionally, the bill would authorize certain public attorneys to bring an enforcement action and would require a court to impose a civil penalty of not more than $10,000 for each violation. *SB 683 is pending in the Senate Judiciary Committee.*

SB 478 (Dodd) would make unlawful advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges other than taxes imposed by a government. *SB 478 is pending in the Senate Judiciary Committee.*

AB 8 (Friedman) would impose various disclosure requirements on ticket sellers relating to ticket price, including that the ticket seller display the total cost and fees for a ticket prior to the ticket being selected for purchase. *AB 8 is pending in the Assembly Arts, Entertainment, Sports, and Tourism Committee.*

Prior Related Legislation.

AB 3235 (Chu) of 2020 was substantially similar to this bill, with notable differences. The bill did not require local or state taxes to be included in the advertised rates; prohibited a place of short-term lodging from advertising a room rate that does not include all of the required fees needed to stay there once specific dates are chosen by a consumer; and stated that the bill's requirements to include all mandatory fees in advertising were intended to clarify existing law. *This bill failed passage in the Assembly Business and Professions Committee.*

ARGUMENTS IN SUPPORT:

The *Consumer Federation of California*, the sponsor of this bill, writes in support:

> Some 85% of Americans have had direct experience in one form or another with hidden or junk fees. These fees are deceptive, infuriating, and unnecessary. That's why President Biden and some leading Republicans agree that combating these junk fees is important.
>
> Deceptive advertising in the lodging industry has increased over the last few years, with many hotels, motels, and short-term rentals not disclosing hidden fees up front. Across the U.S., hotels generated approximately $3 billion from mandatory fees in 2018 alone, an 8.5% increase compared to 2017.1 Some hotels and alternatives to lodging establishments charge separate mandatory "resort fees" or "cleaning fees" but fail to disclose them until very late in the booking process or at final "checkout" as a way to manipulate internet searches by consumers. In some cases a cleaning fee can equal, or even exceed, the nightly rate and is not included in the advertised rate until a consumer goes to book the rental. Multiple states (Nebraska, Pennsylvania) and jurisdictions (DC) have taken legal action on a bipartisan basis against resort fees.
>
> […]

> As these deceptive practices continue to grow across the state and country, California should stand up for consumers and ensure that lodging establishments are disclosing their entire cost upfront. Without this disclosure, consumers will continue to be deceived through these advertising practices. Consumers deserve to transparently know the full true price of their lodging options before making a purchasing decision.

ARGUMENTS IN OPPOSITION:

The *California Chamber of Commerce* writes in opposition to this bill:

> For hotels and STRs, there are a range of governmental taxes, fees, and assessments that are industry-wide and consumers should be aware are not necessarily the choice of the individual hotel or STR. For example, these include assessments related to improvement districts […]. However, [this bill] would hide that information from consumers – making it unclear what expenses were added by the Government or outside the control of the individual business.
>
> […]
>
> International and domestic travelers will weigh the price of staying in California and – if [this bill] is passed – will see prices that appear ***significantly*** higher than other states. Of course, this will be an illusory increase, because other states' displayed rates will not include their taxes and applicable fees. Consumers, however, will have no way to predict this, and might reasonably think that both states' prices do not include taxes (as this is standard across the vast majority of all goods in trade). As a result, California's apparently inflated pricing will potentially dissuade more tourists from visiting our great state – and thereby further slow the recovery of our embattled tourism industry.

IMPLEMENTATION ISSUES:

Price Differences Based on Travel Dates. This bill currently does not account for differences in price due to dates of travel or number of occupants. As a result, it would be difficult for businesses to comply given that room rate can very day to day. The author may wish to specify that a consumer must select specific dates before businesses are required to advertise room rates inclusive of all taxes and fees.

Clarity. As currently drafted, this bill specifies that a place of short-term lodging shall not advertise or offer a room rate that does not include all taxes and fees required to *book or reserve* the short-term lodging. Consumers often have the option to book or reserve short-term lodging without full payment. The author may wish to define "book or reserve" or use different terminology to ensure that consumers know the total cost of staying at the short-term lodging, not just the initial expense incurred when making the reservation or booking.

Enforcement. A violation of this bill would be enforceable by public attorneys, including a city attorney, district attorney, or the Attorney General. For parity, the author may wish to include county counsel.

AMENDMENTS:

1) At the author's request, amend the bill as follows, to specify that all taxes and fees must be included in the advertised room rate *once specific dates are chosen by a consumer*.

   On page 2, after line 3:

   (a) (1) A place of short-term lodging shall not advertise or offer a room rate, as defined in Section 17561, *if specific travel dates are selected,* that does not include all taxes and fees required to book or reserve the short-term lodging.

   On page 2, after line 9:

   (2) An internet website, application, or other similar centralized online platform whereby rental of a place of short-term lodging is advertised or offered, shall not advertise or offer a room rate, as defined in Section 17561, *if specific travel dates are selected,* that does not include all taxes and fees required to book or reserve the short-term lodging.

REGISTERED SUPPORT:

Consumer Federation of California *(sponsor)*
California Association of County Treasurers and Tax Collectors
California Public Interest Research Group
City of Santa Monica
Consumer Attorneys of California
Consumer Federation of America
Consumer Reports
Housing & Economic Right Advocates

REGISTERED OPPOSITION:

California Chamber of Commerce

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 595 (Essayli) – As Amended March 21, 2023

SUBJECT: Animal shelters: 72-hour public notice: euthanasia: study.

SUMMARY: Requires that all animal shelters provide public notice at least 72 hours before euthanizing any animal with information that includes the scheduled euthanasia date, and requires the Department of Food and Agriculture (CDFA) to conduct a study on animal shelter overcrowding and the feasibility of a statewide database for animals scheduled to be euthanized.

EXISTING LAW:

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

2) Requires that during the shelter's holding period and prior to adoption or euthanasia of a dog, a public or private shelter shall scan the dog for a microchip that identifies the owner of that dog and shall make reasonable efforts to contact the owner and notify them that their dog is impounded and is available for redemption. (FAC § 31108)

3) Requires that during the shelter's holding period and prior to adoption or euthanasia of a cat, a public or private shelter shall scan the cat for a microchip that identifies the owner of that cat and shall make reasonable efforts to contact the owner and notify them that their cat is impounded and is available for redemption. (FAC § 31752)

4) Requires all public animal shelters operated by societies for the prevention of cruelty to animals, and humane shelters that perform public animal control services, to provide the owners of lost animals and those who find lost animals with all of the following:

    a. Ability to list the animals they have lost or found on "Lost and Found" lists maintained by the animal shelter.

    b. Referrals to animals listed that may be the animals the owners or finders have lost or found.

    c. The telephone numbers and addresses of other animal shelters in the same vicinity.

    d. Advice as to means of publishing and disseminating information regarding lost animals.

    e. The telephone numbers and addresses of volunteer groups that may be of assistance in locating lost animals.

    (FAC § 32001)

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

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

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

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

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

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

    (FAC § 32003)

THIS BILL:

1) Requires an animal shelter to provide public notice on its website at least 72 hours before euthanizing an animal.

2) Requires the public notice provided by an animal shelter to include information that includes, but is not limited to, the date that an animal is scheduled to be euthanized.

3) Exempts an animal that is irremediably suffering from a serious illness or severe injury, newborn animals needing maternal care that were impounded without their mothers, and dogs with a history of vicious or dangerous behavior from the 72 hour notice requirement.

4) Defines "animal shelter" as a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter.

5) Requires the CDFA to conduct a study on the overcrowding of California's animal shelters, the ways in which the state might address animal shelter overcrowding, and the feasibility of a statewide database of dogs and cats that provides public notice and information at the statewide level about animals scheduled for euthanasia.

6) Requires the CDFA to submit a report on its study findings on or before January 1, 2026.

7) Provides that the statutes enacted by the bill shall be known and cited as Bowie's Law.

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

COMMENTS:

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

"Unfortunately, far too often, perfectly healthy, loving animals are euthanized before they have a chance to be adopted. Last year, an innocent puppy named Bowie was wrongfully euthanized, and AB 595 would have prevented this tragedy from occurring."

Background.

Efforts to Reduce Euthanasia at California Animal Shelters. The California State Assembly declared in 2015 that the official State Pet is the shelter pet. According to information provided by the ASCPA in 2019, approximately 6.5 million companion animals enter animal shelters in the United States every year. While animal shelters play a critical role in caring for homeless pets, the number of animals entering shelters each year often exceeds the available resources and capacity to care for them, resulting in overcrowding. One of the options that shelters may consider is euthanasia as a means of managing the number of animals in their care.

In 1998, the Legislature enacted Senate Bill 1785 by Senator Tom Hayden, which formally established that the State of California's policy is "that no adoptable animal should be euthanized if it can be adopted into a suitable home" and "that no treatable animal should be euthanized." The Hayden Law required shelters to hold animals for a minimum of four to six days before euthanizing them, giving owners a chance to reclaim their pets or allowing animals to be adopted. Key provisions in the Hayden Law to support that policy included requirements that animal shelters do all of the following:

- Work to increase the number of animals reunited with owners by increasing the holding period for sheltered animals.
- Establish minimum holding periods for all owner-relinquished animals.
- Postpone euthanasia for any animal until after the expiration of the minimum holding period, with exceptions only for injured or very sick.
- Release animals slated for euthanasia to rescue groups upon request.
- Provide prompt and necessary veterinary care, nutrition, and shelter.
- Maintain a system of record keeping essential for reuniting lost animals with owners, managing housing, and documenting holding times and medical care.

Despite the efforts resulting from enactment of the Hayden Law, however, euthanasia rates in California animal shelters has remained high. According to data from the California Department of Public Health, 165,213 dogs and cats were euthanized in 2020. While it should be noted that this number is meaningfully lower than in previous years, there has been a call for action to further reduce euthanasia rates in California.

Language enacted as part of the Budget Act of 2021 established the Animal Shelter Assistance Act. This legislation provided $50 million in competitive grants for outreach, regional conferences and resources on best practices for improving animal health and care in animal shelters, and in person assessments and training for local animal control agencies or shelters, societies for prevention of cruelty to animals, and humane societies. The Budget Act also required the University of California to submit a report by March 31, 2023 on the use of funds, activities supported, a list of grantees, and analysis of the programs impact.

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

In its report to the Legislature dated March 22, 2023, the University of California provided an overview of the state's efforts to reduce euthanasia within animal shelters. The report noted that "over 180,000 animals still lost their lives in animal shelters two decades after SB 1785 was enacted and this trend has recently accelerated." The University of California further explained:

> "Prior to the COVID-19 pandemic, programs were in place to help keep pets out of shelters, which included free and low-cost veterinary care, spay/neuter services, and supplies to keep pets in homes; however, the COVID-19 pandemic drastically reduced the availability of affordable and accessible spay/neuter services and growing economic hardship has led to an increase in animals brought to shelters. In particular, animal shelters are taking in puppies and large dogs at a rate that has not been seen in many years."

Bowie. In December of 2022, the *Los Angeles Times* reported that a terrier puppy named Bowie had been euthanized at an animal shelter in Baldwin Park, California. The article reported that Bowie had been at the shelter for more than three weeks, during which time he "exhibited extreme fear and fearful aggression." While Bowie was featured on the agency's website as available for rescue, the notice did not specifically mention that he would be euthanized if no one adopted him.

According to the *Times* article, a rescue group called Underdog Heroes reached out to the agency inquiring about adopting Bowie, but somehow the communication was not received or relayed to the appropriate individuals at the agency. Bowie was put down shortly thereafter, reportedly at the decision of one employee. This led to outcry among animal advocates, who believed that Bowie was unnecessarily euthanized due to inadequate efforts by the agency to find him a home.

Several weeks later, the Los Angeles County Board of Supervisors voted to order the agency to investigate the dog's death "in collaboration with rescue partners and animal welfare stakeholders." In addition, the Board of Supervisors voted approved a motion directing the Los Angeles County Department of Animal Care and Control Services to provide a five-year plan to reduce the number and percentage of animals who are euthanized.

The author of this bill introduced this bill in direct response to the incident that occurred in Los Angeles County, and has formally titled the legislation "Bowie's Law." The bill would require all animal shelters to provide public notice on their internet websites at least 72 hours before euthanizing any animal. That public notice would be required to include information that includes, but is not limited to, the date that an animal is scheduled to be euthanized. This bill would also require the CDFA to conduct a study on topics relating to the overcrowding of California's animal shelters and ways that the state might address animal shelter overcrowding. The bill specifically directs the CDFA to consider the feasibility of a statewide database of dogs and cats that provides public notice and information at the statewide level in the same manner that the bill would require at each individual animal shelter.

Ultimately, the effect of Bowie's Law would be a requirement that an animal shelter wait an additional 72 hours before euthanizing any animal, during which time it must provide public notice that includes the scheduled euthanasia date. This requirement would be in effect even if a pet had been generally advertised as available for adoption for weeks prior, as was the case with Bowie. The author believes that if the agency in Los Angeles had acted consistent with the requirements of this bill, Bowie would not have been unnecessarily euthanized.

Current Related Legislation. AB 332 (Lee) requires the California Department of Public Health to collect specified data from public animal shelters as part of their annual rabies control activities reporting. *This bill is pending in this committee.*

Prior Related Legislation. AB 1881 (Santiago) from 2022 would have required every public animal control agency, shelter, or rescue group to conspicuously post or provide a copy of a Dog and Cat Bill of Rights. *This bill died on the Senate Floor.*

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

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

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

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

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

ARGUMENTS IN SUPPORT:

This bill is supported by **Social Compassion in Legislation** (SCIL). According to SCIL: "As California's animal shelters continue to remain full of many adoptable animals, the need for predictable, systematic communication between the shelters and the public, including rescue organizations, is imperative." SCIL argues that "recognizing that some shelters will have to implement new procedures to comply with the provisions of AB 595, the requirement to post for at least 72 hours before euthanizing a dog or cat is a crucial step in bridging communication gaps between animal shelters and the public. This requirement will give rescues around the state and the general public the information and time they need to save as many animals as possible."

The **No Kill Advocacy Center** also supports this bill, writing: "When animal welfare organizations work collaboratively, more lives are saved, wasteful taxpayer expenditures are reduced, revenues for municipal and private shelters increase, and community economic and social benefits ensue. Shelters would not incur additional costs to implement AB 595 because notice can be done on an existing website and automated using freely-available shelter management software. Indeed, the bill will result in overall savings, as more animals are sent to nonprofit organizations, shifting the cost of care from taxpayer to private philanthropy and eliminating expenses associated with killing animals and disposing of their dead bodies."

ARGUMENTS IN OPPOSITION:

The **California Animal Welfare Association** and a coalition of 89 organizations representing animal care and control agencies, SPCAs, humane societies, rescues, and other animal welfare organizations has submitted a letter in opposition to this bill. The coalition letter states: "The practical effect of AB 595 is a mandate on additional holding times for animals in shelters. Already overcrowded and underfunded shelters will have to make significant changes to their current operations to meet the mandate – changes that will not lead to better lifesaving outcomes. AB 595 isn't just about "planning ahead" or being more transparent; it's about a one-size-fits-all mandate that will have negative consequences in many circumstances and communities. Unfortunately, shelters need to pivot quickly when intake outpaces space." The coalition argues that "shelter environments, regardless of how advanced the facility, are stressful. The ultimate goal for unclaimed animals is to move them out of the shelter as quickly as possible. Ideally this is through adoption or rescue transfers, but many shelters also have robust foster networks. It is also important to note that most shelters in California utilize every available opportunity to increase live outcomes and reduce unnecessary animal intake and euthanasia."

The **California State Association of Counties**, **Urban Counties of California**, **the League of California Cities**, and the **Rural County Representatives of California** also submitted a joint letter in opposition to this bill. The representatives of local government write: "AB 595 will require shelters to make significant changes to their current processes in ways that run counter to long-standing best practices in shelter management. Currently, shelters can operate at capacity and only end up euthanizing as a last resort in emergent situations. When shelters are presented with new animals they are statutorily required to admit, such as owned strays, victims of hoarding or animal abuse, or animals that require temporary safe keeping when owners are arrested or hospitalized, staff must find ways to make space for all of these animals within their limited capacity. In order to meet the 72-hour requirement in this bill, shelters may end up needing to euthanize animals sooner than they otherwise would have to ensure there is space to accommodate new animals when they arrive, which is obviously an undesirable outcome."

POLICY ISSUE(S) FOR CONSIDERATION:

Overinclusion of Animal Species. This bill would currently require animal shelters to provide the public notice at least 72 hours in advance of the scheduled euthanasia for "any animal." While dogs and cats are the most common animals held and potentially euthanized at animal shelters, opposition has noted that this bill would now also apply to "fighting cocks, snakes, horses, farm animals, Guinea pigs, hamsters, and in some cases, wildlife." This could potentially necessitate more problematic unanticipated space needs for shelters that are not equipped to hold those animals for 72 hours after determining that euthanasia is appropriate. The author may wish to narrow the bill to only certain species of animals—for example, "dogs, cats, and rabbits," which would be consistent with the state's ban on retail sales of specified animals.

Date of Euthanasia. The only specific information this bill currently requires be included in the 72-hour public notice is the date that the animal is scheduled to be euthanized. While alerting the public that an animal is slated to be put down can be an effective strategy when publishing a plea for adoption, it is not necessarily an appropriate tactic to require in every instance. The author may wish to consider amending the bill to instead simply require the public notice to indicate that the animal is subject to euthanasia and provide information about its availability for adoption.

Lack of Flexibility. This bill currently only provides for very limited exemptions to the 72-hour public notice rule. Animal shelters are not required to provide public notice for an animal irremediably suffering from a serious illness or severe injury, newborn animals that need maternal care and have been impounded without their mothers, or dogs with a history of vicious or dangerous behavior documented by the agency charged with enforcing state and local animal laws. However, there may be other circumstances where an animal shelter determines that providing the 72-hour public notice is not in the best interest of either the animal scheduled to be euthanized or the general animal population at the shelter. The author may wish to provide animal shelters with discretion to determine when this is the case and to provide public notice for less than 72 hours. The bill could potentially require an animal shelter to document the reason for providing less than 72 hours' notice for each instance where it utilizes this exemption, with that documentation available for inspection by the public.

Criminal Penalties. Currently, violations of this bill would be punishable as a misdemeanor. This is not due to specific language in the bill, but generally applicable language contained in Section 9 of the Food and Agricultural Code, which states that "unless a different penalty is expressly provided, a violation of any provision of this code is a misdemeanor." As the opposition has noted, it may not be appropriate to punish shelter employees as criminals for failing to comply with the provisions of this bill. The author may therefore wish to exempt this bill from the misdemeanor provision contained in Section 9.

AMENDMENTS:

1) Narrow the bill's 72-hour public notice requirement to apply only to dogs, cats, and rabbits.

2) Strike the requirement that an animal shelter's public notice include the date that an animal is scheduled to be euthanized and instead require that the notice indicate that the animal is subject to euthanasia and include information about the animal its availability for adoption.

3) Authorize an animal shelter to provide public notice for less than 72 hours if the animal shelter determines that doing so is in the best interest of the animal or the general animal population at the shelter.

4) Require an animal shelter that provides public notice for less than 72 hours to document the reason and keep it on file and available for public inspection for at least three years.

5) Provide that violations of the bill do not constitute a crime punishable as a misdemeanor.

REGISTERED SUPPORT:

No Kill Advocacy Center
Social Compassion in Legislation

REGISTERED OPPOSITION:

Amador County Animal Control
American Society for the Prevention of Cruelty to Animals
Animal Rescue Foundation
Animal Samaritans SPCA
Animal Shelter Assistance Program

Antioch Animal Services
Bakersfield SPCA
Barstow Humane Society
Berkeley-East Bay Humane Society
Best Friends Animal Society
Butte Humane Society
Calaveras County Animal Services
California Animal Welfare Association
California State Association of Counties
California Teamsters Public Affairs Council
Carmel Police Department Animal Control
Central California SPCA
Chula Vista Animal Services
City of Bakersfield Animal Control
City of Burbank Animal Shelter
City of Fontana
City of Gridley Animal Control Department
City of Lodi Animal Services
City of Norco Animal Control Services
City of Palo Alto Animal Services
City of Perris Animal Control
City of Rancho Cucamonga Animal Center
City of Roseville Police Department
City of Sacramento
City of San Jose
City of Shafter Animal Control Services
City of Shasta Lake Animal Shelter
City of Stockton Animal Services
Colusa County Sheriff's Animal Control Services
County of Kern
County of Monterey Health Department
County of Napa
County of San Luis Obispo Division of Animal Services
East Bay SPCA
Fresno Humane Animal Services
Friends of Colusa County Animal Shelter
Friends of the Alameda Animal Shelter
Friends of Upland Animal Shelter
Front Street Animal Shelter - City of Sacramento
Gimme Love Animal Shelter
Haven Humane Society
Hayward Animal Services Bureau
Hayward Animal Shelter
Hollister Animal Shelter
Humane Society of Imperial County
Humane Society of Sonoma County
Humane Society of Truckee-Tahoe
Humane Society of Ventura County
Humane Society Silicon Valley

Inland Valley Humane Society & SPCA
Kern County Animal Services
Lake County Animal Care and Control
League of California Cities
Madera County Animal Services
Madera County Animal Shelter
Marin Humane
Mendocino County Animal Care Services
Michelson Center for Public Policy
Napa County Animal Shelter
National Animal Care & Control Association
Nevada County Animal Control
Newport Beach Animal Control
North Bay Animal Services
Oakland Animal Services
Palm Springs Animal Control
Palo Alto Humane Society
Pasadena Humane Society
Peninsula Humane Society & SPCA
Placer County Animal Services
Placer SPCA
Rancho Coastal Humane Society
Ridgecrest Animal Shelter
Rural County Representatives of California
San Diego County Department of Animal Services
San Diego Humane Society
San Diego Humane Society and SPCA
San Francisco Animal Care and Control
San Francisco SPCA
San Gabriel Valley Humane Society
Santa Barbara Humane Society
Santa Cruz SPCA
SEAACA Animal Control
Solano County Animal Care Services
SPCA Monterey County
SPCA Los Angeles
Tulare Animal Services
Tuolumne County Animal Control
Urban Counties of California
Valley Humane Society
Ventura County Animal Services
Visalia Animal Services
Woods Humane Society
Yolo County Sheriff's Office Animal Services

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 663 (Haney) – As Introduced February 9, 2023

SUBJECT: Pharmacy: mobile units.

SUMMARY: Allows for any controlled substances approved for the treatment of opioid use disorder to be carried and dispensed at county-operated mobile pharmacy units.

EXISTING LAW:

1) Establishes the Board of Pharmacy (BOP) to administer and regulate the Pharmacy Law. (Business and Professions Code (BPC) §§ 4000 *et seq.*)

2) Defines "dispense" as the furnishing of drugs or devices upon a prescription from a physician, nurse practitioner, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor acting within the scope of their practice. (BPC § 4024)

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

4) Defines a "remote dispensing site pharmacy" as a licensed pharmacy located in California that is exclusively overseen and operated by a supervising pharmacy and staffed by one or more qualified registered pharmacy technicians, where pharmaceutical care services are remotely monitored or provided by a licensed pharmacist through the use of telepharmacy technology. (BPC § 4044.3)

5) Defines "telepharmacy" as a system that is used by a supervising pharmacy for the purpose of monitoring the dispensing of prescription drugs by a remote dispensing site pharmacy and provides for related drug regimen review and patient counseling by an electronic method. (BPC § 4044.7)

6) Authorizes the BOP to allow for the employment of a mobile pharmacy or clinic in areas impacted during a declared federal, state, or local emergency to ensure the continuity of patient care if certain conditions are met. (BPC § 4062(c))

7) Authorizes the BOP to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged, the mobile pharmacy is necessary to protect the health and safety of the public, and certain conditions are met. (BPC § 4110(c))

8) Allows for a county, city and county, or special hospital authority to operate a mobile unit operated as an extension of its pharmacy license to provide prescription medication within its jurisdiction to individuals without fixed addresses, individuals living in county-owned or city-and-county-owned housing facilities, and those enrolled in Medi-Cal plans operated by the county or a city and county, a health district, or a joint powers authority; allows a mobile unit to dispense prescription medication if all of the following requirements are met:

    a) A licensed pharmacist is on the premises and the mobile unit is under the control and management of a pharmacist while prescription medications are being dispensed.

b) All activities of the pharmacist, including the furnishing of medication by the pharmacist, are consistent with the Pharmacy Law.

c) If a physician is practicing in the mobile unit, all prescribing by the physician meets the requirements of the Medical Practice Act.

d) The mobile unit does not carry or dispense controlled substances.

e) Dangerous drugs shall not be left in the mobile unit during the hours that the mobile unit is not in operation.

f) At least 30 days prior to commencing operation of a mobile unit, a county, city and county, or special hospital authority shall notify the board of its intention to operate a mobile unit. Notice shall also be given to the BOP at least 30 days prior to discontinuing operation of a mobile unit.

(BPC § 4110.5)

THIS BILL:

1) Exempts controlled substances approved by the federal Food and Drug Administration (FDA) for the treatment of opioid use disorder from the prohibition against mobile units carrying or dispensing controlled substances.

2) Requires any controlled substance for the treatment of opioid use disorder that is carried or dispensed by a mobile unit to be carried in reasonable quantities based on prescription volume and stored securely in the mobile unit.

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

COMMENTS:

Purpose. This bill is sponsored by the **City and County of San Francisco**. According to the author:

> "We are currently in an opioid overdose crisis. The State needs to do everything possible to expand access to life saving treatment, including getting medication for opioid use disorder to communities that need it most. While local governments can operate mobile pharmacies to provide health care to communities that lack access to "brick and mortar" pharmacies, they cannot dispense medication for opioid use disorder. To provide those suffering with opioid use disorder access to effective treatment, AB 663 will allow local governments who operate mobile pharmacies to dispense medications for opioid use disorders."

Background.

Overview of the Opioid Crisis. Opioids are a class of drugs prescribed and administered by health professionals to manage pain. The term "opioid" is commonly used to describe both naturally occurring opiates derived from the opium poppy as well as their manufactured synthetics. Common examples of prescription opioids include oxycodone (OxyContin, Percocet); hydrocodone (Vicodin, Norco, Lorcet); codeine; and morphine. Heroin is also an opioid, but is ineligible for lawful prescription in the United States.

In addition to providing pain relief, opioids can be used as a cough suppressant, an antidiarrheal, a method of sedation, and a treatment for shortness of breath. The majority of pharmaceutical opioids are Schedule II drugs under the federal Controlled Substances Act, considered by the federal Drug Enforcement Administration (DEA) to have a high potential for abuse that may lead to severe psychological or physical dependence. However, combination drugs containing lower doses of opioids combined with other active ingredients are typically less restricted; for example, cough syrups containing low doses of codeine are frequently classified Schedule V medications.

In October of 2017, the White House declared the opioid crisis a national public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country. According to the Centers for Disease Control and Prevention (CDC), as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28 percent increase over the previous year. The California Department of Public Health estimated that nearly 2,000 Californians died of an opioid overdose in 2016.

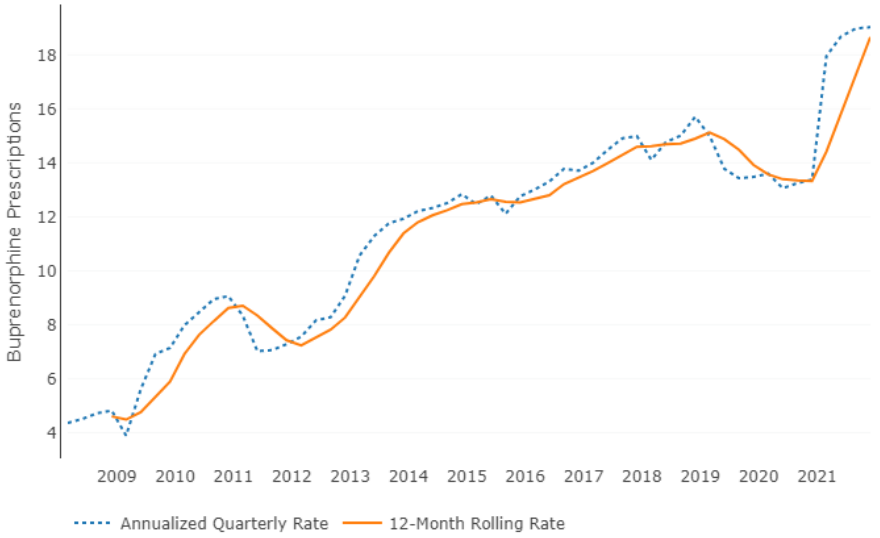
The nature of the country's opioid crisis has evolved over the past several years as illicitly manufactured fentanyl has replaced prescribed pain management medication as the dominant source of opioid-related overdoses. Fentanyl is a synthetic opioid that is up to 100 times stronger than morphine. Fentanyl is often pressed into pills to imitate more common (and less potent) pharmaceutical products, and other drugs can be unknowingly "laced" with fentanyl. Over 70,000 Americans died of a fentanyl overdose in 2021, including 5,961 deaths in California – approximately 83% of all opioid-related deaths in California.

The abuse of prescription drugs was historically viewed as a criminal concern analogous to street narcotics cases regularly investigated by law enforcement. In recent years, however, an expert consensus has evolved around the opinion that the opioid crisis must be addressed through the lens of public health policy. It is widely accepted that health professionals must continue to play a critical role in any meaningful solutions through safe-prescribing and the medication-assisted treatment of opioid use disorder.

Buprenorphine. Itself a type of opioid, buprenorphine is a Schedule III controlled substance used in treatment of opioid use disorder. Buprenorphine is what is referred to as a partial opioid agonist; this essentially means that it provides a much lower degree of euphoria than other opioids like oxycodone and heroin, and is considered to be less prone to abuse or dependence. In medication-assisted treatment of addiction, buprenorphine is used similarly to methadone, but with reduced side effects. Buprenorphine is frequently marketed under the brand name Subutex, as well as Suboxone when combined with naloxone, an opioid antagonist.

As an opioid classified as a Schedule III controlled substance, buprenorphine can only be prescribed or administered by a licensed practitioner in possession of a DEA registration. Prior federal restrictions on buprenorphine under the federal Drug Addiction Treatment Act of 2000 allowed for only specially trained physicians to prescribe buprenorphine through an "X-waiver" process. Further restricting the availability of buprenorphine treatments was federal law limiting the number of patients a physician in receipt of an X-waiver may treat. The Drug Addiction Treatment Act of 2000 originally capped the number of patients per physician at ten; this cap was raised under the Obama administration to allow up to 100 patients to be treated with buprenorphine per approved physicians who have held the waiver for two years, and up to 275 patients at three years. In January of 2021, the federal Department of Health and Human Services announced that it was eliminating the X-waiver entirely.

As the federal restrictions on prescribing buprenorphine have incrementally loosened, the number of prescriptions has gone up substantially. The following chart is available through the California Department of Public Health's Opioid Overdose Surveillance Dashboard, which utilizes data from the CURES database. The chart shows the rate of buprenorphine prescriptions per 1,000 residents statewide.



Mobile Pharmacy Units. In 2022, legislation sponsored by the County of San Diego and the County of Santa Clara was enacted to expand the authority for pharmacies to operate within mobile units. Previously, mobile units were only authorized as a way to temporarily provide pharmacy services during a natural disaster when brick-and-mortar pharmacies were damaged or destroyed. The language of the bill allowed for any county, city and county, or special hospital authority to operate a mobile unit for purposes of providing prescription medication to unhoused and low-income individuals.

Current law places certain limitations on how counties and special hospital authorities may operate mobile pharmacy units. One provision of the law specifically prohibits mobile units from carrying or dispensing controlled substances. While this prohibition was intended to prevent mobile units from carrying classes of medication that are considered at high risk or abuse or diversion, several drugs approved for treatment of opioid use disorder are currently classified as controlled substances, making them unavailable through a mobile unit.

This bill seeks to create an exemption to the prohibition in current law that prevents mobile units operated by counties from carrying and dispensing controlled substances. The bill would specifically exempt all controlled substances approved by the FDA for the treatment of opioid use disorder. This would include methadone (Schedule II) and buprenorphine (Schedule III). The bill would further provide that any controlled substance must be carried in reasonable quantities based on prescription volume and stored securely in the mobile pharmacy unit.

Current Related Legislation. AB 1731 (Santiago) would exempts a health practitioner who prescribes, orders, administers, or furnishes buprenorphine in the emergency department of a hospital from the duty to consult the state's prescription drug monitoring program. *This bill is pending in this committee.*

Prior Related Legislation. AB 269 (Berman, Chapter 1, Statutes of 2023) authorized an entity approved by the Department of Public Health to operate a designated COVID-19 testing and dispensing site to acquire, dispense, and store COVID-19 oral therapeutics at or from a designated site.

SB 872 (Dodd, Chapter 220, Statutes of 2022) authorizes a county, city and county, or special hospital authority to operate a licensed mobile unit under certain conditions.

ARGUMENTS IN SUPPORT:

The **City and County of San Francisco** is sponsoring this bill. San Francisco Mayor London Breed writes: "Treatment with buprenorphine, and other medications for opioid use disorder, is a foundational part of our efforts to reduce overdose deaths and connect our most vulnerable residents to ongoing care. One of the challenges faced by clinical outreach teams attending to people experiencing homelessness is providing prescription medications to people in a convenient and accessible location. Until recently, California law required that most pharmacies must operate in a fixed location, such as a retail pharmacy. While a recently passed law, SB 872 (Dodd, 2022) expanded medication access by allowing jurisdictions to operate mobile pharmacies, the law does not currently allow dispensing of key medications for opioid use disorder." Mayor Breed argues that "with new tools like mobile pharmacies available to provide medications for the treatment of opioid use disorder, the City will be better able to address the needs of individuals suffering from substance use disorders."

Attorney General Rob Bonta also supports this bill, writing: "OUD medication, including buprenorphine, are an important part of successful OUD treatment. Buprenorphine has shown a decrease in overdose deaths by 50% in individuals with OUD compared to treatment without those medications. In populations with barriers to accessing traditional healthcare, such as those experiencing homelessness, buprenorphine availability is key for reducing overdose deaths." Attorney General Bonta argues that the bill "would help expand local efforts to prevent overdose deaths and improve access to healthcare for some of our most vulnerable populations."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

There are currently three drugs approved by the FDA for the treatment of opioid use disorder. One drug, naltrexone (often sold under brand name Vivitrol) is an opioid antagonist that is also used to treat alcohol use disorder. Naltrexone is not a federally scheduled controlled substance; therefore, there is currently no prohibition against a mobile unit operated by a county carrying or dispensing this drug.

The second FDA-approved opioid use disorder treatment medication is methadone (often sold under brand names Dolophine and Methadose). Methadone is a Schedule II controlled substance and its use is heavily regulated; outpatient treatment programs must receive federal approval to prescribe methadone for opioid use disorder. While the DEA considers methadone to have a "high potential for abuse," it recently implemented new regulations increasing the number of mobile methadone treatment facilities in an effort to expand access to treatment in remote and underserved communities.

Buprenorphine is considered similarly effective to methadone but is generally less restricted as a Schedule III controlled substance. As previously discussed, the federal Health and Human Services Agency recently expanded the ability of health practitioners to prescribe buprenorphine. The drug is now much more commonly used to treat opioid use disorder.

Buprenorphine is still considered by the DEA to have some potential for abuse. A euphoric effect can be derived from use of buprenorphine similar to other opioids; however, unlike methadone and other full opioid agonists, there is a "ceiling effect" where taking more of the medication will not increase its effects. Buprenorphine can also be abused by crushing and injecting the drug when intended for use as a sublingual tablet. In order to curb the potential for abuse and misuse, several FDA-approved medications for the treatment of opioid use disorder feature a combination of both buprenorphine and naloxone, an opioid antagonist used to reverse the effects of opioids. While the presence of naloxone has no effect on buprenorphine when taken as intended, it alleviates the risk of abuse by discouraging intravenous use of the drug. The FDA has approved several medications that contain a combination of buprenorphine and naloxone, such as Bunavail, Cassipa, Suboxone, and Zubsolv.

Recognizing that current law prohibits mobile pharmacy units from carrying or dispensing controlled substances due to their risk of abuse or diversion, the author may wish to consider narrowing the bill to exclude methadone or other FDA-approved Schedule II controlled substances. This would still allow for buprenorphine and buprenorphine/naloxone combination formulations that are proven to be effective at treating opioid use disorder but pose less of a risk than methadone or other potential Schedule II drugs.

AMENDMENTS:

To refine the language of the bill to specifically allow for mobile pharmacy units to carry and dispense buprenorphine and buprenorphine/naloxone combination medications, amend paragraph (2) of subdivision (d) in the bill as follows:

> *(2) Paragraph (1) does not apply to Schedule III, Schedule IV, or Schedule V controlled substances approved by the federal Food and Drug Administration for the treatment of opioid use disorder. Any controlled substance for the treatment of opioid use disorder carried or dispensed in accordance with this paragraph shall be carried in reasonable quantities based on prescription volume and stored securely in the mobile pharmacy unit.*

REGISTERED SUPPORT:

City and County of San Francisco *(Sponsor)*
Attorney General Rob Bonta
California Pharmacists Association
County Behavioral Health Directors Association
County Health Executives Association of California
Steinberg Institute

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 765 (Wood) – As Introduced February 13, 2023

SUBJECT: Physicians and surgeons.

SUMMARY: Prohibits any person who is not a licensed physician and surgeon from using various medical specialty titles or otherwise implying that they are a physician and surgeon.

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 Medical Board of California (MBC), a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members. (BPC § 2001)

3) Enacts the Osteopathic Act, which provides for the licensure and regulation of osteopathic physicians and surgeons. (BPC §§ 2450 *et seq.*)

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

5) Declares that protection of the public shall be the highest priority for both the MBC and the OMBC in exercising their respective licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2001.1; § 2450.1)

6) Provides that any person who practices or attempts to practice, or who advertises or holds themselves out as practicing, any system or mode of treating the sick or afflicted in California, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as a physician and surgeon or without being otherwise authorized to perform the act is guilty of a crime. (BPC § 2052)

7) Requires a person who provides certain alternative or complementary to healing arts services and who is not a licensed physician and surgeon to make a written disclosure to the client that they are not a licensed physician and that the services to be provided are not licensed by the state, among other disclosures. (BPC § 2053.6)

8) Prohibits any person who does not have a valid, unrevoked, and unsuspended certificate as a physician and surgeon from the MBC from using the words “doctor” or “physician,” the letters or prefix “Dr.,” the initials “M.D.,” or any other terms or letters indicating or implying that they are a physician and surgeon, with certain exceptions. (BPC § 2054)

9) Allows a person who has been issued a physician’s and surgeon’s certificate by the MBC to use the initials “M.D.” (BPC § 2055)

10) Provides that nothing in the Medical Practice Act shall be construed as limiting the practice of other persons licensed, certified, or registered under any other provision of healing arts law when that person is engaged in their authorized and licensed practice. (BPC § 2061)

11) Makes it unlawful for any healing arts licensee to publically communicate a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services in connection with the professional practice or business for which they are licensed. (BPC § 651)

12) Makes it unlawful for any person to make or disseminate any statement in the advertising of services, professional or otherwise, which is untrue or misleading. (BPC § 17500)

THIS BILL:

1) Adds references to osteopathic physicians and surgeons licensed by the OMBC to provisions of existing law generally prohibiting use of the terms "doctor," "physician," "Dr.," and "M.D." by persons who are not licensed physicians and surgeons.

2) Further prohibits a person who is not licensed as a physician and surgeon from using any medical specialty title, and specifically prohibits use of the following names or titles: "anesthesiologist," "cardiologist," "dermatologist," "doctor of osteopathy," "emergency physician," "endocrinologist," "family physician," "gastroenterologist," "general practitioner," "gynecologist," "hematologist," "hospitalist," "internist," "interventional pain medicine physician," "laryngologist," "medical doctor," "nephrologist," "neurologist," "obstetrician," "oncologist," "ophthalmologist," "orthopedic surgeon," "orthopaedic surgeon," "orthopedist," "orthopaedist," "osteopath," "otologist," "otolaryngologist," "otorhinolaryngologist," "pathologist," "pediatrician," "primary care physician," "proctologist," "psychiatrist," "radiologist," "rheumatologist," "rhinologist," "surgeon," or "urologist."

3) Broadly prohibits a person who is not licensed as a physician and surgeon from using any other titles, terms, letters, words, abbreviations, description of services, designations, or insignia, alone or in combination with any other title, indicating or implying that the person is licensed as a physician and surgeon.

4) Declares that the law enacted by the bill shall be known as the California Patient Protection, Safety, Disclosure, and Transparency Act and makes various findings and declarations in support of its provisions.

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

COMMENTS:

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

> "Health care consumers deserve to know what types of providers are delivering their care. Trust, transparency and honest in licensure status, education and training is critical in promoting and protecting patient safety. California has adopted many scope of practice expansions and I was the author of one for nurse practitioners (NP). These expansions,

including my NP bill, have called for clear representation of a practitioner's license so the public is aware should they prefer to receive care from a different type of licensed provider. This bill further clarifies and strengthens this disclosure by assuring consumers that if certain terms are used in a title, consumers know the care they are seeking or receiving is being provided by a physician."

Background.

Early History of Medical Practice and Title Regulation. Prior to the Progressive Era, a myriad of healing disciplines competed for recognition in the field of medicine, including homeopathy, magnetopathy, naprapathy, naturopathy, neuropathy, osteopathy, and physcultopathy. During this period, terms such as "physician" and doctor" were broadly used across these disciplines. In 1878, California created three boards to regulate medical practice, each appointed by a different society: the Medical Society, the Eclectic Medical Society, and the Homeopathic Medical Society. These boards were consolidated into a single Board of Medical Examiners in 1901, and the Governor was subsequently required to select appointments from lists of names presented by those societies, along with the Osteopathic Association and the Association of Naturopaths.

In 1913, the Board of Medical Examiners was again reconstituted with the role of societies and associations removed. The new board was authorized to issue two forms of certificates: a "physician and surgeon" certificate that granted the holder the authority to use drugs, medical preparations, and surgical procedures to treat patients; and a "drugless practitioner certificate." Under the revised Medical Practice Act, individuals practicing within any of the natural or noninvasive medical systems were required to hold a certificate as a drugless practitioner. Drugless practitioners were explicitly prohibited from using the letters "M.D.," the words "doctor of medicine," or variations of the term "physician and surgeon" in connection with their practice or "upon any sign, card, advertisement, or announcement."

The enactment of the 1913 legislation reflected the national rise of allopathy as the dominant medical practice—the evidence-based system utilizing drugs and surgery to treat patients that some would come to term "modern medicine." Representatives of the professions that had been downgraded to drugless practitioner status immediately resisted the law. Chinese herbalists and nonreligious faith healers unsuccessfully challenged its constitutionality. In 1914, Proposition 46 was placed on the ballot to create a Board of Examiners for Drugless Physicians. The initiative would have allowed practitioners who treated patients without drugs or medicine to be regarded as physicians, outside the jurisdiction of the Board of Medical Examiners. While supporters argued that the initiative would give each Californian "the right to choose his or her own doctor without any interference by unfair or drastic laws," it was rejected by 67 percent of voters.

In 1922, chiropractic and osteopathic practitioners each respectively sponsored ballot measures to regulate their professions separately from the Board of Medical Examiners. Arguments in favor accused medical doctors on the board of being "biased and prejudiced," viewing practitioners within other medical systems as competitors and seeking to "destroy" and "suppress" those systems. Opponents argued that if chiropractors and osteopaths each received their own special board, then new boards could be established for "the other twenty-five drugless cults," which "would result in a chaotic condition constantly menacing the public health." Both of the initiatives passed. A similar ballot measure to create a "naturopathic physician's license" was later rejected in 1934; that profession ultimately negotiated the right to be licensed as "naturopathic doctors" in 2003.

Modern Regulation of Medical Titles. The Medical Practice Act currently prohibits any person from practicing or advertising as practicing medicine without a license. Statute specifically makes it a misdemeanor for any unlicensed person to use the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any other terms or letters indicating or implying that the person is a licensed physician and surgeon on any sign, business card, or letterhead, or, in an advertisement. To use these words, prefixes, or initials, a person's license must be valid, unrevoked, and unsuspended. The statute features three limited exceptions for individuals who are trained as physicians but not currently licensed in California.

General provisions governing health professional licensing boards make it unlawful for any healing arts licensee to publically communicate any false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of rendering professional services in connection with their licensed practice. Statute specifically prohibits a licensee from using "any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive." Practitioners may advertise that they are certified or that they limit their practice to specific fields; however, the term "board certified" reserve for physicians certified by an American Board of Medical Specialties member board.

Additionally, Section 17500 of the Business and Professions Code broadly prohibits false advertising of a product or service. Specifically, this law makes it unlawful for any person to make any statement or advertisement with intent to perform services, professional or otherwise, that is untrue or misleading. While this code section covers a wide range of false advertisements by sellers of goods or services, its provisions would be applicable to health care licensees.

While the Medical Practice Act expressly reserves use of the words "doctor" or "physician" for actively licensed physicians, this provision does not comprehensively reflect the current state of the law. For example, while podiatrists are independently licensed by the Podiatric Medical Board of California, their formal title is "doctors of podiatric medicine." Similarly, the California Board of Naturopathic Medicine licenses and regulates a profession statutorily referred to as "naturopathic doctors." Optometrists, dentists, chiropractors, psychologists, and other practitioners possessing professional doctorates are also expressly authorized by law to use the term "doctor." "Dr." is also commonly used as a social honorific for anyone who has received a doctoral degree, including research doctorates not associated with licensure.

In 2009, the American Medical Association (AMA) launched an initiative branded by the organization as the "Truth in Advertising campaign." According to the AMA, the goal of the campaign is to address confusion among patients regarding the qualifications of health providers from whom they receive care. A survey published by the AMA in 2018 found that "only half of patients surveyed believe that it is easy to identify who is a physician—and who is not—by reading what services they offer, their title, and other licensing credentials in advertising and marketing materials."

Following the publication of its survey results, the AMA embarked on a campaign to seek both national and state legislation to reserve various professional titles for licensed physicians and surgeons. A model bill, the "Health Care Professional Transparency Act," has been introduced and passed in a number of states. Generally, the legislation requires all health care professionals to clearly and accurately describe their license type in advertisements, during patient encounters, and on name tags, and reserves the use of certain titles.

The author of this bill contends that the risk of patient confusion in California has increased as non-physician health professionals have recently been empowered to address a national decline in the number of accessible primary care providers. A recent study found that between 2010 and 2019, the number of primary care physicians in proportion to population remained largely unchanged nationally, and that counties with a high proportion of minorities saw a decline during that period. During the 2019-20 legislative session, the author this bill authored legislation to increase the ability of qualified nurse practitioners to independently practice in certain settings without standardized procedures or physician supervision. While that bill required nurse practitioners to verbally inform all new patients that they are not licensed physicians, the author has committed to resolving any increased potential for misconstruction or misrepresentation.

The changes this bill proposes to make to subdivisions (a) and (b) in current law are simply clarifying. Because osteopathic physicians and surgeons have the same scope of practice as physicians and surgeons licensed by the MBC and are regulated under the same chapter of code, it naturally follows that they should receive the same title protection for the initials "D.O." that licensees of the MBC receive for "M.D." Additionally, the bill clarifies that exemptions in current law for graduates of medical schools apply equally to graduates of osteopathic medical schools. This bill makes no further changes or additions to the existing restrictions on the unlicensed use of "doctor," "physician," and associated terms.

The bill would then add a new subdivision (c) to the current law, which would additionally prohibit a series of medical specialty titles and other terms that the author and supporters of the bill argue would be misleading to patients if used by non-physicians. There are currently 24 certifying boards represented by the American Board of Medical Specialties, which offer certification in 40 specialty and 88 subspecialty areas. Although physicians and surgeons receive plenary licenses in California, voluntary board certification is an additional way to demonstrate competence and expertise in a particular specialty.

Physicians who advertise that their practice is limited to specified fields of medicine, or who have received board certification in a specialty, have been historically identified with certain titles representative of that practice. For example, a physician certified by the American Board of Pediatrics is commonly referred to as a "pediatrician," and a physician certified by the American Board of Dermatology would likely present themselves as a "dermatologist." Current statute does not expressly restrict the use of these terms to physicians; however, provisions of existing law generally prohibiting false or misleading statements in the advertisement of professional services would potentially apply if these terms were used by a non-physician health professional to imply that they are a licensed physician and surgeon.

By prohibiting the use of specific medical specialty titles, this bill would further ensure that patients may correctly assume that a provider is a licensed physician if they present themselves using terms commonly associated with that profession. The bill would also prohibit persons who are not licensed physicians from using "any other titles, terms, letters, words, abbreviations, description of services, designations, or insignia, alone or in combination with any other title, indicating or implying that the person is licensed under this chapter to practice as such." This broader language is intended to ensure that the bill's expressed listing of titles would not be interpreted as limiting enforcement against individuals posing as physicians to cases where those specific titles are used. However, the author has reiterated that the intent of the bill is to allow other health professions to accurately describe their specialties, while simultaneously providing patients with greater clarity.

Prior Related Legislation. AB 890 (Wood, Chapter 265, Statutes of 2020) authorized a nurse practitioner to provide specified services in specified settings, without standardized procedures, if the nurse practitioner meets additional education, examination, and training requirements.

ARGUMENTS IN SUPPORT:

The **California Medical Association** (CMA) and a coalition of physician specialty associations, colleges, and societies write in support of this bill: "Existing laws already prevent non-physicians from using the term "physician" – but that is not sufficient because there are many other equivalent terms and titles that can be used that imply the provider is a physician. This bill would fix that problem by making sure that anyone who is not a physician is also prohibited from using those other "physician-equivalent" terms that could be misleading." The coalition argues that "as the California Legislature continues to expand the scope of practice for some healthcare practitioners, it is more important than ever that patients understand the skills, qualifications, and licensure status of their healthcare providers."

The **Consumer Attorneys of California** (CAOC) also supports this bill. The CAOC writes: "Health care consumers deserve to know what types of providers are delivering their care. Trust, transparency and honesty in licensure status, education and training is critical in promoting and protecting patient safety. California has adopted many scope of practice expansions but these expansions have also called for clear representation of practitioner's license so the public is aware should they prefer to receive care from a different type of licensed provider.

ARGUMENTS IN OPPOSITION:

The **California Association of Nurse Anesthetists** (CANA) opposes this bill. According to CANA: "There is no actual evidence of patient confusion or safety risk, let alone harm. The bill author has provided results from a survey completed by the American Medical Association ("Truth in Advertising") which did not measure or report any outcomes relative to utilization of the terms or abbreviations "Dr." or anesthesiologist. It simply supported the idea that providers should clearly designate their level of education and training. CRNAs are licensed by California to practice anesthesiology to the full extent of their education and training." CANA further argues that "AB765 restricts the constitutional commercial speech rights of the nurse anesthesiology community to effectively describe their profession and practice."

The **California Naturopathic Doctors Association** (CNDA) opposes this bill, raising a concern that "AB765 would prevent Naturopathic Doctors from referring to themselves as 'doctor,' despite having doctoral training and licensing, superseding language in our Act that allows us to call ourselves 'doctor.' This would be true for dentists, podiatrists, chiropractors, veterinarians, and many other healthcare practitioners with doctoral-level training." The CNDA further argues that "some Naturopathic Doctors are Board-Certified with Specialty Associations with rigorous requirements and should be able to refer to themselves as such, e.g. FABNO (Naturopathic Oncologist), FABNP (Naturopathic Pediatrician) and this would become illegal with the passage of this bill. Many MDs and DOs call themselves by specialist titles when they are not Board Certified and this bill would not prevent that. There is NO actual evidence of patient confusion or safety risk, and there is NO evidence of harm due to lack of clarity in provider identification. Limiting those with terminal doctoral degrees and those who employ accurate descriptors in conjunction with their state approved licensure decreases transparency to patients."

POLICY ISSUE(S) FOR CONSIDERATION:

Lack of Clarity in Existing Law. Concerns have been raised that this bill would prohibit individuals with doctorates from using the term "doctor" unless they are currently licensed as physicians and surgeons. As previously discussed, restriction of the use of the word "doctor" or the prefix "Dr." is contained in a provision of existing law, and this bill does not substantively change or expand the scope of that restriction. However, it is arguable that language in current law does not accurately reflect the authority granted to other licensed health practitioners in their governing laws to use those terms. Nor does current law expressly exempt individuals who do not imply any authority to practice a healing art but who use the honorific "Dr." to recognize a nonprofessional doctorate or as part of an established nickname.

For example, Dr. Dre is an American rapper and entrepreneur whose debut record as a solo performer, *The Chronic*, is widely recognized as a seminal hip hop album of the 1990s and credited with popularizing the G-funk rap subgenre. Born Andre Romell Young, the artist's moniker was inspired Julius Erving, a professional basketball player for the Philadelphia 76ers who is considered to be one of the greatest dunkers of all time and who is known by his nickname "Dr. J." Neither Dr. Dre nor Dr. J is a graduate of any medical school and neither holds a current license as a physician and surgeon from a state medical board. However, the MBC has not prosecuted Dr. Dre or Dr. J for violating the Medical Practice Act, likely because they are clearly not implying that they are physicians, which is the obvious intent of the law.

Under the status quo, it is apparent that a non-physician may safely use the term "doctor" and its associated prefix without fear of incurring a misdemeanor conviction if they are authorized by another law to use that title (e.g. a person licensed under the Naturopathic Doctors Act); in possession of a doctoral degree (e.g. Dr. Jill Biden, Ed.D.); or clearly not implying any qualification to practice medicine (e.g. Dr. Demento). However, current law does not expressly reference any of these exemptions, and opponents to the bill argue that by making even technical changes to the statute, the Legislature could be implying that it should be enforced as drafted. The author may wish to reassure those organizations by updating current law to reflect cases where the prohibition does not apply.

Constitutionality. Opposition to this bill has argued that its proposed ban on the use of medical specialty titles by non-physicians would violate the First Amendment of the Constitution as an infringement on free speech. The use of certain terms in the advertisement of professional services falls under the definition of "commercial speech." The Supreme Court of the United States established a test for determining whether the regulation of commercial speech violates the First Amendment of the Constitution in *Central Hudson Gas & Elec v. Public Service Comm of New York* 447 U.S. 557 (1980). In this case, the Court recognized commercial speech as constitutionally protected, but established a multi-pronged test for determining whether restrictions are permissible. In its decision, the Court ruled that in order for the government to limit commercial speech, it must pass intermediate scrutiny and each of the following must be demonstrated:

1) The government must have a substantial interest;

2) The regulation must directly and materially advance the government's substantial interest; and

3) The regulation must not be more extensive than necessary.

The substantial interest that this bill would advance is presumably the protection of patients from being misled regarding the licensed credentials of a health provider. An argument could be made that the addition of the "any other titles, terms, letters, words, abbreviations, description of services, designations, or insignia" language renders the bill inappropriately tailored. However, similar language is already in existing law, prohibiting the use of "any other terms or letters" implying that a person is a licensed physician.

Opposition to this bill has pointed to what they believe to be an analogous case that was decided by the Fifth Circuit Court of Appeals. In *American Academy of Implant Dentistry v. Parker,* 860 F.3d 300 (5th Cir. 2017), a Texas law had prohibited dentists from advertising as specialists in areas that the American Dental Association does not recognized as specialties; the Fifth Circuit ruled that the state failed to demonstrate that this prohibition was not more extensive than necessary to serve its interest. The Fifth Circuit actually pointed to California's existing restrictions on use of the term "board certified" as an example of what it believed would be permissible—as represented in the Ninth Circuit Court of Appeals decision *American Board of Pain Management v. Joseph,* 353 F.3d 1099 (9th Cir. 2004).

If this bill were to be challenged following enactment, the courts could find that its provisions pass the *Central Hudson* test consistent with the Ninth Circuit's decision regarding California's restrictions on medical specialty claims. There is also an argument that a court would not conclude that use of medical specialty titles by a non-physician is not "inherently misleading" if the title is commonly associated only with physicians. While it is arguably most likely that this bill would be considered constitutional, that cannot be assured unless it is indeed challenged following enactment.

Potential Overbreadth. As previously discussed, this bill goes beyond banning the use of specified titles, but additionally bans "any other titles, terms, letters, words, abbreviations, description of services, designations, or insignia" implying licensure as a physician. Opponents to the bill have argued that even if a healing arts licensee accurately describes their training without using one of the specifically prohibited titles, it could be considered unlawful due to the broad nature of the "any other" language.

For example, this bill would prohibit a licensee of the California Board of Naturopathic Medicine who is a member of the Pediatric Association of Naturopathic Physicians from referring to themselves as a "naturopathic pediatrician." However, the author has indicated that the intent of the bill is to allow that licensee to represent themselves as "a naturopathic doctor who specializes in pediatrics." While there will likely be a persistent policy debate over whether to allow for titles like "nurse anesthesiologist" or "naturopathic oncologist," amendments to the bill may be helpful to resolve concerns that the bill goes beyond that form of limitation and prohibits other statements of specialization that the author is not seeking to prohibit.

Non-Physician Osteopaths. This bill would ban use of the term "osteopath" by someone who is not a physician. While an "osteopathic physician and surgeon" is a specific term for a D.O. licensed by the OMBC, the general term "osteopathy" may still refer to more traditional healing techniques. These "non-physician osteopaths" lawfully practice what is regarded by the Medical Practice Act as "alternative or complementary medicine" and have arguably used the title "osteopath" since the practice of osteopathy was founded in 1874. While it appears that only a small number of non-physician osteopaths may be currently practicing in California, it may be inappropriate to ban their use of the term "osteopath" without further policy discussion.

AMENDMENTS:

1) To clarify that existing law does not prohibit other healing arts licensees who are authorized by the laws governing their profession to use the terms described in subdivision (a) and to clarify that existing law does not prohibit other persons from using those terms when there is no claim of entitlement to practice medicine, subdivision (b) of Section 2054 should be amended to add the following exemptions:

   (4) A person holding a current and active license under another chapter of this division, to the extent the use of the title is consistent with the act governing the practice of that license.

   (5) A person whose use of the word "doctor" or the prefix "Dr." is not associated with any claim of entitlement to practice medicine or any other professional service for which use of the title would be untrue or misleading pursuant to Section 17500.

2) To add additional medical specialty titles consistent with language currently in the bill, the proposed subdivision (c) should be amended to add the titles "perinatologist," "plastic surgeon," "reproductive endocrinologist," and "urogynecologist."

3) To allow for further debate about whether it is appropriate for a non-physician to continue to use the title "osteopath," the proposed subdivision (c) should be amended to strike reference to that term.

4) To clarify that non-physician healing arts licensees may continue to use terms that accurately describe their practice, the following paragraphs should be added to the proposed subdivision (c):

   (2) Nothing in this subdivision shall prevent a person holding a current and active license under another chapter of this division from using any term identified on their license, certificate or registration, or from making any truthful statement that they specialize in a service or field that is within their licensed scope of practice and that does not contain any of the medical specialty titles specified in paragraph (1).

   (3) Nothing in this subdivision shall prevent an individual licensed under this chapter to use the term "surgeon" as long as that individual has been granted privileges to perform surgery in a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, a surgical clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204 of the Health and Safety Code, an outpatient setting accredited by an accreditation agency, as defined in Section 1248 of the Health and Safety Code, or an ambulatory surgical center certified to participate in the Medicare Program under Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.).

   (4) This subdivision does not apply to any person who possesses a license pursuant to Section 1626, or holds a special permit under Section 1640, when using a dental specialty or discipline title as defined in Section 1640.1.

REGISTERED SUPPORT:

California Medical Association *(Sponsor)*
American Academy of Dermatology Association
American College of Obstetricians and Gynecologists District IX
American Federation of State, County, and Municipal Employees
American Medical Association
American Society of Anesthesiologists
Association of Northern California Oncologists
California Academy of Eye Physicians and Surgeons
California Ambulatory Surgery Association
California Chapter, American College of Cardiology
California Chapter of the American College of Emergency Physicians
California Orthopaedic Association
California Radiological Society
California Rheumatology Alliance
California Society of Anesthesiologists
California Society of Dermatology & Dermatologic Surgery
California Society of Plastic Surgeons
California State Association of Psychiatrists
Consumer Attorneys of California
Medical Board of California
Osteopathic Physicians and Surgeons of California

REGISTERED OPPOSITION:

American Association of Naturopathic Physicians
California Association of Nurse Anesthetists
California Naturopathic Doctors Association
California Nurses Association
California Optometric Association

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 766 (Ting) – As Amended March 23, 2023

SUBJECT: Cannabis: invoices: payment.

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

EXISTING LAW:

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

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

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

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

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

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

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

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

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

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

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

THIS BILL:

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

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

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

4) Requires an unpaid invoice report to include all of the following:

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

    b) The invoice due date.

    c) The invoice amount.

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

5) Requires the DCC to notify a licensee who has been reported for failure to pay in full 15 days after the final date set in the invoice.

6) Requires the DCC to commence disciplinary action against a licensee reported for failing to pay in full after 15 days if the licensee fails to pay in full after 30 days after the DCC notice.

7) Prohibits a licensee reported for failure to pay in full 15 days after the final invoice date from purchasing goods or services from another licensee on credit until the licensee pays the outstanding invoice in full.

8) Specifies that, for purposes of the requirements under this bill, the final invoice date for payment of the invoice may not be later than 30 calendar days from the date the goods or services are sold or transferred.

9) Clarifies that the provisions of this bill do not apply to unpaid cannabis excise tax moneys required to be collected by a distributor.

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

COMMENTS:

Purpose. This bill is co-sponsored by the *Cannabis Distribution Association*, *California Cannabis Manufacturers Association*, and *California Cannabis Industry Association*. According to the author, "The legal cannabis industry doesn't have access to traditional credit and financing options that other small businesses are afforded, nor does it have similar oversight and protections around terms of sale. The resulting financial instability has created a debt bubble across the cannabis supply chain, with licensees of all types experiencing ballooning accounts receivable. [This bill] would address the debt crisis in the California cannabis industry by establishing clear terms of sale across the supply chain and by establishing oversight of sales on credit payment. This bill would also restrict the flow of goods to licensees who are defaulting on their credit terms."

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

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

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

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

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

The sponsors state that the current system has led to a "debt bubble," which may lead to a destabilization of the industry. This bill is aimed at preventing further overleveraging by requiring licensees to pay within 15 days of the date on the invoice of cannabis products and establishing reporting and disciplinary requirements for licensees who fail to pay. The requirements are loosely based on California "tied-house" restrictions on alcohol manufacturers and the payment timelines between prime contractors and subcontractors.

ARGUMENTS IN SUPPORT:

The *Cannabis Distribution Association*, *California Cannabis Manufacturers Association*, and *California Cannabis Industry Association* (co-sponsors) write in support:

> California's legal cannabis market is the largest in the world, served by a supply chain comprised of thousands of licensed cultivators, manufacturers, distributors and retailers. Unfortunately, due to the restrictive status of cannabis at the federal level, this massive consumer industry is largely cash-based and extremely capital-limited. As a result of this financial strain, cannabis sales across the supply chain are largely made on credit terms, with licensees agreeing to pay for goods and/or services at a specified later date.
>
> However, California's cannabis industry does not have the same oversight of sales made on terms that is afforded to other, similar consumer industries. As a result, terms of sale are not honored by some cannabis businesses, with late payment of invoices being commonplace across the supply chain. In some rare instances, licensees refuse to pay invoices altogether. This "culture of nonpayment" that has emerged in California's cannabis market leaves businesses across the entire industry and supply chain – as well as ancillary businesses that support legal cannabis operators - with outstanding balances and unpaid invoices sometimes totaling hundreds of thousands of dollars. This ballooning debt bubble in the cannabis industry will only continue to grow without proper oversight, putting the entirety of the state's supply chain at risk of collapse and impacting state revenue decline even further.
>
> There is precedent in other regulated California industries establishing maximum terms of sale across respective licensees, and overseeing the timely payment of goods across supply chains. For example, language in Business and Professions Code1 establishes maximum payment terms between contractors and subcontractors in the construction industry, and grants the Contractors State License Board (CSLB) express oversight and enforcement authority to ensure timely payment for services. In the alcohol industry, "credit laws" governing the timely payment of wholesale invoices are commonplace; California law outlines specific terms that dictate the flow of payments across the alcohol supply chain. Even other regulated cannabis markets have begun to address the issue of outstanding debts and timely payment, including New York's Office of Cannabis Management (OCM) and Colorado's Marijuana Enforcement Division (MED). California's cannabis licensees deserve similar oversight and protection to ensure a timely flow of goods and payment across the supply chain.
>
> [This bill] seeks to provide similar protections for California's cannabis industry by establishing maximum credit terms that cannabis licensees can sell on, and granting the [DCC] powers to ensure businesses pay for goods and services in a timely manner. Specifically, this bill follows precedent in other states by establishing a maximum credit term of 30 days, with an additional 15 day window for licensees to pay. Licensees who fail to pay within the 15th day of the invoice due date will be reported to the DCC, and once verified, unable to further purchase goods on credit until their outstanding debts are resolved. Additionally,

the DCC can take disciplinary action against any licensee that continues to ignore payment terms 30 days after verification of delinquency by the Department. Critically, this bill would apply to all license types in California's cannabis industry, ensuring timely payment for goods and services regardless of cannabis business type.

Credit laws are a proven, workable way in other California markets, and in other states, to guarantee timely flow of goods and payments across supply chains. Without such protections as outlined in this bill, the state's cannabis industry faces severe financial uncertainty as the ballooning debt bubble across the supply chain continues to grow.

ARGUMENTS IN OPPOSITION:

A coalition of retailers comprised of the *United Cannabis Business Association (UCBA)*, the *Long Beach Collective Association*, the *Coachella Valley Cannabis Alliance*, *Social Equity Los Angeles*, the *San Francisco Cannabis Retailers Alliance*, the *Angeles Emeralds*, the *California Minority Alliance*, and the *Silicon Valley Cannabis Alliance* are opposed to this bill unless it is amended, writing:

While we recognize the intent of the bill, we also strongly believe that this solution is much too drastic and punitive in nature and will result in greater net negative for the industry and the state of California, than it would benefit the viability of the industry.

Though the issue of accounts receivable debt amongst the industry is real, the nature of the cannabis industry whereby it is state legal and not federally has been an existing challenge to all cannabis licensees, especially with regards to accessing financial tools such as debt financing.

The same challenges have existed in other states where state legal cannabis markets have existed for many years prior to California passing Prop 64, and those states have seen no need to implement such a punitive solution.

While the problem exists, it is also important to recognize why it exists. Cannabis operators have a responsibility to self regulate on the terms in which they believe are best for their businesses. Those same operators should also have the best understanding of what their limits are in extending those terms to other licensees.

Due to the limited amount of retailers in California's legal market, it has been common practice for distributors to over extend their offerings as a means of competing in the market, and similarly over incentivize them to take larger quantities of their products for greater value discounts, ultimately obligating the retailers who continue to struggle to sell in a market competing against the massive illicit market. This willing business practice by distributors fails to account for the perishable quality of these goods which have an expiration date.

The viability of the cannabis industry relies on its retailers, and with so very few throughout the state of California having to compete against a large and thriving illicit market. At the time of this letter there are currently more distributors in the

state than retail licenses. The viability of the legal market depends on more retailers not less.

We strongly believe that the punitive nature of this bill is not the appropriate tool. We have connected with the sponsors of the bill to offer some recommendations in exploring the proper approach to resolving this issue, but at the time remain unconvinced that involving the state to resolve an issue that was willingly exacerbated by the individual decisions of the operators themselves is not an appropriate involvement at this time.

POLICY ISSUES FOR CONSIDERATION:

Tied-House Restrictions. The provisions of this bill are loosely based on alcohol tied-house restrictions. A tied-house is an alcohol retailer or drinking establishment that has an exclusive contract with a brewery.

Alcohol tied-house restrictions are a vestige of the prohibition era restrictions against vertical integration. In enacting tied-house restrictions, the legislature specifically noted that "it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques."

As such, tied-house restrictions were not a tool to protect the market from overleveraged retailers, but to segregate the market and make it more difficult for suppliers to sell alcohol.

IMPLEMENTATION ISSUES:

Heavy Enforcement. This bill requires the DCC to commence disciplinary action against a licensee who fails to pay an invoice after 45 days. However, as described under the bill, disciplinary action means formal action against a license, including probation, suspension, and revocation. Formal disciplinary actions are normally reserved for egregious violations of a licensing law. They are severe violations that merit threatening the suspension or loss of a license altogether, meaning the loss of an individual's ability to partake in the licensed profession altogether. A failure to pay an invoice within 45 days on its own may not be a strong indication that a licensee should lose their license.

AMENDMENTS:

1) To eliminate reporting and discipline of minor violations, amend the bill as follows:

On page 3 of the bill, after line 4:

(b) (1) A licensee who sold or transferred goods *with a total value of five thousand dollars ($5,000)* to another licensee and who has not received payment in full 15 days after the final date set forth in the invoice *or invoices* as required by subdivision (a) shall report the unpaid invoice *or invoices* to the department.

2) To ensure that minor or first-time violations are not prosecuted as formal disciplinary action against a license, amend the bill as follows:

On page 3, after line 18:

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

(3) For multiple failures to pay, the department shall commence disciplinary action in accordance with Chapter 3 (commencing with Section 26030), taking into account the frequency and gravity of the failure to pay

3) To clarify that the bill is not retroactive, amend the bill as follows:

On page 3, after line 32:

(g) This section shall only apply to an invoice on a sale or transfer made after January 1, 2024.

REGISTERED SUPPORT:

Cannabis Distribution Association (cosponsor), including:
- Mammoth Distribution
- Nabis
- Kiva Sales & Service
- Statehouse
- Humble Cannabis Solutions
- HERBL Distribution
- Lowell Farms
- Gold Mountain Distribution
- Node Labs
- UpNorth Distribution

California Cannabis Industry Assocation (cosponsor)
California Cannabis Manufaturers Association (cosponsor)
Albert Einstone's
Anresco Laboratories
Autumn Brands
Chemistry
CLSICS
Infinite Chemical Analysis Labs
Kiva Confections
Local Cannabis Company
Lompoc Valley Cannabis Association, Santa Barbara County
Pacific Stone
Pure Beauty
Rose Los Angeles
Rukli Distribution

SC Labs
Sunderstorm
The Parent Company

REGISTERED OPPOSITION:

Retailers Coalition (unless amended):
- United Cannabis Business Association (UCBA)
- Long Beach Collective Association
- Coachella Valley Cannabis Alliance
- Social Equity Los Angeles
- San Francisco Cannabis Retailers Alliance
- Angeles Emeralds
- California Minority Alliance
- Silicon Valley Cannabis Alliance

Osiris Ventures DBA Norcal Cannabis

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1021 (Wicks) – As Introduced February 15, 2023

SUBJECT: Controlled substances: rescheduling.

SUMMARY: Provides that if any Schedule I controlled substance is federally rescheduled or exempted from the Controlled Substances Act, it will automatically become lawful for health professionals to prescribe, furnish, or dispense under California law.

EXISTING LAW:

1) Establishes the Uniform Controlled Substances Act in California, which divides controlled substances into five schedules ranging with the most serious and heavily controlled substances, classified as Schedule I, to the least serious and most lightly controlled substances, classified as Schedule V. (Health & Safety Code (HSC) §§ 11053 – 11058)

2) Provides that if any non-hemp cannabinoid is federally rescheduled or otherwise made a lawfully prescribed controlled substance, it shall also be deemed legal to prescribe under state law upon the effective date of the change in federal law. (HSC § 11150.2)

3) Places cannabis, mescaline, 3,4-methylenedioxy amphetamine (MDMA), peyote, psilocybin, and tetrahydrocannabinols (THC) on Schedule I of the state's Uniform Controlled Substances Act, among other drugs, within the classification of hallucinogenic substances. (HSC § 11054)

4) Prohibits the possession of specified controlled substances, including mescaline, peyote, and THC. (HSC § 11350)

5) Makes it unlawful to possess any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances, including mescaline, peyote, and THC. (HSC § 11364)

6) Makes it unlawful to visit or be in any room or place where specified controlled substances are being unlawfully smoked or used, including mescaline, peyote, and THC. (HSC § 11365)

7) Criminalizes the opening or maintenance of any place for the purpose of unlawfully selling, giving away, or using specified controlled substances, including cannabis, mescaline, peyote, and THC. (HSC § 11366)

8) Makes it unlawful for a person who, with the intent to produce psilocybin or psilocyn, cultivates any spores or mycelium capable of producing mushrooms or other material which contains such a controlled substance. (HSC § 11390)

9) Makes it unlawful to transport, import, sell, furnish, give away, or offer to transport, import, sell, furnish, or give away any spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn. (HSC § 11391)

10) Makes it unlawful to use or be under the influence of specified controlled substances, including mescaline and peyote. (HSC § 11550)

11) States that a prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of their professional practice, and that the responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. (HSC § 11153)

12) Establishes the Controlled Substance Utilization Review and Evaluation System (CURES), for the purposes of collecting records of dispensed Schedule II, III, IV, and V controlled substances. (HSC § 11165)

13) Enacts the Compassionate Use Act of 1996, which first allowed patients to engage in the medical use of cannabis, and for patients and their primary caregivers to cultivate and possess medicinal cannabis, without being subject to criminal prosecution or punishment. (HSC §§ 11362.5 *et seq.*)

14) 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.*)

15) Defines "medicinal cannabis" or "medicinal cannabis product" as goods intended to be sold or donated for use pursuant to the Compassionate Use Act by a medicinal cannabis patient who possesses a physician's recommendation, or in compliance with any compassionate use, equity, or other similar program administered by a local jurisdiction. (BPC § 26001)

THIS BILL:

1) Provides that if any substance listed in Schedule I of the Uniform Controlled Substances Act in California is excluded from Schedule I of the federal Controlled Substances Act and either rescheduled or exempted from one or more provisions of the act, a physician, pharmacist, or other healing arts licensee who prescribes, furnishes, or dispenses that product in accordance with federal law shall be deemed to be in compliance with applicable California law.

2) Additionally provides that a product composed of the excluded substance may be prescribed, furnished, dispensed, transferred, transported, possessed, or used in accordance with federal law upon the effective date of the change in federal law.

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

COMMENTS:

Purpose. This bill is sponsored by **MAPS Public Benefit Corporation**. According to the author:

> "The bill seeks to resolve a predictable future ambiguity for professional, licensed healing arts practitioners by creating a pathway for prescribing substances containing a Schedule I substance, only after the federal government schedules a new drug product containing the

same chemical entity. Specifically, AB 1021 will allow relevant licensed healing arts professionals in California to appropriately prescribe and dispense FDA-approved drug products that contain substances controlled in Schedule I. This effort does not decriminalize or legalize any controlled substance for any non-medical use. It specifically applies to prescription medicines approved by the FDA for medical use. This is a necessary step to prevent a gap in access to potentially life-saving legal medications in the State and to eliminate any 'gray area' for licensed healthcare providers and patients in California."

Background.

Federal vs. State Controlled Substances Scheduling. The federal Controlled Substances Act classifies a number of drugs and chemicals into one of five schedules. Drugs falling within Schedules II through V may be prescribed only by health practitioners in possession of a DEA registration and are ranked according to the drug's potential for abuse, with lower numbered schedules representing drugs with a higher risk of abuse or dependence. Schedule I drugs have been determined to have no currently accepted medical use and a high potential for abuse. Schedule I drugs may not be prescribed by any health practitioner in the United States. Examples of Schedule I drugs include cannabis, LSD, peyote, heroin, and ecstasy.

California also has its own schedule of controlled substances under the Uniform Controlled Substances Act. While the federal and state schedules are typically aligned in regards to how medications are classified, there have been conflicts between the federal and state acts, typically when the federal government reschedules a substance or exempts a specific drug from the Controlled Substances Act. When this occurs, statute in California typically must be legislatively amended to reconcile the differences.

For example, cannabis is currently listed as a Schedule I drug both federally and under California law. While MAUCRSA allows for cannabis to be cultivated, manufactured, and sold by licensees of the Department of Cannabis Control, it generally remains ineligible to be prescribed, furnished, or dispensed. However, in 2018, the federal Food and Drug Administration (FDA) approved a drug called Epidiolex, an epilepsy medication containing highly-purified CBD from the cannabis plant. Advocates for the epileptic community actively championed the FDA's approval of Epidiolex, leading to it becoming the first federally approved drug containing cannabinoids. Prior legislation in California was subsequently enacted to ensure that the drug would also be legal in California. When the FDA later approved additional drugs containing other cannabinoids, the law was further amended to automatically make it lawful to prescribe, furnish, and dispense any FDA-approved drug containing cannabinoids.

Potential Approval of Hallucinogenic Therapies. Beyond cannabis, other controlled substances currently listed as Schedule I both federally in California have been the subject of research into whether they could have effective medical use. In the May 2020 issue of the *American Journal of Psychiatry*, an evidenced-based summary of literature entitled "Psychedelics and Psychedelic-Assisted Psychotherapy" provided a literature review on the clinical application of psychedelic drugs in psychiatric disorders. A total of 1,603 articles were identified and screened. Articles that did not contain the terms "clinical trial," "therapy," or "imaging" in the title or abstract were filtered out. The remaining 161 articles were reviewed by two or more authors and 14 article were identified as reporting on well-designed clinical trials investigating the efficacy of LSD, MDMA, psilocybin, and ayahuasca for the treatment of mood and anxiety disorder, trauma and stress-related disorders and substance related and addictive disorders as well as end-of-life care.

The most significant database exists for MDMA and psilocybin, which have been designated by the FDA as "breakthrough therapies" for PTSD and treatment-resistant depression, respectively. The research on LSD and ayahuasca is observational, but available evidence suggests that these agents may have therapeutic effects in specific psychiatric disorders. The literature review concluded that while randomized clinical trials support the efficacy of MDMA in the treatment of PTSD and psilocybin in the treatment of depression and cancer-related anxiety, the research to support the use of LSD and ayahuasca (DMT) in the treatment of psychiatric disorders is preliminary, although promising. Overall, the database has been insufficient for FDA approval of any psychedelic compound for routine clinical use in psychiatric disorders at this time; however continue research on the efficacy of psychedelics for the treatment of psychiatric disorders is warranted.

On April 5, 2023, MAPS Public Benefit Corporation—the sponsor of this bill—announced its preliminary findings from an observational study, *Long-Term Safety and Persistence of Effectiveness of Manualized MDMA-Assisted Therapy for the Treatment of Posttraumatic Stress Disorder*. According to MAPS Public Benefit Corporation, these preliminary findings "show that participants in this study demonstrated a durable response at least six months, and in some cases a year or more, after their final MDMA-assisted therapy session during the Phase 3 study." The preliminary findings further suggest that therapies utilizing hallucinogenic controlled substances could receive federal approval in the future.

In the event that MDMA, psilocybin, or other Schedule I controlled substances are either federally rescheduled or exempted from the Controlled Substances Act following FDA approval, the author of this bill believes that California should immediately allow health professionals to prescribe, furnish, and dispense those substances as part of federally lawful treatment. This bill would apply if any Schedule I controlled substance is excluded from Schedule I of the federal Controlled Substances Act and placed on a schedule of the act other than Schedule I, or if a product composed of one of these substances is approved by the FDA and either placed on a rescheduled or exempted from the Act. In that instance, California-licensed physicians, pharmacists, and other healing arts licensees would be immediately considered allowed to prescribe, furnish, and dispense those drugs, regardless of their classification within the California Uniform Controlled Substances Act.

Nothing in this bill would legalize any controlled substance that is currently prohibited. For any Schedule I drug to become lawfully prescribed in California, researchers and activists must first successfully advocate for federal laws to be changed. In the event that those efforts are successful, this bill would ensure that California's implementation of the approval is not delayed by misalignment between state and federal drug scheduling.

Prior Related Legislation. SB 519 (Wiener) from 2021 would have made it lawful for the facilitated or supportive use of specified controlled substances classified as hallucinogens. *This bill died on the inactive file on the Assembly Floor.*

AB 527 (Wood, Chapter 618, Statutes of 2021) provided that if any cannabinoids are federally rescheduled or otherwise made a legally prescribed controlled substance, they shall also be legal to prescribe under state law, and reconciled conflicts between state and federal controlled substance schedules.

AB 710 (Wood, Chapter 72, Statutes of 2018) provided that if cannabidiol is federally rescheduled or otherwise made a legally prescribed controlled substance, it shall also be legal to prescribe under state law.

AB 2783 (O'Donnell, Chapter 589, Statutes of 2018) aligned state and federal law regarding the scheduling of hydrocodone combination products.

ARGUMENTS IN SUPPORT:

This bill is sponsored by **MAPS Public Benefit Corporation**, which writes: "Well over half of US states already have processes that establish automatic or near-automatic parity with federal government scheduling. California is among 19 states and the District of Columbia that do not have a mechanized process in their legislative or regulatory frameworks to address this issue. This effort does not decriminalize or legalize any controlled substance for any non-medical use. It specifically applies to prescription medicines approved by the FDA for medical use. This is a necessary step to prevent a gap in access to potentially life-saving legal medications in the State and to eliminate any "gray area" for licensed healthcare providers and patients in California."

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:

This bill is intended to address the potential approval of promising therapies using Schedule I controlled substances such as MDMA, psilocybin, LSD, and ayahuasca. However, there are also ongoing advocacy efforts to reschedule or deschedule cannabis federally, which is also currently a Schedule I controlled substance. Through the enactment of MAUCRSA, California has implemented a rigorous regulatory program for the cultivation, manufacture, distribution, testing, and sale or both medicinal and adult-use cannabis, despite the fact that cannabis cannot currently be lawfully prescribed, furnished, or dispensed by health professionals.

If cannabis's Schedule I status were to be substantially changed at the federal level, it is likely that complex questions would arise. Discussion would likely be required as to how to reconcile the requirements of MAUCRSA with state and federal laws governing the prescription and dispensation of controlled substances. In order to ensure that California would have time to resolve those outstanding questions prior to treating cannabis as rescheduled under the state's Uniform Controlled Substances Act in California, the author may wish to exclude that substance from the provisions of this bill.

AMENDMENTS:

To exempt cannabis and cannabis products currently regulated in California through MAUCRSA from becoming automatically lawful to prescribe, furnish, or dispense under the provisions of this bill, a new subdivision (c) should be added as follows:

(c) This section shall not apply to cannabis or any cannabis product, as defined by Section 26001 of the Business and Professions Code, that is regulated by Section 11150.2.

REGISTERED SUPPORT:

MAPS Public Benefit Corporation *(Sponsor)*
Kaiser Permanente

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1070 (Low) – As Amended March 23, 2023

SUBJECT: Physician assistants: physician supervision: exceptions.

SUMMARY: Authorizes a physician assistant (PA) to gather patient information and perform annual wellness visits, advanced assessments, or health evaluations, including diagnostic screenings, without physician supervision so long as no direct patient treatment or prescribing is involved.

EXISTING LAW:

1) Regulates and licenses PAs under the Physician Assistant Practice Act and establishes the Physician Assistant Board (PAB) to administer and enforce the act. (Business and Professions Code (BPC) §§ 3500-3545)

2) Defines "supervising physician" or "supervising physician and surgeon" as a physician and surgeon who supervises one or more physician assistants and who is not currently on disciplinary probation prohibiting the employment or supervision of a physician assistant. (BPC § 3501(e))

3) "Supervision" means that a physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a PA. (BPC § 3501(f)(1))

4) Specifies that supervision does not require the physical presence of the physician and surgeon, but does require the following:

    a) Adherence to adequate supervision as agreed to in the practice agreement. (BPC § 3501(f)(1)(A))

    b) The physician and surgeon is available by telephone or other electronic communication methods at the time the PA examines the patient. (BPC § 3501(f)(1)(B))

5) Specifies that the PAB may require the physical presence of a physician and surgeon as a term or condition of a PA's reinstatement, probation, or imposing discipline. (BPC § 3501(f)(2))

6) Defines "practice agreement" as the writing, developed through collaboration among one or more physicians and surgeons and one or more PAs, that defines the medical services the PA is authorized to perform and that grants approval for physicians and surgeons on the staff of an organized health care system to supervise one or more PAs in the organized health care system. (BPC § 3501(k))

7) Authorizes a PA to perform medical services if the following requirements are met:

    a) The PA renders the services under the supervision of a physician and surgeon who is not subject to a disciplinary condition prohibiting that supervision or prohibiting the employment of a PA. (BPC § 3502(a)(1))

b) The PA renders the services under a practice agreement. (BPC § 3502(a)(2))

c) The PA is competent to perform the services. (BPC § 3502(a)(3))

d) The PA's education, training, and experience have prepared the PA to render the services. (BPC § 3502(a)(4))

8) Requires a practice agreement to include provisions that address the following:

a) The types of medical services a PA is authorized to perform. (BPC § 3502.3(a)(1)(A))

b) Policies and procedures to ensure adequate supervision of the PA, including, but not limited to, appropriate communication, availability, consultations, and referrals between a physician and surgeon and the PA in the provision of medical services. (BPC § 3502.3(a)(1)(B))

c) The methods for the continuing evaluation of the competency and qualifications of the PA. (BPC § 3502.3(a)(1)(C))

d) The furnishing or ordering of drugs or devices by a PA. (BPC § 3502.3(a)(1)(D))

e) Any additional provisions agreed to by the PA and physician and surgeon. (BPC § 3502.3(a)(1)(E))

9) Prohibits a physician and surgeon from supervising more than four PAs at any one time except in declared emergencies. (BPC §§ 3516(b), 3502.5)

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

COMMENTS:

Purpose. This bill is sponsored by *Signify Health*. According to the author, "In-home health evaluations are an incredibly valuable service provided by clinicians throughout the state. The in-home evaluation allows physician assistants an unparalleled line of sign into the member's clinical, social, functional, behavioral and environmental condition. The COVID-19 pandemic not only exposed the lack of access to health care for many Californians, it had a profound impact on workforce availability that remains a challenge today. Many patients have not seen a physician in over a year. Highly trained and credentialed PA's are well qualified to perform in-home assessments and provide the limited scope of services rendered without supervision. By eliminating the need for physician involvement when licensed PA's are merely gathering patient information and performing a health evaluation that does not involve treating or prescribing, the system is made more efficient for both the physician and the PA by reducing unnecessary paperwork and by removing any potential obstacles for PA's to perform these limited in scope evaluations."

Background. PAs are healthcare providers that can provide a wide range of medical services under the supervision of a physician, including prescribing, when authorized by a supervising physician under a document known as a practice agreement. The practice agreement outlines what a PA may or may not do based on the PA's competence and the level of physician supervision required. A physician may also supervise more than one PA, but no more than four at a time.

Due to the high level of medical care that PAs are capable of providing, the supervision ratio limit was put in place to prevent physicians from becoming overextended. This bill would lift the supervision requirement, and therefore the ratio, for evaluation and triage services that do not involve direct patient treatment or prescribing medication.

Precedent for Lifting Ratios. On March 4, 2020, the governor proclaimed a state of emergency as a result of the impacts of COVID-19 to help the state prepare to respond to medical care and hospitalization needs. During the emergency, the governor issued Executive Order N-39-20, authorizing the California Department of Consumer Affairs (DCA) to waive professional licensing or scope of practice requirements for licensed healthcare professionals, including PAs.

On April 14, 2020, the DCA issued a waiver titled DCA-20-04 Physician Assistant Supervision Requirements that waived the four PA to one physician ratio requirement and lifted the supervision requirement in practice sites or organized health care systems when a supervising physician was not available. The waiver was extended until March 31, 2022.

ARGUMENTS IN SUPPORT:

Signify Health (sponsor) writes in support:

> Signify Health, a CVS company, is a leading healthcare platform that leverages advanced analytics, technology, and a nationwide healthcare provider network to create and power value-based health programs. We are one of the largest providers of in-home health evaluations (IHEs) in the country and provide these evaluations to Medicare Advantage (MA) and Medicaid managed care organization (MCO beneficiaries. Last year, we visited over 2.2 million MA and/or Medicaid MCO beneficiaries including more than 24,000 Californians. Since 2019, we have performed over 66,000 evaluations in the state.
>
> We employ and work with highly skilled clinicians, including physicians, nurse practitioners and physician assistants to perform the in-home evaluation. Our mobile provider network enables us to deploy clinicians where they are needed most and meet people in the comfort of their home. The clinician spends an average of 50 minutes either sitting face-to-face or via video conferencing with the member to review current and past health conditions, perform diagnostic tests when appropriate, examine the home for safety hazards, and discuss social determinants of health….
>
> The Signify clinician does not provide treatment nor issue prescriptions. After the IHE is performed, a summary of the IHE is sent to the member's known primary care provider (PCP), and members are encouraged to reconnect with their primary care doctor to discuss any follow-up care. In fact, our data shows that 90% of members who complete a Signify Health IHE return to their PCP within one year.
>
> Our Physician Assistants are required to be certified by a national accreditation body to be considered for hire. They are trained and coached to ensure the highest standards of clinical accuracy and patient/member satisfaction throughout their tenures. They are monitored for the quality of their documentation, identification

> of HEDIS gap, clinical coding accuracy and customer complaints. We have rigorous processes for peer review, quality and compliance oversight, and complaint resolution. Throughout their tenure, these clinicians are trained and coached to ensure the highest standards of clinical accuracy and patient/member satisfaction….
>
> Currently California allows a physician to oversee 4 physician assistants that provide in-home evaluations. With the current need for these important home evaluations, we believe [this bill] is the right approach and ensures that nothing shall prohibit a physician assistant from gathering patient information and/or performing a health evaluation including diagnostic screenings that does not involve rendering treatment or prescribing medications.

ARGUMENTS IN OPPOSITION:

None on file

POLICY ISSUE FOR CONSIDERATION:

Lifting of Physician Supervision. The Physician Assistant Practice Act does not place many restrictions on the types of medical services a PA may provide outside of what is agreed to with a physician in a practice agreement. As a result, physician supervision through a practice agreement is the basis of all PA practice. However, this bill would lift supervision altogether, a departure from the current PA practice model. Focusing on lifting the four PAs to one physician supervision ratio requirement, rather than the overall supervision requirement, may still achieve the sponsor's goal of removing unnecessary barriers to performing in-home evaluations where treatment or prescriptions are not provided.

AMENDMENTS:

To address the supervision issue, the bill should be amended to lift the four PA to one physician ratio and clarify the settings in which the ratio does not apply by referencing in-home evaluations:

> Strike the current contents of Section 1 of the bill and instead insert:
>
> *Section 3516 of the Business and Professions Code is amended to read:*
>
> (a) Notwithstanding any other provision of law, a physician assistant licensed by the board shall be eligible for employment or supervision by a physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that employment or supervision.
>
> (b) *(1)* Except as provided in *paragraph (2) and* Section 3502.5, a physician and surgeon shall not supervise more than four physician assistants at any one time.
>
> *(2) Paragraph (1) does not apply to the supervision of a physician assistant doing any of the following when performing a home evaluation:*
>
> *(A) Gathering patient information.*

(B) Performing an annual wellness visit, advanced assessment, or health evaluation, including diagnostic screenings, if it does not involve direct patient treatment or prescribing medication.

(c) The Medical Board of California may restrict a physician and surgeon to supervising specific types of physician assistants including, but not limited to, restricting a physician and surgeon from supervising physician assistants outside of the field of specialty of the physician and surgeon.

REGISTERED SUPPORT:

Signify Health (sponsor)
California Academy of PAs

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1111 (Pellerin) – As Amended March 13, 2023

SUBJECT: Cannabis: small producer event sales license.

SUMMARY: Requires the Department of Cannabis Control (DCC) to issue a small producer event sales license, authorizing onsite cannabis sales at state temporary events, to a licensed cultivator who meets specified requirements.

EXISTING LAW:

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

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

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

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

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

6) Authorizes the DCC to issue a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities comply with the following:

    a) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older, cannabis consumption is not visible from any public place or nonage-restricted area, and the sale or consumption of alcohol or tobacco is not allowed on the premises.

    b) All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event are licensed to engage in that activity.

c) The activities are otherwise consistent with regulations promulgated and adopted by the DCC governing state temporary event licenses.

d) A state temporary event license shall only be issued in local jurisdictions that authorize such events.

e) A licensee who submits an application for a state temporary event license shall, 60 days before the event, provide to the DCC a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event.

(BPC § 26200(e))

7) Authorizes a local jurisdiction to allow for cannabis use on the premises of a cannabis retailer or microbusiness that does not sell or allow for the consumption of alcohol or tobacco on the premises, among other restrictions. (BPC § 26200(g))

8) Specifies that the state cultivator license types to be issued by the DCC include all of the following:

a) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

b) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of between 501 and 5,000 square feet of total canopy size on one premises.

c) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the department of between 2,501 and 5,000 square feet of total canopy size on one premises.

d) Type 1C, or "specialty cottage," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the department, of 2,500 square feet or less of total canopy size for mixed-light cultivation, 2,500 square feet or less of total canopy size for outdoor cultivation with the option to meet an alternative maximum threshold to be determined by the department of up to 25 mature plants for outdoor cultivation, or 500 square feet or less of total canopy size for indoor cultivation, on one premises.

e) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

f) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

g) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the department, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

h) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The department shall limit the number of licenses allowed of this type.

i) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The DCC shall limit the number of licenses allowed of this type.

j) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the DCC between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The DCC shall limit the number of licenses allowed of this type.

k) Type 4, or "nursery," for cultivation of cannabis solely as a nursery.

(BPC § 26061(a))

9) Provides that, except as otherwise provided by law:

a) Type 5, or "outdoor," means for outdoor cultivation using no artificial lighting greater than one acre, inclusive, of total canopy size on one premises.

b) Type 5A, or "indoor," means for indoor cultivation using exclusively artificial lighting greater than 22,000 square feet, inclusive, of total canopy size on one premises.

c) Type 5B, or "mixed-light," means for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the DCC greater than 22,000 square feet, inclusive, of total canopy size on one premises.

(BPC § 26061(b)(1)-(3))

10) Prohibits Type 5, Type 5A, and Type 5B cultivation licenses from being issued before January 1, 2023. (BPC § 26061(c))

THIS BILL:

1) Requires the DCC to issue a small producer event sales license for use at state temporary events.

2) Specifies that a licensee who meets all of the following requirements may apply for a small producer event sales license:

a) The applicant holds a valid state cultivation license.

b) The applicant holds a valid license, permit, or other authorization issued by a local jurisdiction that authorizes the licensee to engage in cannabis cultivation.

c) The applicant satisfies all of the following:

i) The applicant cultivates no more than one acre of cannabis under outdoor cultivation licenses, inclusive of all licensed premises.

ii) The applicant cultivates no more than 22,000 square feet of cannabis under mixed-light tier 1 cultivation licenses, inclusive of all licensed premises.

iii) The applicant cultivates no more than 5,000 square feet of cannabis under mixed-light tier 2 and indoor cultivation licenses, inclusive of all licensed premises.

3) Specifies that notwithstanding the cultivation limitations, a licensee who holds a valid state cultivation license may apply to the DCC for a small producer event sales license if they are an equity applicant or licensee, as defined.

4) Prohibits the DCC from requiring an applicant to resubmit information already provided by the applicant for their state cultivation license, and from requiring an applicant to submit to background checks or other inspections already performed for approval of their state cultivation license.

5) Requires the DCC to establish a process to facilitate the submission of applications.

6) Specifies that a small producer event sales license is valid for no more than 32 total days of sales at temporary events per calendar year.

7) Provides that all cannabis or cannabis products sold by a small producer event sales licensee at a licensed event shall only contain cannabis cultivated by that licensee.

8) Requires cannabis and cannabis products intended to be sold to be transported to the cannabis event venue by a distributor licensee, as specified.

9) Provides that, except as otherwise provided, a small producer event sales licensee must comply with all requirements imposed on licensees selling cannabis or cannabis products at a state temporary event license.

10) States that the Legislature finds and declares that this act furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act.

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

COMMENTS:

Purpose. This bill is sponsored by the *Origins Council*. According to the author,

> California's small cannabis producers are world-renowned for their craft and quality, but lack access to scale-appropriate marketing activities that would be available if they were small producers of products like wine or coffee. As a result, communities of small producers across the state are struggling to compete against better-resourced competitors. Enabling small producers to sell their own products at licensed cannabis events would support the development of a craft cannabis market in California and facilitate sustainable economic development in cannabis producing regions.

Background.

Department of Cannabis Control. Since July 1, 2021, the DCC has been the single entity responsible for administering and enforcing the majority of California's cannabis laws,

collectively known as MAUCRSA. The DCC is additionally responsible for licensing and regulating cannabis businesses, including the cultivation, manufacture, testing, transportation, labeling, and sale of cannabis and cannabis products in this state.[1]

Although cannabis consumption is generally lawful for individuals 21 years of age or older, it is prohibited in a location where smoking tobacco is prohibited; within 1,000 feet of a school, daycare center, or youth center while children are present; or while driving, operating, or riding in a vehicle. Cannabis consumption is also prohibited in public places, although local jurisdictions may authorize cannabis consumption on the premises of a licensed retailer or microbusiness under certain conditions and the DCC is authorized to issue state temporary event licenses where individuals 21 years of age or older may buy and consume cannabis.[2]

State Temporary Events. Temporary events are analogous to trade fairs where cannabis businesses can showcase their products and services and consumers can buy and consume cannabis. Temporary events may be held over four consecutive days and are subject to the approval from the local jurisdiction in which the temporary event is proposed to be held. At the time of this writing, 56% of cities and counties do not allow any type of cannabis businesses to operate within their jurisdictions.[3]

Since the DCC's establishment in 2021, it has issued 36 temporary event licenses, 11 in 2021 and 25 in 2022. Over the last three years, the temporary events have been held in the cities of Adelanto, Oakland, Santa Rosa, San Francisco, Port Hueneme, and Turlock as well as Cathedral City. Temporary cannabis events have also been held in Stanislaus, Mendocino, Humboldt, and Riverside counties.

Temporary events are required to be organized by a licensed event organizer who is responsible for applying for the temporary event license, maintaining the event space, hiring security, posting specified signage, and providing the DCC with a list of participants and a diagram illustrating the layout of the event and where participants will be set up.[4] Retailers are the only licensees currently permitted to sell cannabis goods at temporary events and must follow specific rules related to the sale and consumption of cannabis on-site, including the display and packaging of cannabis goods, age restrictions on sales, daily sales limits, a prohibition on samples, and recording sales in the Track and Trace system. Licensed distributors are required to transport cannabis goods to and from an event.[5]

This bill would require the DCC to issue a small producer event sales license, valid for up to 32 days per year, for use at state temporary events so that licensed small- and medium-size cultivators and equity applicants and licensees (subject to eligibility criteria set by local jurisdictions) could sell their cannabis products directly to consumers. Importantly, small producer event sales licensees would be required to adhere to the same rules as retailers at temporary events.

---

[1] Department of Cannabis Control. (n.d.). *About the Department of Cannabis Control*. Department of Cannabis Control. Retrieved April 6, 2023, from https://cannabis.ca.gov/about-us/about-dcc/
[2] Ibid.
[3] Department of Cannabis Control. (n.d.). *Where cannabis businesses are allowed*. Department of Cannabis Control. Retrieved April 6, 2023, from https://cannabis.ca.gov/cannabis-laws/where-cannabis-businesses-are-allowed/
[4] Department of Cannabis Control. (n.d.). Events. Department of Cannabis Control. Retrieved April 6, 2023, from https://cannabis.ca.gov/licensees/events/
[5] Ibid.

DCC Regulations Pertaining to Cultivators Participating in State Temporary Events. In 2021, DCC compliance staff required licensed cultivators participating in the Emerald Cup (a licensed temporary event) to remove any cannabis products they had on display in their booths and were allowed only to display empty packaging.[6] Partly in response to this incident, representatives of cannabis cultivation licensees sponsored AB 2691 (Wood) in 2022, which was substantially similar to this bill. In November 2022, the DCC finalized regulations that, as it relates to this bill, allow non-retail licensees (e.g., cultivators and manufacturers) to participate in temporary events and display cannabis or cannabis products, as specified.[7] Specifically, the regulations 1) limit the amount of cannabis or cannabis products that may be displayed by non-retail licensees, 2) specify that products displayed by non-retail licensees may be provided to attendees for inspection and educational purposes only, 3) authorize cannabis and cannabis products for display to be brought to the event by non-retail licensees or their employees, subject to specific possession limits, and 4) allow non-retail licensees to display packaging and promotional materials, and display *and sell* cannabis accessories and branded merchandise.[8]

Cannabis Cultivation and Required Licenses. Cannabis cultivators grow cannabis plants that are then harvested, sold as flower, and made into products.[9] The process is similar to other agribusiness in California and entails soil preparation, planting seed, irrigating and fertilizing plants, managing pests, trimming and harvesting plants, and drying and curing plants.[10]

A DCC-issued license is required to cultivate cannabis for commercial use.[11] The type of cultivation license required depends on the size of the area where mature plants are grown and the type of lighting that is used.[12] Outdoor licenses are required for cultivators who grow cannabis outdoors without artificial lighting on mature plants.[13] Indoor licenses are required for cultivators who grow cannabis indoors in a permanent structure using at least 25 watts of artificial light per square foot. Mixed-light licenses are for cultivators who grow cannabis in a greenhouse, conservatory, hothouse, or other similar structure.[14] Tier 1 mixed-light licenses are required when artificial lighting is used that produces up to six watts of artificial light per square foot, and Tier 2 mixed-light licenses are required when artificial lighting is used that produces six to 25 watts of artificial light per square foot.[15] Cultivation license types are further distinguished by the physical size of the cultivation area (e.g., 1 acre or 22,000 square feet).[16]

---

[6] KMUD News. (2022, April). *State Agency cracks down on small cannabis farmers at Emerald Cup*. SoundCloud. Retrieved April 6, 2023, from https://soundcloud.com/kmudnews/state-agency-cracks-down-on-small-cannabis-farmers-at-emerald-cup

[7] Department of Cannabis Control. (2022, November 10). *California's cannabis department adopts comprehensive regulatory changes*. Department of Cannabis Control. Retrieved April 6, 2023, from https://cannabis.ca.gov/2022/11/californias-cannabis-department-adopts-comprehensive-regulatory-changes/

[8] Ibid.

[9] Department of Cannabis Control. (n.d.). *Cultivation*. Department of Cannabis Control. Retrieved April 6, 2023, from https://cannabis.ca.gov/licensees/cultivation/

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Ibid.

This bill would limit eligibility for a small producer event sales license based on applicants' cultivation capacity.

Current Related Legislation.

AB 471 (Kalra) would authorize DCC to issue a state caterer license that authorizes the licensee to serve cannabis at a private event approved by a local jurisdiction for the purpose of allowing event attendees to consume the cannabis. *Pending in the Assembly Governmental Organization Committee.*

Prior Related Legislation.

AB 2844 (Kalra) of 2022 was substantially similar to AB 471 (Kalra) of 2023. *Held in the Assembly Appropriations Committee.*

AB 2691 (Wood) of 2022 was substantially similar to this bill. *Died on the Assembly Inactive File.*

AB 2210 (Quirk) Chapter 391, Statutes of 2022, prohibited DCC from denying an application for a state temporary event license solely on the basis that there is a license issued pursuant to the Alcoholic Beverage Control Act for the proposed premises of the event.

AB 2312 (Quirk) of 2020 was substantially similar to AB 2210 (Quirk) of 2022. *Died pending a hearing in this committee.*

AB 2020 (Quirk), Chapter 749, Statutes of 2018, authorized the Bureau of Cannabis Control to issue a temporary state license to provide on-site sales and consumption of cannabis at a temporary event located at a fairground, district agricultural association event, or at another venue expressly approved by a local jurisdiction.

AB 2641 (Wood) of 2018 would have established, until January 1, 2024, a temporary cannabis retailer license for qualified cannabis manufacturers and cultivators to sell their own products at temporary cannabis events, as specified. *Held on the Senate Appropriations Committee Suspense File.*

ARGUMENTS IN SUPPORT:

According to the *Rural County Representatives of California* and the *California State Association of Counties*:

> Currently, cannabis farmers are prohibited from selling their products directly to consumers unless they also own and operate a full-fledged licensed retail facility. This disadvantages small cannabis farmers, who lack the resources to vertically integrate or support large advertising budgets or sales teams. The cost of maintaining high industry standards combined with challenging market conditions, and restricted access to customers, among other considerations, have created a crisis for small producers, particularly homestead farmers residing in rural California. Many are unable to recoup production costs, much less achieve profitability. In turn, an increasing number of these operators are exiting the regulated industry which could lead to significant expansion of the illicit market and dire economic impacts on local economies.

> Existing law allows for the issuance of a temporary event license to authorize onsite cannabis sales to persons 21 and older, so long as that temporary event is an event that receives local approval. [This bill] expands market access through specialty event licenses, providing more opportunities for small commercially licensed cannabis businesses to better market their products. Providing a pathway for small operators to access legal markets.

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Direct-to-consumer sale of cannabis. Under existing law, only a licensed retailer may sell cannabis or cannabis products directly to a consumer. Licensed cultivators and licensed manufacturers rely on licensed retailers to bring their products to market, selling their cannabis or cannabis products through storefront shops (dispensaries) or delivery. Licensed retailers face a myriad of restrictions and requirements pertaining to hours of operation, customer age verification, security, and types of cannabis products that they can sell. This bill would require the DCC to issue a small producer event sales license to eligible cultivators allowing direct-to-consumer cannabis sales by those licensees at temporary events. The author may wish to consider whether this bill would promote unfair competition between retailers and cultivators by allowing cultivators to sell cannabis goods directly to consumers at temporary cannabis events.

Cultivation limits. This bill would limit the amount of cannabis that a cultivator may grow in order to be eligible for a small producer event sales license. The bill specifically provides that a licensed cultivator must not cultivate more than one acre of cannabis under outdoor cultivation license(s), more than 22,000 square feet of cannabis under mixed-light tier 1 cultivation license(s), nor more than 5,000 square feet of cannabis under mixed-light tier 2 and indoor cultivation license(s), inclusive of all licensed premises. However, as currently written, the bill would allow a licensed cultivator to do all three at once: cultivate up to 1 acre of cannabis under outdoor cultivation license(s), 22,000 square feet of cannabis under mixed-light tier 1 cultivation license(s), and 5,000 square feet of cannabis under mixed-light tier 2 and outdoor licenses. The author may wish to clarify that a small producer event sales licensee could not cultivate more than one acre of cannabis, includsive of all licsens types as the author and sponsors have said this bill is intened to support small cultivators.

Number of temporary cultivator event retail licenses. Pursuant to this bill, a small producer event sales licensee would be authorized to sell cannabis and cannabis products directly to consumers at state temporary events for a total of 32 days per calendar year. Each state temporary event may be up to four days in length. Small producer event sales licensees would have the discretion to sell cannabis and cannabis products for consecutive days at a fewer number of state temporary events or sell cannabis and cannabis products for fewer days at each state temporary event and sell cannabis or cannabis products at more state temporary events. To prevent unfair competition between small-scale licensed cultivators and licensed retailers the author may wish to consider reducing the number of days for which a small producer event sales license would be valid each year.

IMPLEMENTATION ISSUES:

DCC Tracking. This bill would require the DCC to track the number of days each small producer event sales licensee sells cannabis or cannabis products directly to consumers at temporary events. The author may wish to consider the feasibility of such a requirement for DCC.

Bill language. As currently drafted, this bill uses inconsistent terminology when referencing state temporary events.

AMENDMENTS:

1) To ensure that eligible cultivators cannot cultivate more than one acre of cannabis, inclusive of all outdoor, indoor, and mixed-light licenses, amend the bill as follows:

   On page 3 of the bill, after line 9:

   (i) The applicant cultivates no more than one acre of cannabis ~~under outdoor cultivation license(s)~~, inclusive of all licensed premises.

2) For clarity, amend the bill as follows:

   On page 3 of the bill, after line 29:

   (c) A small producer event sales license shall be valid for no more than 32 total days of sales at *state* temporary events per calendar year.

   (d) (1) All cannabis or cannabis products sold by a small producer event sales licensee at a licensed *state temporary* event shall only contain cannabis cultivated by that licensee.

   (2) Cannabis and cannabis products intended to be sold pursuant to paragraph (1) shall be transported to the *state temporary* ~~cannabis~~ event venue by a distributor licensee in accordance with Section 26070.

3) At the author's request, amend BPC § 26050.6(b)(2) as follows to account for local jurisdictions' discretion in setting eligibility criteria for equity status.

   On page 3 of the bill, after line 17:

   (2) Notwithstanding the limitations in subparagraph (C) of paragraph (1), a licensee who holds a valid state cultivation license may apply to the department for a small producer event sales license if they are ~~an~~ *a local* equity applicant or licensee, as defined in Section ~~26249~~ *26240*.

REGISTERED SUPPORT:

Origins Council *(Sponsor)*
Big Sur Farmers Association
California Cannabis Industry Association
California Norml (UNREG)
California State Association of Counties

California State Grange
Cannabis Equity Policy Council
Cannacraft, INC.
County of Humboldt
County of Mendocino
Covelo Cannabis Advocacy Group
Emerald Cup; the
Global Cannabinoid Research Center
Hessel Farmers Grange
Humboldt County Growers Alliance
Leafworks
Long Beach Commercial Cannabis Council
Medical Cannabis Resource Events
Mendocino Cannabis Alliance
Mendocino Producers Guild
Nevada County Cannabis Alliance
Oaksterdam University
Rural County Representatives of California
San Jose Cannabis Equity Working Group
Sonoma County Cannabis Alliance
Sweetleaf Health Equity
The Parent Company
Trinity County Agricultural Alliance
United Core Alliance
Veterans Cannabis Group
Weed for Warriors Project

REGISTERED OPPOSITION:

United Cannabis Business Association

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1126 (Lackey) – As Introduced February 15, 2023

SUBJECT: Cannabis: citation and fine.

SUMMARY: Specifically authorizes the Department of Cannabis Control (Department) to issue a citation for misrepresenting unlicensed cannabis products as being licensed, including through the unlicensed use of the cannabis universal symbol.

EXISTING LAW:

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

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

4) Requires the Department to convene an advisory committee to advise state licensing authorities on the development of standards and regulations for legal cannabis. (BPC § 26014)

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

6) Authorizes the Department to issue a citation to a licensee or unlicensed person for violating MAUCRSA or regulations adopted pursuant to MAUCRSA, and allows the Department to assess an administrative fine of up to $5,000 per violation by a licensee and up to $30,000 per violation by an unlicensed person. (BPC § 26031.5)

7) Prohibits cannabis and cannabis product packages and labels from being made to be attractive to children. (BPC § 26120)

8) Requires a cannabis cartridge or integrated cannabis vaporizer to bear a universal symbol that is at least one-quarter inch wide by one-quarter inch high and either engraved, affixed with a sticker, or printed in black or white. (BPC § 26122)

9) Requires the Department to promulgate regulations setting standards for the manufacturing, packaging, and labeling of all manufactured cannabis products, including a requirement that edible products be marked with a universal symbol. (BPC § 26130)

THIS BILL:

1) Provides the Department with express authority to issue a citation for a claim or representation of a product as licensed cannabis without a license.

2) Specifically includes the unlicensed use of the cannabis universal symbol as an example of misrepresenting unlicensed cannabis as being licensed.

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

COMMENTS:

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

> "While state law requires cannabis licensees to use the universal symbol on all packaging, nothing in law prohibits the use of the symbol by non-licensees. As a result, the universal symbol is widely used by non-licensees to legitimize intoxicating hemp products and illicit cannabis products with potency levels that far exceed the limits set allowed by the limits allowed by Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). In fact, empty "cannabis" packages are available for bulk purchase at most local tobacco and smoke shops and online for pennies per package specifically designed to fooling the consumer into believing the product placed inside is safe and legal. This bill makes fraudulent use of the universal symbol a crime and seeks to enhance consumer confidence in legal cannabis products."

Background.

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

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

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

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

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

Enforcement Against Unlicensed Activity. A report published by the Reason Foundation estimates that as much as two-thirds of cannabis sales in California take place on the black market. This is consistent with widespread consensus that illicit cannabis continues to proliferate notwithstanding the enactment of MAUCRSA. In addition to unlicensed persons engaging in unlawful cannabis activity, there have also been cases where licensed cannabis businesses run a "back door" operation of illicit cannabis commerce in addition to their licensed activity.

Because unlicensed cannabis products do not receive state oversight and enforcement of various health and safety requirements, including laboratory testing, consumption of unlicensed cannabis products can pose a significant risk to consumers. In August 2019, the number of emergency department visits related to cannabis vaping products sharply increased, with a total of 2,807 hospitalized cases or deaths reported to federal Centers for Disease Control and Prevention in the United States. It is believed that much of this "vaping crisis" was the result of untested, unlicensed manufactured cannabis products.

Enforcement against the black market has attracted significant legislative attention, particularly within the California State Assembly. A task force was recently established through the 2022-23 Budget process to promote communication between state and local entities engaged in the regulation of commercial cannabis activity and facilitate cooperation to enforce applicable state and local laws. Existing law authorizes the Department to take enforcement action for violations of MAUCRSA. The Department can issue a citation to either a licensee or an unlicensed person, which can include an order of abatement and a fine of up to $5,000 for licensees and $30,000 for unlicensed individuals. This authority allows the Department to issue a citation to licensees who sell cannabis products that do not comply with MAUCRSA, or to black market operators.

However, statute does not specifically state that falsely claiming or representing unlicensed cannabis as being licensed is an enforceable violation of MAUCRSA and its implementing regulations. The author and sponsors of this bill contend that this is an issue as some consumers may unknowingly consume unlicensed products without realizing that they have not met the state's regulatory requirements. Examples have been provided of illicit cannabis products that appear from their packaging to be licensed, including by featuring the universal symbol.

MAUCRSA requires the Department to promulgate regulations setting standards for the manufacturing, packaging, and labeling of all manufactured cannabis products, including a requirement that products be provided to customers with sufficient information to enable the informed consumption of the product, including the potential effects of the cannabis product and directions as to how to consume the cannabis product, as necessary. MAUCRSA also required those regulations to include a universal symbol for all edible products that contain cannabinoids.

Section 17410 of the Department's current regulations requires the following graphic symbol to be featured on the packaging of various cannabis products, including cannabis seeds, edibles, vape cartridges and integrated vaporizers, and nonmanufactured cannabis goods:

The universal symbol is required to be "black or white in color" and "shall be made conspicuous by printing the symbol on a contrasting color." The symbol must be at least one-half inch, except in the case of cannabis vape cartridges or integrated cannabis vaporizers, where it must be no smaller than one-quarter inch. The regulations prohibit the symbol from being altered or cropped in any way other than to adjust the sizing for placement on the primary panel.

The author and sponsors of this bill believe that featuring the universal symbol on an illicitly manufactured cannabis product actively deceives cannabis consumers into believing they are purchasing safe, legal, tested products. While selling cannabis products without a license or without otherwise complying with MAUCRSA is already illegal, the author believes there should be specific penalties for this type of deceptive behavior. This bill would generally authorized the Department to issue a citation for any false claim or representation that a product is licensed without a license, and would specifically provide that unlicensed use of the universal symbol is cause for that citation.

Current Related Legislation. AB 1448 (Wallis) authorizes a local jurisdiction to establish administrative penalties for violations of local law relating to commercial cannabis activity. *This bill is pending in this committee.*

AB 1171 (Blanca Rubio) authorizes a person licensed under MAUCRSA to bring an action in superior court against a person engaging in commercial cannabis activity without a license. *This bill is pending in this committee.*

Prior Related Legislation. AB 1417 (B. Rubio) would have established civil penalties for violating specified cannabis marketing or advertising requirements, and would have specified disbursement procedures for civil penalties. *This bill was held under submission on the Senate Appropriations Committee's suspense file.*

AB 2899 (B. Rubio, Chapter 923, Statutes of 2018) prohibited a licensee from publishing or disseminating advertisements or marketing of cannabis and cannabis products while the licensee's license is suspended.

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

ARGUMENTS IN SUPPORT:

The **California Cannabis Manufacturers Association** and **Kiva Confections** are co-sponsoring this bill, each writing: "AB 1126 would enact necessary improvements to the Department of Cannabis Control; the bill would allow the DCC to issue citations to parties participating in the sale of unlicensed cannabis through the use of false licensing or unlicensed use of the cannabis universal symbol. This legislation would provide critical support to the growing legal market and help to protect consumers from unlicensed businesses. The culture around the legal cannabis industry recognizes the necessity of legislation such as AB 1126, as to protect consumers and put money back into the regulated market."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

While the author and sponsors have characterized the cannabis universal symbol as representing that a product is licensed and tested pursuant to California law, it is not clear that this is how it was intended to be interpreted. Prior to the enactment of Proposition 64, the California Department of Public Health was required to create labeling requirements specifically for edible products containing cannabis. It is arguable that this requirement was first instituted not to provide a stamp of approval, but to warn consumers that a brownie, cookie, or other edible product contained tetrahydrocannabinol (THC). While the Department's regulations require a multitude of cannabis products to be marked with the universal symbol, and it is required for products containing any cannabinoids (including non-psychoactive cannabinoids such as CBD), the author may wish to consider the implications of prohibiting illicit operators from warning consumers that a product is potentially psychoactive.

REGISTERED SUPPORT:

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

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1171 (Blanca Rubio) – As Amended March 23, 2023

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

SUBJECT: Cannabis: private right of action.

SUMMARY: Authorizes a person licensed under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to bring an action in superior court against a person engaging in commercial cannabis activity without a license seeking to enjoin the unlicensed practice.

EXISTING LAW:

1) Regulates controlled substances under the California Uniform Controlled Substances Act. (Health and Safety Code (HSC) §§ 11000-11651)

2) Defines "Cannabis" as all parts of the plant Cannabis sativa L., whether growing or not; its seeds; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. (HSC § 11018)

3) Lists cannabis as a Schedule I controlled substance. (HSC §§ 11054(d)(13), 11054(d)(20))

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

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

6) Prohibits a person or entity from engaging in commercial cannabis activity without a state license issued by the DCC. (BPC § 26037.5)

7) Authorizes the DCC to issue a citation to an unlicensed person for any act or omission that violates any provision of MAUCRSA or related regulations, which may include an order of abatement or an administrative fine not to exceed $30,000 per violation, and specifies that each day of violation constitutes a separate violation. (BPC § 26031.5)

8) Authorizes the DCC, after the exhaustion of administrative and judicial review procedures, to apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited person to comply with the order. (BPC § 26031.5(d))

9) Authorizes the superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of MAUCRSA to, upon a petition filed by the

DCC, issue an injunction or other appropriate order restraining the conduct. (BPC § 26031.2(a))

10) Defines an injunction as a writ or order requiring a person to refrain from a particular act that when granted by a judge may be enforced as an order of the court. (Code of Civil Procedure (CCP) § 525)

11) Specifies that an injunction may be granted in the following cases:

    a) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. (CCP § 526(a)(1))

    b) When it appears by the complaint or affidavits that the commission of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action. (CCP § 526(a)(1))

    c) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the act respecting the subject of the action, and tending to render the judgment ineffectual. (CCP § 526(a)(3))

    d) When pecuniary compensation would not afford adequate relief. (CCP § 526(a)(4))

    e) Where it would be extremely difficult to ascertain the amount of compensation that would afford adequate relief. (CCP § 526(a)(5))

    f) Where the restraint is necessary to prevent a multiplicity of judicial proceedings. (CCP § 526(a)(6))

    g) Where the obligation arises from a trust. (CCP § 526(a)(7))

12) Specifies that a person guilty of willful disobedience of the terms of a process or court order or out-of-state court order is guilty of a misdemeanor. (Penal Code § 166(a)(4)).

THIS BILL:

1) Authorizes, in addition to other remedies permitted by law, a commercial cannabis licensee to bring an action in superior court against a person engaging in commercial cannabis activity without a license.

2) Authorizes the court to, in an action brought under the provisions of this bill, enter an order enjoining the defendant from engaging in commercial cannabis activity without a license.

3) Requires the court to, in an action brought under the provisions of this bill, award a prevailing plaintiff their reasonable attorney's fees and costs.

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

COMMENTS:

Purpose. This bill is sponsored by the *San Diego & Imperial Counties Joint Labor Management Cannabis Committee*. According to the author, "[This bill] seeks to empower legal and fully licensed cannabis operators to petition the court to issue an injunction against non-licensed operators. This additional enforcement tool is essential given that the local and state agencies responsible for cannabis enforcement are insufficiently resourced to meet the challenge of California's enormous and rapidly growing illegal cannabis industry."

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

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

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

Unlicensed Market. As noted during the February 25, 2020, joint informational hearing between this Committee and the Assembly Budget Subcommittee No. 4 on State Administration, there have been significant concerns over cannabis operations that continue to do business outside of the regulatory scheme. They can avoid taxes and compete with lawful businesses. They also create the potential for consumer and environmental harm, avoiding testing and agricultural requirements.

Normally, licensing agencies regulate problematic licensed and unlicensed activity by imposing administrative penalties against an existing license, the strongest of which is revocation of the license, or by withholding the issuance of a license until any problems or deficiencies are addressed. The difficulty in regulating unlicensed businesses that do not plan to obtain a license, including unlicensed cannabis businesses, is that there is no incentive to comply with the administrative penalties because the license is irrelevant to them.

As a result, MAUCRSA authorizes the DCC, after the exhaustion of the administrative and judicial review procedures, to apply to the superior court for a judgment in the amount of any administrative fines and an order compelling the cited person to comply with the DCC order. A violation of a court order is a misdemeanor.

It also establishes various civil penalties which are sought in court and are not tied to the licensing process, which can be brought by the DCC, the Attorney General, or local public attorneys. There are individual penalties of up to three times the amount of the required license fee (which vary based on gross annual revenue, up to $300,000 for a microbusiness with gross annual revenue of $80,000,000). There are also civil penalties of up to $30,000 per day of operation for aiding and abetting unlicensed cannabis activity, which means a person encouraged, aided, or facilitated the activity.

Additionally, it is punishable by up to one year in county jail, which increases per violation, for someone who has management or control of a property (including an employee who works at the property) that knowingly makes the property available for the unlawful manufacturing, storing, or distributing a controlled substance for sale or distribution, including cannabis.

This bill would establish a new private right of action, allowing individual licensees to sue an unlicensed cannabis operation and authorize a court to issue an injunction prohibiting the unlicensed activity. It would also grant the licensee attorney's fees if the lawsuit is successful.

Current Related Legislation. AB 1448 (Wallis), which is pending in this committee, would authorize a local jurisdiction to establish administrative penalties for violations of local law relating to commercial cannabis activity, authorize a local jurisdiction that has established procedures for collecting those administrative penalties to additionally collect specified civil penalties as administrative penalties, and redirect specified portions of civil penalties collected for unlicensed commercial cannabis activity from the General Fund to the treasurers of localities that brought the action for the penalties.

AB 1616 (Lackey), which is pending in this committee, would require the Board of State and Community Corrections to prioritize grant funding for local governments whose proposed programs seek to address the black market.

SB 51 (Bradford), which is pending in the Senate, would authorize the DCC to issue a provisional license for a local equity applicant for retailer activities if the applicant meets specified requirements and authorize the DCC to renew a provisional license until it issues or denies the provisional licensee's annual license, subject to specified requirements, or until 5 years from the date the provisional license was issued, whichever is earlier.

Prior Related Legislation. AB 2087 (Petrie-Norris) of 2022, which was held on suspense in the Assembly Appropriations Committee, would have established a private right of action for those who received unlicensed dispensing or furnishing of prescription drug services.

ARGUMENTS IN SUPPORT:

The *San Diego & Imperial Counties Joint Labor Management Cannabis Committee (JLM)* (sponsor) writes in support:

> The JLM is a joint venture between UFCW Local 135, which represents over 13,000 unionized employees, and March and Ash, a community-oriented chain of cannabis dispensaries in Southern California…. Five years after the passage of the Adult Use of Marijuana Act (AUMA, Proposition 64 2018), we now find the legal market at risk, including its high-road employers, community entrepreneurs, and contribution to California's vibrant economy.

Today, good operators in the licensed cannabis industry are under siege on three fronts. They are losing substantial market share to illegal cannabis operators, to licensed cannabis operators operating outside the regulated market, and to companies selling high-potency synthetic THC-like products under the guise of hemp.

Unfortunately, state and local enforcement has been unable to keep up with the growing illicit market. In short, more needs to be done to clamp down on entities illegally selling intoxicating cannabis and cannabis-like products outside of the regulated framework. [This bill] will empower licensed operators to seek judicial relief against their illegal competitors by giving them standing in Superior Court to seek a permanent injunction against unlicensed operators

The devastating impact of this illicit competition is seen in the form of dramatically decreased tax revenue. Between Q2 2021 and Q4 2022, the CDTFA reports that Cannabis Excise Tax Revenue has dropped by 40% (https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=CannabisTaxRevenues).

There is no sign that that download trajectory is slowing. According to Headset, a real-time industry data-tracking company, legal cannabis sales have been in decline for 22 months. In May 2022, there were close to 1,500 brands in the market. Less than a year later, only about 1,000 remain. Some of the largest multi-state operators have exited the California market, characterizing operating conditions as "brutal" and the investment climate as "toxic."

The persistence of the illicit cannabis market continues to put workers' lives at risk, degrade our natural resources, endanger community safety, and undermine the stability of the state's cannabis tax revenue.

We must do more to enforce existing law, to complement our ongoing support for the legal cannabis market.

ARGUMENTS IN OPPOSITION:

None on file

POLICY ISSUES FOR CONSIDERATION:

1) *Private Right of Action as an Enforcement Tool*. Currently, cannabis licensing requirements are enforced by the DCC and state and local law enforcement, who can seek penalties for behavior that rises to the level of prosecution, including civil penalties. This bill would establish a private right of action, allowing for a type of enforcement of cannabis licensing requirements by licensees against unlicensed cannabis operators. It would be the only private right of action related to unlicensed practice under the Business and Professions Code.

   A private right of action is the right to sue to enforce one's rights in court as a private citizen. However, under this bill, there is no individual right that would be enforced. Unlicensed practice on its own is not a civil matter involving the violation of any party's rights.

While the enforcement of licensing laws is in the public interest, it is also in the public interest to ensure an individual has in fact committed a violation and, if so, that the punishment fits the violation. As a result, regulators and law enforcement thoroughly investigate violations and build a case before bringing an action.

The private right of action under this bill would bypass that process, allowing an individual licensee to haul an allegedly unlicensed person directly to court. As this bill is written, the only conditions required to file a lawsuit are that (1) the filer is a cannabis licensee and (2) the filer believes the party being sued is engaged in unlicensed cannabis activity. Regulators and law enforcement are trained to understand and investigate violations of the law. A cannabis licensee may not have the same investigatory or legal training. Therefore, there may be some risk of misuse.

2) *Efficacy*. According to the sponsors, the reason for this bill is that "state and local enforcement has been unable to keep up with the growing illicit market." However, injunctions are still enforced by law enforcement. If a court finds in favor of a plaintiff licensee and issues an injunction, it would still be up to law enforcement to enforce the injunction. Therefore, a violation of an injunction resulting from a private right of action may present similar enforcement issues as a violation of existing law.

3) *Criminal Penalties*. Under existing law, if a person identifies unlicensed activity, they may make a complaint to the DCC or law enforcement, and the complaint will be investigated. Whether a criminal misdemeanor is an appropriate charge for the gravity of the violation is up to the prosecuting agency.

   Because this bill would bypass the existing enforcement process, it would subject any unlicensed cannabis activity to misdemeanor penalties upon the complaint of a cannabis licensee. While court orders such as injunctions are civil actions, violating them constitutes a misdemeanor offense, resulting in up to 6 months in jail and up to $1000 in fines. Therefore, this bill may criminalize behavior that would not currently be prosecuted as a crime.

4) *Standing*. This bill establishes a private right of action but does not specify any conditions that would trigger the right, which is known as standing, other than the requirement that the complainant be a licensee. For civil actions, standing is usually based on harm or the potential for harm. The purpose of the civil process is to provide an avenue for those that have suffered harm or are at risk of imminent harm to redress or avoid that harm. If this bill passes this committee, the author may wish to establish identifiable harms that may be redressed through the private right of action.

IMPLEMENTATION ISSUES:

1) *Bill Conflict*. Section 2 of this bill would create a new BPC § 26038.1. AB 1448 (Wallis), which is pending in this committee, would also create a new BPC § 26038.1, but with a substantially different purpose. If this bill passes this committee in its current form, the author may wish to reconcile that conflict.

REGISTERED SUPPORT:

San Diego & Imperial Counties Joint Labor Management Cannabis Committee (sponsor)
United Food & Commercial Workers Union

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1369 (Bauer-Kahan) – As Amended March 23, 2023

SUBJECT: Out-of-state physicians and surgeons: telehealth: license exemption.

SUMMARY: Authorizes an eligible out-of-state physician and surgeon to practice medicine in California without a license if the practice is limited to delivering health care via telehealth to an eligible patient who has a disease or condition that is immediately life-threatening.

EXISTING LAW:

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

2) Provides that protection of the public shall be the highest priority for both the MBC in exercising its licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2001.1)

1) Entrusts the MBC with responsibility for, among other things, the enforcement of the disciplinary and criminal provisions of the Medical Practice Act; the administration and hearing of disciplinary actions; carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge; suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions; and reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board. (BPC § 2004)

2) Provides that any person who practices or attempts to practice, or who advertises or holds themselves out as practicing, any system or mode of treating the sick or afflicted in California, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as a physician and surgeon in California or without being otherwise authorized to perform the act is guilty of a crime. (BPC § 2052)

3) Prohibits any person who does not have a valid, unrevoked, and unsuspended certificate as a physician and surgeon from the MBC from using the words “doctor” or “physician” or otherwise implying that they are a physician and surgeon. (BPC § 2054)

4) Empowers the MBC to take action against persons guilty of violating the Medical Practice Act. (BPC § 2220)

5) Defines “telehealth” as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care. (BPC § 2290.5)

6) Enacts the Right to Try Act, which makes an investigational drug, biological product, or device that is not yet approved by the United States Food and Drug Administration (FDA) available to patients with a serious or immediately life-threatening disease, when that patient has considered all other treatment options currently approved by the FDA, has been unable to participate in a relevant clinical trial, and for whom the investigational drug has been recommended by the patient's primary physician and a consulting physician. (Health and Safety Code §§ 111548 *et seq.*)

THIS BILL:

1) Authorizes an eligible out-of-state physician and surgeon to practice medicine in California without a license from the MBC if the practice is limited to delivering health care via telehealth to an eligible patient.

2) Defines "eligible patient" as a person who has a disease or condition that is immediately life-threatening; who has not been accepted to participate in the clinical trial nearest to their home for that disease or condition within one week of completion of applying, or cannot reasonably participate in that trial due to the patient's condition and stage of disease; and who has documentation from their primary physician and a consulting physician attesting that they meet those requirements.

3) Defines "eligible out-of-state physician and surgeon" as a person who is licensed as a physician and surgeon in another state that uses criteria substantially similar to the criteria used by the MBC.

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

COMMENTS:

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

> "Terminally ill patients – especially those with rare diseases – should not be forced to travel for the specialty care they require. The delays and hoops that our current system poses can be the difference between life and death for such patients. A highly limited exemption to California licensure requirements for telehealth provisions to terminally ill patients is simply humane. It respects the rights of a terminally ill individual to try whatever they can to prolong, and even save, their life."

Background.

Regulation of Physicians and Surgeons. Physicians and surgeons in California are regulated by one of two entities: the MBC or the Osteopathic Medical Board of California (OMBC). The MBC licenses and regulates about 153,000 physicians while the OMBC licenses and regulates slightly over 12,000. Generally speaking, most provisions governing discipline for unprofessional conduct by the MBC also apply to the OMBC. The majority of the MBC's staff and resources are dedicated to its enforcement program. The MBC receives approximately 10,000 complaints per year. Statute requires the MBC to prioritize the investigation of certain complaints, including sexual misconduct with a patients.

All physicians and surgeons who practice in California are required to hold an active license from either the MBC or the OMBC. Any person who practices or attempts to practice, or who advertises or holds themselves out as practicing, any system or mode of treating the sick or afflicted in California, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as a physician and surgeon in California or without being otherwise authorized to perform the act, is guilty of a crime. There are only a limited number of exceptions to this general prohibition against the unlicensed practice of medicine.

Telehealth. California first formally recognized the advent of new telehealth technologies in 1996 when the Legislature enacted SB 1665 (Thompson), the Telemedicine Development Act. This bill set standards for the use of what was then called "telemedicine" by health care practitioners and insurers. The bill prohibited health insurers from requiring face-to-face contact between a health care provider and patient for services appropriately provided through telemedicine. The bill also exempted out-of-state practitioners from the Medical Practice Act when consulting either within California or across state lines, with a licensed practitioner in California; however, it prohibited the out-of-state practitioner from having ultimate authority over the care or primary diagnosis of a patient in California.

Much of the Telemedicine Development Act was subsequently repealed and replaced in 2011 through the enactment of AB 415 (Logue), which established the Telehealth Advancement Act of 2011 to revise and update existing law to facilitate the advancement of telehealth as a service delivery mode in managed care and the Medi-Cal Program. The vernacular shift from "telemedicine" to "telehealth" reflected a general consensus among policymakers that telehealth is not itself a form of medicine, but simply a tool to deliver health care outside a traditional office visit. In California there is no distinction between in-person care and telehealth in terms of either the standard of care or the expectations of a physician-patient relationship.

Legally speaking, a physician or other practitioner is deemed to have provided care in whichever geographic place the patient is in at the time of receiving care. For example, if a physician in Chicago, Illinois is giving medical advice to a patient in Palo Alto, California through a telehealth platform, the state considers the physician to be practicing medicine in California. As such, that physician would need a license from the MBC or the OMBC to lawfully provide that care, regardless of whether they are physically within the borders of the state.

Patients with Terminal Diseases. In 2016, the Legislature enacted the Right to Try Act, which authorized the manufacturer of an investigational drug, biological product, or device not yet approved by the FDA to make that investigational drug available to a patient with a serious or immediately life-threatening disease. The patient must have considered all other treatment options currently approved by the FDA and been unable to participate in a relevant clinical trial. The investigational drug must also have been recommended by the patient's primary physician and a consulting physician.

Despite the provisions of the Right to Try Act, terminally ill patients are still limited by the Medical Practice Act's requirement that a physician located outside California must still be licensed by the MBC or OMBC to deliver care to California patients via telehealth. The author contends that this poses a significant issue when a physician outside California is the only person qualified to give specialty care to a patient with a rare, terminal disease.

Under current law, a patient wishing to receive care from a physician outside California has the following options. First, the patient can physically travel to a state where that physician is licensed. Next, under the Telemedicine Development Act, a patient's physician who is licensed in California can consult with an out-of-state physician via telehealth, as long as the California-licensed physician is ultimately responsible for the care. Finally, the out-of-state physician can apply for and obtain a license in California from the MBC.

The author of this bill contends that none of the above options are appropriate for patients who have a disease or condition that is immediately life-threatening. For these patients, it is impractical if not impossible for them to travel to another state, and there is not sufficient time for the out-of-state license to go through the California licensing process. This bill would allow patients to receive care directly from an out-of-state physician only under specified circumstances where the patient has not been accepted to participate in the clinical trial nearest to their home, or, in the medical judgment of their primary physician, it is unreasonable for the patient to participate in that clinical trial due to the patient's current condition and stage of disease.

Current Related Legislation. AB 765 (Wood) prohibits any person who is not a licensed physician and surgeon from using various medical specialty titles or otherwise implying that they are a physician and surgeon. *This bill is pending in this committee.*

AB 1395 (Garcia) requires the MBC to issue a license to applicants for participation in the Licensed Physicians and Dentists from Mexico Pilot Program who do not currently possess federal documentation but otherwise meet the pilot program's requirements. *This bill is pending in the Assembly Committee on Appropriations.*

Prior Related Legislation. AB 1668 (Calderon, Chapter 684, Statutes of 2016) enacted the Right to Try Act.

AB 415 (Logue, Chapter 547, Statutes of 2011) enacted the Telehealth Advancement Act of 2011.

SB 1665 (Thompson, Chapter 864, Statutes of 1996) enacted the Telemedicine Development Act of 1996.

ARGUMENTS IN SUPPORT:

This bill is sponsored by the **ALS Association**, which writes: "The availability of telehealth as a tool to provide care, when an in-person visit isn't necessary, greatly reduces the physical burdens of travel for many people living with ALS. In fact, some of our ALS clinics in California retain telehealth as an option for care. If enacted into law, this legislation would also reduce the economic costs that out-of-state travel imposes on families living with ALS who seek care outside of California."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

While the author's argument for this bill is cogent, there remain unresolved questions as to what administrative recourse would be available to a patient if an out-of-state physician violates the standard of care in the provision of services to that patient via telehealth. Because under the terms of the bill, the MBC would have no authority over the physician, there would likely be no ability for the board to take disciplinary action or other measures to protect the public. At the same time, it is unclear whether the regulatory board within the state where the physician is licensed would have jurisdiction if the care is deemed to not have occurred within that state. As this bill continues to move through the process, the author may wish to consider mechanisms for ensuring that public protection is not compromised by allowing physicians to practice medicine without any oversight or accountability.

REGISTERED SUPPORT:

The ALS Association *(Sponsor)*
ATA Action

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1383 (Ortega) – As Introduced February 17, 2023

SUBJECT: Contractors: discipline: noncompliance with child support obligations.

SUMMARY: Requires the Contractors State License Board (CSLB or board) to adopt regulations by January 1, 2025, to suspend or withhold the issuance of a license if an applicant or the qualifying individual, responsible managing officer, or responsible managing employee for the license, is not in compliance with a child support order, and requires licensees to notify CSLB within 120 days of any court ordered earnings assignment for child support.

EXISTING LAW:

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

2) Specifies that "board," as used in any provision of the Business and Professions Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (BPC § 22)

3) Authorizes a board to suspend a license if a licensee is not in compliance with a child support order or judgment. (BPC § 490.5)

4) Requires a local child support agency to maintain of list of those persons who are not in compliance with a child support court order or judgement. Requires a local child support agency to verify, under penalty of perjury that the persons listed are subject to an order or judgement for the payment of support and that these persons are not in compliance with the order or judgement. (Family Code (FAM) § 17520(b))

5) Requires a child support agency to submit monthly a certified list with the names, social security numbers, individual taxpayer identification numbers, or other uniform identification numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the Department of Child Support Services (DCSS). (FAM § 17520(b))

6) Requires the DCSS to consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, provide a copy of the consolidated list to each board that is responsible for the regulation of licenses. (FAM § 17520(c))

7) Requires all DCA boards to implement procedures to accept and process the list provided by the DCSS, including collecting social security numbers or individual taxpayer identification numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies. (FAM § 17520(d))

8) Requires each board, promptly after receiving the certified consolidated list from DCSS, and prior to the issuance or renewal of a license, to determine whether an applicant is on the most recent certified consolidated list provided by DCSS. (FAM § 17520(e)(1))

9) Authorized each board to withhold issuance or renewal of the license of an applicant on the certified consolidated list provided by DCSS. (FAM § 17520(e)(1))

10) Specifies that if an applicant is on the list, boards shall immediately serve notice, as specified, to the applicant of the board's intent to withhold issuance or renewal of the license. (FAM § 17520(e)(2))

11) Requires boards to issue a temporary license valid for 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license. (FAM § 17520(e)(2)(A))

12) Specifies that DCSS may, when it is economically feasible for DCSS and the boards to do so as determined by DCSS, in cases where DCSS is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgement or order for support for more than four months, provide a supplemental list of these obligors to each board with which DCSS has an interagency agreement. (FAM § 17520(e)(3)(A))

13) Specifies that upon the request by DCSS, the license of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by DCSS. (FAM § 17520(e)(3)(A))

14) Authorizes the boards to suspense the license of any licensee on a supplemental list. (FAM § 17520(e)(3)(A))

15) Requires the boards to immediately serve notice, as specified, to any licensee on a supplemental list informing them that the license will be automatically suspended 150 days after notice is served, unless they come into compliance. (FAM § 17520(e)(3)(B))

16) Prohibits the 150-day notice period from being extended. (FAM § 17520(e)(3)(C))

17) Requires a local child support agency to immediately send a release to the appropriate board and the applicant if any of the following conditions are met:

a) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

b) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the allowable time, as specified.

c) The applicant has filed and served a request for judicial review, but a resolution of that review will not be made within 150 days of the date of applicant being served notice that their license will be suspended, unless the delay is caused by the applicant's failure to act in a reasonable, timely, and diligent manner.

d) The applicant has obtained a judicial finding of compliance. (FAM § 17520(h))

18) Requires a board that has received a release from a local child support agency to process the release within five business days of its receipt. (FAM § 17520(l)(1))

19) Specifies that when a local child support agency determined, subsequent to the issuance of a release, that the applicant is once again not in compliance with a judgement or order for support, or with the terms of repayments, the local child support agency may notify the board, the obligor, and DSCC that the obligor is not in compliance. (FAM § 17520(l)(2))

20) Specifies that DCSS may, when it is economically feasible for DCSS and the boards to develop an automated process for complying, notify the boards that the obligor is once again not in compliance and requires the board to immediately notify the obligor that the obligor's license will be suspended on a specific date no longer than 30 days from the date the form is mailed to the obligor. (FAM § 17520(l)(3))

21) Authorizes DCSS to enter into interagency agreements with the state agencies that have responsibility for the administration of the boards. (FAM § 17520(m))

22) Requires a court to include in any order to pay an amount for child support or modification of the amount to be paid an earnings assignment order that requires the employer of the obligor to pay to the obligee the portion of the earnings that would cover (1) the amount ordered and (2) an amount ordered by the court to be paid toward the liquidation of any arrearage (FAM § 5230)

THIS BILL:

1) Requires the CSLB to adopt regulations to provide for withholding issuance or renewal of a license application if the qualifying individual, responsible managing officer, or responsible managing employee is not in compliance with a child support order or judgment.

2) Specifies that the regulations shall also provide for the suspension of licenses if the DCSS provides the board with a list of delinquent child support obligors and the qualifying individual, responsible managing officer, or responsible managing employee for the license is not in compliance with a child support order.

3) Requires all licensees to notify the registrar in writing of any earnings assignment order for child support issued by a court that includes an amount ordered to be paid toward the liquidation of an arrearage owed by the qualifying individual, responsible managing officer, or responsible managing employee, unless the arrearage has been paid or the order has been suspended.

4) Specifies that if the licensee fails to notify the registrar in writing within 120 days of the issuance of the earnings assignment order, the license shall be automatically suspended if the registrar is informed or is made aware of the order including an unsatisfied arrearage owed and the licensee fails to provide proof that the arrearage has been satisfied within 10 days of notice from the registrar. Delays implementation of this provision until the board adopts the necessary regulations.

5) Requires the board to adopt regulations providing procedures for the suspension of the license of a licensee who is out of compliance with a judgment or order of support that requires payment of unsatisfied arrearages. Requires the regulations to include provisions for the board to take action upon notification by any party having knowledge of the judicial determination of arrearages and proof of the order and unpaid arrearages.

6) Requires the board to adopt the regulations required under this bill by by January 1, 2025.

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

COMMENTS:

Purpose.

This bill is sponsored by the *State Building and Construction Trades Council.* According to the author:

> Current law is unclear regarding the suspension of occupational licenses when a licensee is out of compliance with a child support order. Family Code Section 17520 states, "[t]he department may, when it is economically feasible," provide licensing boards with a list of licensees that are four or more months behind on child support. This leaves room for the Department of Child Support Services to potentially not provide these lists of licensees who are not paying their child support, leaving these unscrupulous contractors to continue operating with no punishment. Even more importantly, this leaves the custodial parent without their desperately needed child support payments.
>
> These custodial parents may be doing everything they can to stay off public assistance by working two jobs or living with relatives while their child's other parent is four or more months behind on court ordered support. If the parent eventually has to rely on public assistance because they are not receiving payments, the taxpayers of the State of California would then be responsible for supplementing their income. To avoid this situation and ensure that contractors who are out of compliance with their child support order are given ample chances to come into compliance, [this bill] will strengthen current law by requiring that a clear process is in place for when a contractor is behind on their child support payments.

Background.

Contractors and CSLB. The board was established in 1929 to regulate the construction industry in California and to protect consumers from unscrupulous contractors.[1] It is responsible for implementing and enforcing the Contractors State License Law and related regulations pertaining to the licensure, practice, and discipline of the construction industry in California. The law requires, in part, that any person or business that constructs or alters, or offers to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in

[1] Contractors State License Board. (n.d.). *History and Background*. Contractors State License Board. Retrieved April 2, 2023, from https://www.cslb.ca.gov/About_Us/History_and_BackGround.aspx

California be licensed by CSLB if the total cost of labor and materials for one or more contracts on the project is $500 or more.[2]

CSLB issues licenses to sole proprietors and legal business entities such as a partnership, corporation, limited liability company, or joint venture.[3] Every license is required to have a qualifying individual (also referred to as a "qualifier") who is the person listed in CSLB records that satisfies the experience and examination requirements for a license.[4]

CSLB issues four (4) license types: "A" General Engineering Contractor; "B" General Building Contractor; "B-2" Residential Remodeling Contractor; and "C" Specialty Contractor of which there are 42 specialty contractor classifications (e.g., electrical, drywall, painting, plumbing, roofing, and fencing).[5] Certain license holders are eligible to additionally obtain an asbestos or hazardous substance removal certification issued by CSLB.[6] As of March 1, 2023, there were 285,179 licensed contractors and 27,904 registered home improvement salespersons.

Child Support Order. A child support order is a legal court order, enforceable by suspension of one's driver's license, passport, professional or occupational licenses, and recreational (e.g., fishing and hunting) licenses; bank and property liens; interception of tax refunds and lottery winnings; and civil contempt charges. Parents who refuse or delay paying child support are charged 10 percent interest.[7]

License Suspension. Pursuant to existing law, DCSS and DCA have an Inter-Agency Agreement to effectuate the suspension of licenses. On a monthly basis, DCSS provides DCA with two lists: one list identifies individuals who are not in compliance with a child support order or judgement and the second list identifies individuals whose licenses have been suspended previously for failure to pay child support and who are non-compliant with a child support order or judgement again. Upon receipt, DCA processes the lists to identify matches between the individuals listed and CSLB licensees. If a match is found, CSLB will notify the individual of the following within five days:

- CSLB's intent to withhold the issuance of a new license or the renewal of a license, and issue a temporary license instead, valid for 150 calendar days, if the individual is more than 30 days in arrears on child support payments but has never had their license suspended for failure to pay child support.

- CSLB's intent to automatically suspend the license in 150 calendar days if the individual has been out of compliance for more than four months, but the license has not been suspended previously for failure to pay child support.

---

[2] BPC § 7027.2
[3] Contractors State License Board. (2018, December). *Contractors State License Board Sunset Review*. Contractors State License Board. Retrieved April 2, 2023, from https://www.cslb.ca.gov/Resources/Reports/Sunset/SunsetReviewReport2018.pdf
[4] Ibid.
[5] Contractors State License Board. (n.d.). *CSLB Licensing Classifications*. Contractors State License Board. Retrieved April 2, 2023, from https://www.cslb.ca.gov/About_Us/Library/Licensing_Classifications/
[6] Ibid.
[7] California Child Support Services. (n.d.). *How A Child Support Case Works*. California Child Support Services. Retrieved April 6, 2023, from https://childsupport.ca.gov/about-us/about-california-child-support-services/

- CSLB's intent to automatically suspend the license in 30 days if the license has previously been suspended for failure to pay child support and the individual is out of compliance again.

Licenses are suspended indefinitely until the expiration of the license or until compliance with the support order is achieved and the applicable LCSA initiates the release of a license, whichever occurs first. If the applicable LCSA initiates a release, CSLB will issue a new license, renew a prior license, or reinstate a suspended license within five business days if the applicant or the qualifying individual, responsible managing officer, or responsible managing employee for the license is otherwise eligible for a license.

The process outlined above is highly automated without much involvement from CSLB staff. Upon receipt of the certified lists provided by DCSS, DCA's Office of Information Services' Family Support Unit automatically runs the list for all licensing entities under DCA. When matches are identified, notification letters are automatically generated. CSLB staff print and mail those letters to licensees.

This bill would require CSLB to adopt through regulations a new process for withholding the issuance or renewal of a license or suspending of a license if the qualifying individual, responsible managing officer, or responsible managing employee is not in compliance with a child support order or judgment. The bill would also require a qualifying individual, responsible managing officer, or responsible managing employee to notify the board in writing of any earnings assignment order for child support issued by a court and would require CSLB to automatically suspend a license if the licensee fails to inform the board of the order within 120 days. The author and sponsor contend that existing law is unclear and affords DCSS and licensing entities too much discretion in regard to whether to follow the suspension process outlined above.

Current Related Legislation.

SB 618 (Rubio) would prohibit DCSS or a local child support agency from collecting interest that has accrued on child support owed or assigned to the state or the county and prohibit child support owed or assigned to the state or the county from accruing interest. *Pending in the Senate Judiciary Committee.*

AB 1148 (Bonta) would require an individual's child support obligation to resume on the first day of the 18th month after release from incarceration or involuntary institutionalization in the amount ordered following a required modification hearing. *Pending in the Assembly Judiciary Committee.*

AB 1324 (Bryan) would require DCSS, on or before January 1, 2025, to identify all child support referrals made prior to January 1, 2023 for a child is specified circumstances and direct local child support agencies to rescind those referrals and cease enforcement of those child support orders. The bill additionally requires DCSS to direct local child support agencies to seek modification of these orders when necessary to eliminate ongoing obligations, including the cancellation of all arrears owed to the state and any accrued interest. *Pending in the Assembly Human Services Committee.*

Prior Related Legislation.

AB 923 (Speier), Chapter 906, Statutes of 1994, authorized boards to suspend a license if a licensee is not in compliance with a child support order or judgement. This bill also required district attorneys to maintain lists of individuals not in compliance with a child support court order or judgement and to submit those lists with specified information to the State Department of Social Services. The bill further required the State Department of Social Services to consolidate the lists received from the district attorneys, and within 30 calendar days of receipt, provide a copy of the consolidated list to each board which is responsible for the regulation of licenses. The bill also required the boards to implement procedures to accept and process the consolidated lists provided by the State Department of Social Services. Additionally, the bill required boards to notify an applicant of the board's intent to withhold issuance or renewal of the license.

AB 196 (Kuehl), Chapter 478, Statutes of 1999, restructured the state's child support enforcement program to significantly increase accountability and responsibility for the program and maximize collection and delivery of child support to the children and families to whom it owed. Specifically, the bill, in part, created a new Department of Child Support Services (DCSS), effective January 1, 2000, to replace the Department of Social Services (DSS) as the single state agency responsible for the oversight and management of the state's child support enforcement program; requires that local child support programs located in the district attorneys' offices be transferred to new county departments of child support services, separate and independent from any other county department; provided the director of DCSS with direct oversight, management and control of the local child support agency; and struck out sections of the Welfare and Institutions Code which had become inoperative by their terms, been incorporated in the reorganization of child support statutes accomplished by the bill, or had become inapplicable as a result of the restructuring of program functions and responsibilities set forth in the bill.

SB 542 (Burton and Schiff), Chapter 480, Statutes of 1999, enacted necessary clean-up to AB 196 (Kuehl), Chapter 478, Statutes of 1999.

SB 240 (Speier), Chapter 652, Statutes of 1999, as it relates to this bill, mandated that any board regulating a professional license, the State Bar, and the Department of Real Estate, require every licensee, at the time of issuance or renewal of a license, to provide the social security number of each individual listed on the license and any person who qualifies the license and specified that licenses subject to revocation, suspension, or denial of a renewal application for nonpayment of child support, including licenses issued to an entity if the delinquent obligor is listed on the license or the individual who qualifies the license.

AB 370 (Wright), Chapter 654, Statutes of 1999, required that delinquency notices issued by a state or local government agency state the date upon which the delinquency was calculated and notify the support obligor that the amount calculated may or may not include accrued interest, and provided that the notice requirement shall not be imposed until the local child support agency has instituted the California Child Support Automation System, as defined. The bill also required that the support obligor be notified of his or her right to an administrative determination of arrears. Additionally, the bill prohibited a state agency from suspending enforcement of any arrearages as a result of the obligor's request for an administrative determination of arrears, except under specified circumstances. Moreover, the bill required boards that have received a release to process that release within five business days of its receipt, and incorporated changes

made by AB 196 (Kuehl), Chapter 478, Statutes of 1999, SB 542 (Burton and Schiff), Chapter 480, Statutes of 1999, and SB 240 (Speier), Chapter 652, Statutes of 1999.

ARGUMENTS IN SUPPORT:

According to the *State Building and Construction Trades Council of California*, the bill's sponsor, "[This bill] provides simple clean-up language to ensure that the lists are distributed and disciplinary actions are taken against licensees who are not in compliance with a child support order or judgment. We believe this measure will clarify that those substantially behind in child support will be held accountable, thereby helping to remove bad actors from holding licenses."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Unclear Need for the bill. This bill would require CSLB to develop through regulations a duplicative and conflicting process for suspending a contractor license if the qualifying individual, responsible managing officer, or responsible managing employee is behind on child support payments. Existing law provides a detailed process for occupational licensing entities, including CSLB, to become aware of a licensee's failure to pay, to issue a licensee a warning letter, and to ultimately suspend a license for failure to comply. The committee is not aware of any evidence demonstrating the insufficiency of the existing law and processes.

IMPLEMENTATION ISSUES:

Enforcement. This bill requires contractors to notify CSLB within 120 days of receiving a child support order and CSLB to automatically suspend a licensee for failure to notify the board in writing within 120 days of the issuance of a child support order. However, contractors may not be forthcoming with that information knowing that their license is at risk. In addition, this bill would require CSLB staff to "take action" if notified by any party that a qualifying individual, responsible managing officer, or responsible managing employee is in arrears on child support payments and has proof of the child support order. However, CSLB does not have the capacity, staff expertise, or legal authority to investigate and adjudicate child support matters.

AMENDMENTS:

1) To delete the contents of the bill, strike lines 1-24, inclusive, on page 2 and lines 1-14, inclusive, on page 3.

2) To require DCSS to provide supplemental lists to licensing entities identifying child support obligors who have been out of compliance with a child support order or judgement for more than four months and to notify licensing entities when a child support obligor has become non-compliant again, consistent with DCSS's existing processes, amend the following provisions of Family Code §17520 as follows:

FAM § 17520(e)(3)(A). The department shall ~~may, when it is economically feasible for the department and the boards to do so as determined by the department~~, in cases where the department is aware that certain child support obligors listed on the certified lists have been

out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The board shall have the authority to suspend the license of any licensee on this supplemental list.

FAM § 17520(l)(3). The department shall ~~may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision~~, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). This section does not limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

3) To require licensing entities to suspend the license of someone who is not in compliance with a child support order or judgement, consistent with licensing entities under DCA's existing practices, amend BPC § 490.5 as follows:

BPC § 490.5. A board ~~may~~ shall suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment.

REGISTERED SUPPORT:

State Building and Construction Trades Council of California *(sponsor)*

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1448 (Wallis) – As Introduced February 17, 2023

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

SUBJECT: Cannabis: enforcement of local laws.

SUMMARY: Authorizes a local jurisdiction to establish administrative penalties for violations of local law relating to commercial cannabis activity, including a special lien, authorizes a local jurisdiction that has established procedures for collecting those administrative penalties to additionally collect specified civil penalties as administrative penalties, and redirects specified portions of civil penalties collected for unlicensed commercial cannabis activity from the General Fund to the treasurers of localities that brought the action for the penalties.

EXISTING LAW:

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

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

3) Establishes various civil penalties for unlicensed commercial cannabis activity, including civil penalties of up to three times the amount of the relevant license fee for each violation. (BPC § 26038(a)(1))

4) Specifies that the civil penalties are in addition to criminal penalties that apply to an unlicensed person engaging in commercial cannabis activity (BPC § 26038(g))

5) Clarifies that the civil penalties do not limit, preempt, or otherwise affect any other state or local law, rule, regulation, or ordinance applicable to the conduct relating to commercial cannabis activities. (BPC § 26038(h)(1))

6) Specifies that the civil penalties imposed and collected are first used to reimburse the Attorney General, a county counsel, or a city attorney or prosecutor, whichever brought the action, and the remainder is deposited into the General Fund. (BPC § 26038(c),(e))

7) Specifies that MAUCRSA does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate commercial cannabis licensees, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit

the establishment or operation of one or more types of commercial cannabis licensees under within the local jurisdiction. (BPC § 26200(a)(1))

8) Defines "local agency" as a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency. (Government Code § 54951)

9) Authorizes the legislative body of a local agency, by ordinance, to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty, specifically:

   a) Requires the ordinance to contain administrative procedures governing the imposition, enforcement, collection, and administrative review of the administrative fines or penalties and to comply with specified statutory penalty caps. (GOV § 53069.4(a)(1))

   b) Requires the administrative procedures to provide for a reasonable period of time to remedy the violation if the violation pertains to ongoing building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety. (GOV § 53069.4(a)(2)(A))

   c) Authorizes the ordinance to immediately impose administrative fines or penalties if the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements is a result of the illegal cultivation of cannabis. (GOV § 53069.4(a)(2)(B))

   d) Establishes a process for appealing a final administrative decision under an ordinance that is separate from the existing civil procedures for writs of mandate inquiring into the validity of a final administrative order or decision. (GOV §§ 53069.4(b)(1), 53069.4(b)(2), 70615(a)))

   e) Specifies that the conduct of the appeal is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. (GOV § 53069.4(b)(3))

   f) Specifies that, if no notice of appeal of the local agency's final administrative order or decision is filed within 20 days after service is made, the order or decision will be deemed confirmed. (GOV § 53069.4(c))

   g) Specifies that, if the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty using the procedures in the ordinance. (GOV § 53069.4(d))

10) Makes a violation of a city or county ordinance a misdemeanor unless by ordinance it is made an infraction and specifies that the violation of an ordinance may be prosecuted by local authorities in the name of the people of the State of California, or redressed by civil action. (GOV §§ 25132(a), 36900(a))

11) Makes every ordinance violation that is an infraction punishable by the following:

    a) A fine not exceeding one hundred dollars ($100) for a first violation. (GOV §§ 25132(a)(1), 36900(a)(1))

    b) A fine not exceeding two hundred dollars ($200) for a second violation of the same ordinance within one year of the first violation. (GOV §§ 25132(a)(2), 36900(a)(2))

    c) A fine not exceeding five hundred dollars ($500) for each additional violation of the same ordinance within one year of the first violation. (GOV §§ 25132(a)(3), 36900(a)(3))

12) Authorizes a city or county to, by ordinance: (1) establish a procedure to collect abatement and related administrative costs by a nuisance abatement lien that has the priority of a judgment lien and (2) make the cost of the abatement a special assessment against the abated parcel that is collected at the same time and in the same manner as local taxes are collected and subject to the same penalties and the same procedure and sale in case of delinquency. (GOV § 25845, 38773.1, 38773.5)

13) Defines a judgment lien on personal property as a lien for the amount required to satisfy the money judgment. (Code of Civil Procedure (CCP) § 697.540)

14) Ranks the priority between a judgment lien and other conflicting security interests according to either time of filing or perfection, with judgment liens generally having a lower priority than perfected liens. (CCP § 697.590)

15) Grants special assessment liens priority over all other liens on a property, regardless of the time of their creation, except (1) liens for general taxes or ad valorem assessments in the nature of and collected as taxes, (2) earlier special assessment liens, (3) easements constituting servitudes upon or burdens to said lands; (4) water rights held separately from the title to the lands, and (4) restrictions of record. (Revenue and Taxation Code § 2192.1; GOV § 53935)

THIS BILL:

1) Authorizes a local jurisdiction that has established administrative procedures for the imposition, enforcement, collection, and administrative review of administrative fines and penalties to impose and collect the civil penalties established for unlicensed commercial cannabis activity as administrative penalties in accordance with those administrative procedures, in addition to any other administrative fines or penalties established by the local jurisdiction.

2) Redirects one-half of the remaining civil penalties collected after reimbursing a county counsel, city attorney, or city prosecutor from the General Fund to the treasurer of the county in which the judgment was entered or the city in which the complaining attorney has jurisdiction.

3) Rearranges various sections related to the penalties for violations of unlicensed commercial cannabis activity.

4) Authorizes a local jurisdiction to, by ordinance, make a violation of a local law relating to commercial cannabis activity subject to an administrative fine or penalty, specifically using a substantially similar structure to the existing authority to establish administrative penalties for violations of ordinances, but leaves out the statutory caps:

   a) Requires the local jurisdiction to establish the administrative procedures that govern the imposition, enforcement, collection, and administrative review of the administrative fines or penalties.

   b) Requires the ordinance to specify the amount of the fine or penalty for each violation subject to the procedures.

   c) Authorizes the administrative procedures to provide a reasonable amount of time to correct or otherwise remedy an ongoing violation.

   d) Establishes a process for appealing a final administrative decision under an ordinance that is separate from the existing civil procedures for writs of mandate inquiring into the validity of a final administrative order or decision, and specifies what must be included in a local jurisdiction's file

5) Authorizes a local jurisdiction to, after the exhaustion of the administrative and appeal procedures, file a certified copy of a final decision of the local jurisdiction that directs the payment of an administrative fine or penalty and, if applicable, a copy of an order of the superior court rendered on an appeal from the local jurisdiction's decision with the clerk of the superior court of any county.

6) Requires the judgment to be entered immediately by the clerk in conformity with the decision or order.

7) Specifies that a fee may not be charged by the clerk of the superior court for the performance of an official service required in connection with the entry of judgment.

8) Authorizes a local jurisdiction to establish a procedure to collect the fines or penalties by a special lien upon the parcel of land on which the violation occurred, similar to the existing authority to collect abate nuisances, and specifies that the lien is superior to all encumbrances, existing and future, except liens for taxes and assessments.

9) Specifies that the remedies or penalties related to the administrative penalty authority created under this bill are cumulative to the remedies or penalties available under law.

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

COMMENTS:

Purpose. This bill is sponsored by the *Rural County Representatives of California*. According to the author, "The promise of Proposition 64 was, make marijuana legal and we would have a safer product, we would have a billion dollars annually in tax revenue, and we would protect kids by eliminating the illegal market. Because of illegal cannabis activities, only a portion of these promises have been achieved. Illicit cannabis operators frequently engage in human trafficking, unlawful labor practices, water theft, illegal pesticide use, and environmental degradation as part

of their operations. Local law enforcement agencies and code enforcement departments are on the front lines struggling to deal with the growth of illicit cannabis activities. [This bill] will give local jurisdictions enhanced tools in their effort to info to end unlicensed cannabis activities. We can only achieve the promise of Prop 64 if we stop illegal cannabis."

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

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

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

Unlicensed Market. As noted during the February 25, 2020, joint informational hearing between this Committee and the Assembly Budget Subcommittee No. 4 on State Administration, there have been significant concerns over cannabis operations that continue to do business outside of the regulatory scheme. They can avoid taxes and compete with lawful businesses. They also create the potential for consumer and environmental harm, avoiding testing and agricultural requirements.

Normally, licensing agencies regulate problematic licensed and unlicensed activity by imposing administrative penalties against an existing license (the strongest of which is revocation of the license), or by withholding the issuance of a license until any problems or deficiencies are addressed. The difficulty in regulating unlicensed businesses that do not plan to obtain a license, including unlicensed cannabis businesses, is that there is no incentive to comply with the administrative penalties because the license is irrelevant to them.

As a result, MAUCRSA includes various civil penalties which are sought in court and are not tied to the licensing process, which can be brought by the DCC, the Attorney General, or local public attorneys. There are individual penalties of up to three times the amount of the required license fee (which vary based on gross annual revenue, up to $300,000 for a microbusiness with gross annual revenue of $80,000,000). There are also civil penalties of up to $30,000 per day of operation for aiding and abetting unlicensed cannabis activity, which means a person encouraged, aided, or facilitated, the activity (not just mere knowledge of the activity).

However, according to the sponsors, much of the enforcement of state violations is left to local jurisdictions. And while the law requires the civil penalties collected to first reimburse the local agency that prosecuted the case, the sponsors note that there is no other incentive for locals to

enforce state laws because the remainder of the collected penalties goes to the state general fund. This bill seeks to provide additional incentives by allowing local jurisdictions to collect half of the remaining penalties that would normally go to the general fund and collect unlicensed civil penalties as administrative penalties. According to the sponsors, this would allow local jurisdictions to reinvest the penalties into unlicensed cannabis activity enforcement

Enforcement of Local Laws. Local jurisdictions also have the authority to adopt local ordinances related to unlicensed cannabis activity that is separate from MAUCRSA. However, according to the sponsors, there are three factors that limit the enforcement of the ordinances.

First, existing law limits the amount of any penalty a local jurisdiction can impose for typical unlicensed cannabis activity between $100 and $500 depending on the number of times an ordinance is violated. Any more than that would have to go through the criminal process rather than the administrative process. According to the sponsors, unlicensed cannabis operators are often able to react to enforcement quickly, and the administrative process is quicker. However, this amount is not enough to effectively deter unlicensed cannabis activity. This bill would remove the penalty limits for cannabis ordinances.

Second, existing law normally requires administrative decisions to be reviewed via the writ of mandate process. According to the sponsors, this process is too slow for unlicensed cannabis enforcement. While existing law creates a more expedient judicial review process for the appeal of a local jurisdiction's administrative decisions under an ordinance, the courts have found that both methods of appeal are still available to respondents.[1] This bill would make only the more expedient form of review available for unlicensed cannabis ordinances established using the new process.

Third, the sponsors state that the mechanisms for the collection of penalties, as well as the available enforcement tools altogether, are insufficient to address unlicensed cannabis activity. This bill would authorize a local jurisdiction to make the amount of any unpaid penalties a special lien against a property and make the special lien superior to other encumbrances other than tax and assessments. A lien is a right to keep possession of property belonging to another person until a debt owed by that person is discharged. In combination with the removal of the penalty caps under this bill, a local jurisdiction could use the superior lien to foreclose on a property that continues to violate a local cannabis ordinance.

One last technical difference between the existing law and this bill is that existing law requires ordinances to provide a reasonable time to cure a violation, while this bill would make it optional. According to the sponsors, cannabis violations are not always curable.

Case File. This bill also specifies the contents of the local jurisdiction's case file in the event of an appeal. According to the sponsors, this was adapted from The California Environmental Quality Act (CEQA) and related case law.

---

[1] In *Martin v. Riverside County Dept. of Code Enforcement* (2008) 166 Cal.App.4th 1406, 1411-1412, the court held that "Government Code section 53069.4 provides for alternative procedures for challenging an administrative decision like a ruling on a code violation, either by a de novo appeal to the superior court to be heard by a judge or a subordinate judicial officer or by a petition for writ of mandate under Code of Civil Procedure sections 1094.5 and 1094.6."

Current Related Legislation. AB 1171 (Rubio), which is pending in this committee, would establish a private right of action allowing cannabis licensees to bring an action in superior court against a person engaging in commercial cannabis activity without a license.

AB 1616 (Lackey), which is pending in this committee, would require the Board of State and Community Corrections to prioritize grant funding for local governments whose proposed programs seek to address the black market.

SB 51 (Bradford), which is pending in the Senate, would authorize the DCC to issue a provisional license for a local equity applicant for retailer activities if the applicant meets specified requirements and authorize the DCC to renew a provisional license until it issues or denies the provisional licensee's annual license, subject to specified requirements, or until 5 years from the date the provisional license was issued, whichever is earlier.

Prior Related Legislation. AB 195 (Committee on Budget), Chapter 56, Statutes of 2022, established the civil penalty of up to $10,000 per violation against a person who has management or control of a commercial property or a commercial building, room, space, or enclosure and knowingly rents, leases, or makes it available for the unlicensed cultivation, manufacture, storage, sale, or distribution of cannabis, made each day the violation continues a separate violation, and required an action for the civil penalties to be brought exclusively by the Attorney General on behalf of the people, on behalf of the department, or on behalf of the participating agency, or by a city or county counsel or city prosecutor.

AB 2102 (Jones-Sawyer) of 2022, which died pending a hearing in the Senate Judiciary Committee, would have established a civil penalty of up to $30,000 per violation for knowingly renting, leasing, or making available a building, room, space, or enclosure for the purpose of unlawfully manufacturing, distributing, or selling cannabis, in addition to the criminal penalty, and authorized injunctive relief, as specified.

AB 2728 (Smith) of 2022, which died pending a hearing in the Senate Judiciary Committee, would have increase the penalty for unlicensed activity from three to four times the fee of the license required, as specified.

AB 1138 (Rubio), Chapter 530, Statutes of 2021, established the $30,000 penalties for a person who aids and abets unlicensed commercial cannabis activity and the associated conditions and mechanisms.

AB 2094 (Jones-Sawyer) of 2020, which died pending a hearing in this Committee, would have imposed a $30,000 civil penalty on a person who makes the property available for unlawful cannabis activity.

AB 2164 (Cooley), Chapter 316, Statutes of 2018, allowed local ordinances to provide for the immediate imposition of administrative fines or penalties for the violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis, except as specified.

ARGUMENTS IN SUPPORT:

The *Rural County Representatives of California (RCRC)* (sponsor), the *California State Association of Counties (CSAC)*, and the *League of California Cities (Cal Cities)* write in support:

> A commonality amongst local jurisdictions that have sanctioned commercial cannabis activities or restrict such operations is the overwhelming enforcement needs to combat unlicensed cannabis activities. Local law enforcement agencies and code enforcement struggle to effectively deter illicit cannabis operators who sidestep regulations and undermine the health and safety of residents and our regulated cannabis businesses. Enhanced tools at the local level are needed to combat this highly lucrative and harmful unlawful activity. [This bill] would provide effectual tools at the local level to act against persons that have aided and abetted unlicensed cannabis activity….
>
> Local jurisdictions are a critical partner to successfully regulate the commercial cannabis marketplace. [This bill] will bolster safe access to the cannabis market by targeting enforcement against unlawful operators that undermine the legal marketplace and undercut local economies.

The *California Cannabis Industry Association (CCIA)* writes in support:

> The licensed cannabis industry continues to struggle with competition from an illicit market that is untaxed, unregulated, and untested. This entrenched unlicensed market accounts for approximately ⅔ of all cannabis sales in the state, according to a 2022 Reason Foundation report, and has resulted in numerous consequences, including an increase in cannabis-related violence, worker exploitation, and environmental damage.
>
> While such consequences have had a dramatic impact on public health and safety, it has also robbed the state of billions in tax revenue. Meanwhile, enforcement efforts to combat illicit market activity are largely insufficient to address the severity of this problem.

San Bernadino County writes in support, "Illegal cannabis cultivation is widespread across California and has caused serious environmental damage to many rural areas of the state, including San Bernardino County. [This bill] would authorize local governments to assess an administrative penalty for illegal cannabis activity. Local agencies would have flexibility in determining the amounts of fines, with streamlined appeals and judicial review procedures, and a collection process using lien mechanisms like those used for pesticide violations. [This bill] also revises the Business and Professions Code 26038 to allow a local administrative process to recover penalties, thereby incentivizing local agencies to use this tool to address unlicensed cannabis. The statutory penalties collected are split evenly between the state and local jurisdiction and can be used to support ongoing illegal cannabis enforcement, thereby supporting law-abiding legal cannabis businesses who are competing with illegal cannabis for market share."

ARGUMENTS IN OPPOSITION:

A coalition of real estate associations, the *California Association of Realtors*, the *California Credit Union League*, the *California Escrow Association*, the *California Land Title Association*, the *California Mortgage Association*, the *California Mortgage Bankers Association*, the *Escrow Institute of California*, and the *United Trustees Association* are opposed to the "superpriorty lien" provision of this bill, and request the lien be amended into a judgment lien, writing:

> Though well-intended, the use of superpriority liens would likely significantly disrupt the real estate market of any jurisdiction in which they are used, making it more difficult for prospective homebuyers to obtain reasonably priced and available financing. In addition to market-wide effects, [this bill] risks harming individual innocent property owners and other lienholders, including mortgage lenders, contractors and other tradesmen, as well as custodial parents that have already recorded child support liens against a property….
>
> With respect to real property interests, California has long followed the doctrine of "first in time, first in right." Under this doctrine, lien priority is established by the date of recordation of the lien in real property records, with the exception of tax liens, which are afforded a superpriority status. This doctrine is vital to the health of California's real estate economy, as it allows parties to real estate transactions – such as title insurers, lenders, and others – to rely upon an examination of real property records in order to establish whether a particular parcel of real property is subject to any encumbrances, such as liens, that have already been recorded and respond accordingly. Without such a guarantee of priority to protect their security interest, lenders would not provide loans to consumers or would be forced to significantly increase the interest rates or fees to cover the exponential increase in risk.
>
> By allowing any jurisdiction to create an ordinance that authorizes the recording of superpriority liens, [this bill] risks disrupting the predictability of that long-established system. We anticipate that the effects of this disruption will be significant and far outside the intended scope of the bill. Specifically, in order to mitigate the risk of losing a portion of their security in a given property, we anticipate that lenders will be forced to tighten lending standards on the front-end process of loan generation, mandate larger down payments, and/or increase borrowing costs. Unfortunately, due to the unknowable nature of whether a given property will become subject to a superpriority lien after having already lent against it, the negative impacts of these understandable risk mitigation measures will apply to individuals that were never contemplated by the legislation.
>
> The effects of these actions will also be compounded by the reluctance of Government-Sponsored Enterprises (GSEs), such as Fannie Mae and Freddie Mac, to purchase California mortgages on the secondary market, which will further restrict credit availability within the state. GSEs will undoubtedly look at the properties in subject loan markets as having elevated risk for their secondary market investors, and could even enact a ban on the purchase of any mortgage potentially subject to an ordinance under [this bill]….

We recognize the need for jurisdictions to be able to encumber real property in order to recoup incurred costs or levy penalties in the event of violation. In fact, existing law already provides various levels of government with such authority. However, with the exception of tax liens, none of these liens – related to issues ranging from seismic strengthening, to graffiti nuisance or fire abatement, to unpaid water or sewage bills – have superpriority status…. An additional example of this can be found in the Methamphetamine or Fentanyl Contaminated Property Cleanup Act of 2005, which provides local jurisdictions with the authority to record liens intended to allow for the recovery of costs incurred as a result of remediating methamphetamine or fentanyl contamination….

Rather than rely on a superpriority lien to target a single property, we respectfully propose that the author and sponsor would better achieve their goals by utilizing a lien with judgment status, which, once recorded, will attach to *all* of the violating entity's property in the county in which it is recorded, both personal or real – including other homes or possessions in the bad actor's name.

In addition to avoiding the numerous unintended consequences for real estate as described above, this approach has the added benefit of expanding the reach of the lien, thereby making it more difficult for a bad actor to limit the personal impact of a violation. If the bad actor had conducted an illegal operation at a substandard property but not their home, for instance, a judgment lien would attach to both properties, making it much more difficult for the bad actor to shield themselves from penalties. Perhaps even more impactful, a judgment lien would also attach to personal property, such as vehicles or other possessions, greatly expanding the reach of the bill….

Furthermore, it is our understanding that many of the properties that are utilized for the illegal activities that are the target of this bill are completely unencumbered, meaning there is no need for superpriority status as there are no liens in front of which to jump. Lastly, bad actors can further exploit the mechanism currently proposed by [this bill] by utilizing substandard, "throwaway" properties that will likely be a headache for local jurisdictions to foreclose on, and the loss of which will not meaningfully impact the bad actors, again making superpriority status irrelevant.

As stated above, all creditors are afforded a right to protect themselves through the recordation of a lien to establish their rights. We do not specifically seek to invalidate local jurisdictions' right to record a lien, but rather believe that they would be better served by recording a lien that has the force, effect, and priority of a judgment lien.

POLICY ISSUES FOR CONSIDERATION:

1) *Inconsistent, Unlimited Penalties*. This bill authorizes local jurisdictions to establish administrative penalties that are not subject to any statutory limits. However, it is general practice in licensing enforcement to establish a statutory limit on the penalties that can be assessed. This provides for consistency in enforcement and provides a reasonable expectation of what the penalty for violating the law is. Therefore, the bill should be amended to include a cap.

2) *Superpriority Liens*. This bill authorizes a local jurisdiction to record a lien against a property in the value of uncollected penalties that has higher priority than any other property interest in the property, including a mortgage. According to the opposition, the threat of that type of lien would disrupt the real estate lending market, adding a layer of unpredictability when assessing the risk associated with a property during the lending process. The sponsors respond that this type of lien exists under nuisance abatement laws.

   However, nuisance abatement liens are limited to the cost of the abatement of the nuisance, whereas the penalties under this bill, which are not currently capped, could potentially be much higher. In addition, given that the need for this bill is the scale of the unlicensed cannabis market, the new type of lien may be used more frequently than a nuisance lien. If this bill passes this committee, the author may wish to amend the bill to ensure that the priority of the lien is consistent with the weight of the state's interest in addressing the unlicensed cannabis market against a creditor's right to its property interests.

IMPLEMENTATION ISSUES:

Bill Conflict. Section 2 of this bill would create a new BPC § 26038.1. AB 1171 (Rubio), which is pending in this committee, would also create a new BPC § 26038.1, but with a substantially different purpose. If this bill passes this committee, the author may wish to reconcile that conflict.

AMENDMENTS:

To clarify that the bill only applies to unlicensed cannabis activity and to establish a limit on the penalties that is consistent with the existing civil penalties for unlicensed cannabis activity, amend the bill as follows:

On page 7 of the bill, after line 21:

> **26038.1.** (a) (1) A local jurisdiction, by ordinance, may make a violation of a local law relating to the *unlicensed* cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling, delivering, or distributing of cannabis or cannabis products, including, but not limited to, an ordinance adopted under Section 26200, subject to an administrative fine or penalty. The local jurisdiction shall set forth, by ordinance, the administrative procedures that govern the imposition, enforcement, collection, and administrative review by the local jurisdiction of those administrative fines or penalties. The ordinance shall specify the amount or range of amounts of the administrative fine or penalty, as determined by the local jurisdiction, for each violation subject to these procedures. *Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed three times the amount of the license fee required under this division for the relevant activity per day of unlicensed operation.*

REGISTERED SUPPORT:

Rural County Representatives of California (RCRC) (sponsor)
California Cannabis Industry Association
California State Association of Counties (CSAC)

League of California Cities
San Bernardino County

REGISTERED OPPOSITION:

Real Estate Coalition (unless amended):
California Association of Realtors
California Credit Union League
California Escrow Association
California Land Title Association
California Mortgage Association
California Mortgage Bankers Association
Escrow Institute of California
United Trustees Association

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1557 (Flora) – As Amended March 13, 2023

SUBJECT: Pharmacy: electronic prescriptions.

SUMMARY: Authorizes a pharmacist located and licensed in the state to, on behalf of a licensed hospital, from a location outside of the hospital, verify medication chart orders for appropriateness.

EXISTING LAW:

1) Regulates the practice of pharmacy under the Pharmacy Law and establishes the California State Board of Pharmacy until January 1, 2026, to administer and enforce the act. (Business and Professions Code (BPC) §§ 4000-4427)

2) Defines an "order," as authorization for the administration of the ordered drug from hospital stocks when entered on the chart or medical record for a patient in a hospital, as specified. (BPC § 4019)

3) Authorizes a prescriber, a prescriber's authorized agent, or a pharmacist to electronically enter a prescription or hospital order into a pharmacy's or hospital's computer from any location outside of the pharmacy or hospital with the permission of the pharmacy or hospital except for prescriptions for controlled substances classified in Schedule II, III, IV, or V. (BPC § 4071.1)

4) Requires prescriptions for a controlled substance classified in Schedule II, and makes optional for Schedule III, IV, or V, to be made on a controlled substance prescription form established under state law signed and dated by the prescriber in ink, as specified. (HSC § 11164(a))

5) Authorizes any controlled substance classified in Schedule III, IV, or V to be dispensed upon an oral or electronically transmitted prescription that must be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other authorized person. (HSC § 11164(b))

6) Requires a health care practitioner authorized to issue a prescription to have the capability to issue an electronic data transmission prescription on behalf of a patient and to transmit that electronic data transmission prescription to a pharmacy selected by the patient. (BPC § 688(a))

7) Requires a pharmacy, pharmacist, or other practitioner authorized to dispense or furnish a prescription to have the capability to receive an electronic data transmission prescription on behalf of a patient. (BPC § 688(b))

THIS BILL:

1) Deletes the limitation against electronically entering prescriptions for controlled substances classified in Schedule II, III, IV, or V.

2) Authorizes a pharmacist to remotely verify medication chart orders for appropriateness before administration, consistent with federal requirements, if the following are met:

   a) The pharmacist is located and licensed in the state.

   b) The verification is on behalf of a licensed healthcare facility, as established in the healthcare facility's policies and procedures.

3) Requires a healthcare facility to maintain a record of a pharmacist's verification of medication chart orders.

4) Requires the verification record to meet the same requirements as those for records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices and records for the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board.

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

COMMENTS:

Purpose. This bill is sponsored by the *Board of Pharmacy*. According to the author, "[This bill] is an important bill that would make permanent the authority for a state licensed pharmacist to conduct medication reviews outside of a California licensed hospital. This measure ensures that hospital patients have 24-hour access to a pharmacist to perform vital medication chart order review to ensure safe medication use. Many rural hospitals do not have a pharmacist on site during all hours of operations, which could delay medication administration. Also, during patient surges and unanticipated employee leave, on-site pharmacists may be insufficient to perform all necessary services, including compounding preparations, medication therapy reviews, and other duties while also conducting timely reviews of medication orders. [This bill's] straightforward approach ensures continuity of patient care while providing flexibility to hospitals in determining how best to manage medication reviews for patients."

Background. Pharmacists are healthcare professionals licensed to practice pharmacy, which includes dispensing prescription drugs, monitoring drug interactions, and counseling patients on the proper usage of drugs. They are also able to review medication orders from prescribers, checking for appropriateness before the medication is administered.

For hospitals participating in the federal Medicare and Medicaid programs, the Centers for Medicare and Medicaid Services (CMS) requires a pharmacist to review all non-emergency patient care orders before administration to a patient.

The State Operations Manual specifies that hospitals must have a process for reviewing all medication orders, except in emergencies, for appropriateness by a pharmacist before the first dose is dispensed. The hospitals must also have a process for resolving questions with the prescribing practitioner and documenting the discussion and outcome in the patient's medical record or pharmacy copy of the prescriber's order.

The review is encouraged to include:

- Therapeutic appropriateness of a patient's medication regimen.

- Therapeutic duplication in the patient's medication regimen.
- Appropriateness of the drug, dose, frequency, and route of administration.
- Real or potential medication-medication, medication-food, medication-laboratory test, and medication-disease interactions.
- Real or potential allergies or sensitivities.
- Other contraindications.

Remote Verification of Medication Orders. The Pharmacy Law does not explicitly require a pharmacist performing verification of medication orders to do so onsite. As such, the Board of Pharmacy has never taken action against a pharmacist that has verified medication orders from an offsite location.

However, in response to the COVID-19 pandemic, the Board of Pharmacy issued a waiver of the Pharmacy Law allowing the offsite verification of medication orders. The implication of the waiver is that the offsite verification of medication orders was previously prohibited. According to the board's waiver, existing law authorizes "a pharmacist to enter a prescription or an order into a pharmacy's or hospital's computer from any location outside of a pharmacy or hospital, under specified conditions…. [but it] does not permit a pharmacist to perform other steps in the dispensing process."

Based on this new interpretation, the use of offsite or remote verification violates the Pharmacy law. As a result, the Board of Pharmacy is sponsoring this bill to avoid severe disruptions in the continuity of care in hospitals. According to the board, many rural hospitals do not have pharmacists on premises 24 hours a day, meaning patients would not be able to receive medication until a pharmacist returned and performed the medication review. For larger hospitals, the number of medication orders that are remotely verified can number in the millions.

The Board of Pharmacy's waiver ends May 28, 2023. This bill would clarify that pharmacists are authorized to verify medication orders remotely, allowing the use of offsite medication order verifications indefinitely.

Electronic Entering of Schedule II, III, IV, or V Prescriptions or Orders. Existing law authorizes the electronic entering of prescriptions except for Schedule II, III, IV, or V drugs. This bill would delete the exemption for scheduled drugs. Under AB 2789 (Wood), Chapter 438, Statutes of 2018, beginning January 1, 2022, all prescriptions issued by a licensed healthcare practitioner to a California pharmacy must be submitted electronically.

Prior Related Legislation. SB 1379 (Ochoa Bogh) of 2022, which died pending a hearing in the Senate Committee on Business, Professions and Economic Development, would have authorized a pharmacist working for a hospital pharmacy to perform order entry and other data entry, perform prospective drug utilization review, interpret clinical data, perform insurance processing, perform therapeutic interventions, provide drug information, authorize the release of medication for administration, and perform other clinical services on behalf of a hospital pharmacy located in California and under the written authorization of a pharmacist-in-charge.

ARGUMENTS IN SUPPORT:

The *Board of Pharmacy* (sponsor) writes in support "that not all health care facilities have 24-hour onsite pharmacist services, most notably in many rural areas. In response to the COVID-19 public health emergency, the Board issued a waiver that included provisions to allow for remote medication chart order review and believes such reviews have been performed appropriately and safely in the best interest of patients. [This bill] makes permanent this authority. The Board believes the permanent authority sought in this measure is in the best interest of Californians as it provides health care facilities flexibility in meeting federal requirements and ensuring continuity of patient care. Permanent authority for pharmacists to perform medication chart order reviews as specified in the bill is both appropriate and necessary to ensure patients have ready access to pharmacist care, even when a pharmacist is not on site or available to complete such reviews."

The *California Hospital Association* writes in support:

> The Centers for Medicare & Medicaid Services requires a pharmacist review of all non-emergency medication orders prior to administration to patients. However, many rural hospitals do not have a pharmacist on site during all hours of operations, which could delay medication administration.
>
> Also, during patient surges and unanticipated employee leave, on-site pharmacists may be insufficient to perform all necessary services, including compounding preparations, medication therapy reviews, and other duties while also conducting timely reviews of medication orders. Advancements in technology over the last few decades — along with waivers provided by the state Board of Pharmacy due to the COVID-19 pandemic — have enabled hospital pharmacists to remotely review and process medications and today millions of new orders are reviewed and processed off site prior to patient administration.
>
> The waiver that allows hospitals to remotely process prescriptions is set to expire on May 28, 2023, and the passage of [this bill] is urgently needed so hospitals can continue to use this proven and safe practice. The flexibility permitted under [this bill] would help ensure that every new non-emergency medication for patients in California hospitals has been carefully reviewed by a pharmacist.

ARGUMENTS IN OPPOSITION:

None on file

AMENDMENTS:

The author has requested that an urgency clause be added to the bill:

> On page 3, below line 15, insert:
>
> *SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:*

The waiver that currently allows for remote processing expires on May 28, 2023. It is necessary that this act take effect immediately to ensure that hospitals can continue to remotely process prescriptions.

REGISTERED SUPPORT:

California State Board of Pharmacy (sponsor)
California Hospital Association
California Medical Association
California Pharmacists Association
Cedars Sinai
Kaiser Permanente
Sonoma Valley Hospital
Stanford Health Care
Sutter Health
Tenet Healthcare Corporation

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1564 (Low) – As Amended March 23, 2023

SUBJECT: Master of Divinity: physician and surgeon: title.

SUMMARY: Clarifies that a person who has earned a Master of Divinity may not display titles highlighting the title "MD" or "M.D." in a way that makes it unclear that the title is an "MDiv" or "M.D.i.v."

EXISTING LAW:

1) Regulates the practice of medicine under the Medical Practice Act and the Osteopathic Act. (BPC §§ 2460-2499.8; Osteopathic Act, California Proposition 20 (1922))

2) Establishes the Medical Board of California and the Osteopathic Medical Board of California to administer and enforce the acts. (BPC §§ 2001, 2450)

3) Prohibits the practice of medicine, including using drugs or devices, severing or penetrating tissue, or using any other method in the treatment of diseases, injuries, deformities, or other physical and mental conditions without a physician and surgeon or osteopathic physician and surgeon license, unless authorized by a license granted under some other law. (BPC §§ 2051, 2052, 2453)

4) Makes it a misdemeanor to use in an advertisement, such as a business card, the words "doctor" or "physician," the letters or prefix "Dr.," the initials "M.D.," or any other terms or letters indicating or implying that the user is a physician and surgeon, physician, surgeon, or practitioner, or that the user is entitled to practice, or to represent or hold themselves out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without being a licensed physician and surgeon. (BPC § 2054)

THIS BILL:

1) Prohibits a person who has earned a Master of Divinity from displaying the title "MDiv" or "M.D.i.v." in a communication or advertisement relating to the person's practice unless the title is clearly distinguishable from the title "MD" or "M.D."

2) Specifies that prohibited displays include, but are not limited to, using different colors, fonts, or font sizes in a way that makes the "MD" or "M.D." more prominent than the "iv" or "i.v."

3) Provides that a person who violates the provisions of this bill will not be subject to the misdemeanor criminal penalties in the Medical Practice Act.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "This bill further clarifies state law to protect and ensure consumers are well informed."

Background. Existing law prohibits the use of the letters MD, an abbreviation for a medical degree, in advertisements, such as window signs or business cards, in a way that may mislead consumers into believing the user is a physician if the user is not licensed as a physician. This bill clarifies that a licensed healing arts professional who is not a physician but holds a Master of Divinity degree, which is abbreviated as MDiv, may not make the "MD" overly prominent or obscure the "iv" in a way that makes it look like an MD. A Master of Divinity is a degree that is focused on theological or religious subject areas and offered by institutions operated by religious organizations.

Current Related Legislation. AB 765 (Wood) would prohibit a person who is not licensed as a physician and surgeon to use any medical specialty title, as specified, or any titles, terms, letters, words, abbreviations, description of services, designations, or insignia indicating or implying that the person is licensed to practice under the Medical Practice Act.

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: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1616 (Lackey) – As Introduced February 17, 2023

SUBJECT: California Cannabis Tax Fund: Board of State and Community Corrections grants.

SUMMARY: Authorizes the Board of State and Community Corrections (BSCC) to award grants to local governments that were previously ineligible and requires BSCC to prioritize local governments whose programs seek to combat the illicit cannabis market.

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) §§ 26000-26325)

2) Establishes the Department of Cannabis Control (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) Imposes a 15% excise tax upon purchasers of cannabis or cannabis products sold in this state in addition to the sales and use tax imposed by the state and local governments. (Revenue and Tax Code (RTC) § 34011)

4) Imposes a cultivation tax on all harvested cannabis that enters the commercial market at a rate of $9.25 per dry-weight ounce for cannabis flowers and $2.75 per dry-weight ounce for cannabis leaves. (RTC § 34012)

5) Provides the Department of Tax and Fee Administration (CDTFA) with responsibility for administering and collecting taxes on cannabis businesses. (RTC § 34013)

6) Establishes the California Cannabis Tax Fund (Tax Fund) in the State Treasury wherein cannabis tax revenues are deposited. (RTC § 34018)

7) Specifies that money in the Tax Fund shall be disbursed by the Controller in the following order of funding priority:

    a) Funds sufficient to reimburse departments for any reasonable costs incurred through the implementation of the state's cannabis laws that are not otherwise reimbursed.

    b) $10 million to a public university in California annually to research and evaluate the implementation and effect of the state's cannabis laws, including the impact of legal cannabis on public health; the public safety implications of legal cannabis; the effectiveness of certain drug treatment programs; whether additional antitrust protections are needed in the recreational cannabis market; the economic impacts of the state's

cannabis laws; and how to best tax cannabis based on potency, and the structure and function of licensed cannabis businesses; among other topics of study.

c) $3 million to the Department of the California Highway Patrol annually to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired by the use of cannabis.

d) $10 million beginning with the 2018-19 fiscal year, then increasing by $10 million each year until reaching $50 million annually, to the Governor's Office of Business and Economic Development to award community reinvestments grants to local health departments and at least 50% to qualified community-based nonprofit organizations to support job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care for communities disproportionately affected by past federal and state drug policies.

e) $2 million annually to the University of California San Diego Center for Medicinal Cannabis Research to further its objectives.

f) Remaining funds deposited into sub-trust accounts as follows:

   i) 60% into the Youth Education, Prevention, Early Intervention and Treatment Account, disbursed to the Department of Health Care Services for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use. The programs shall emphasize accurate education, effective prevention, early intervention, school retention, and timely treatment services for youth, their families, and their caregivers.

   ii) 20% into the Environmental Restoration and Protection Account, disbursed to the Department of Fish and Wildlife and the Department of Parks and Recreation to fund activities related to the natural resources and wildlife implications of legal cannabis.

   iii) 20% into the State and Local Government Law Enforcement Account, disbursed to the California Highway Patrol to fund education regarding cannabis-impaired driving and to the BSCC to award grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with locally legalized cannabis. Specifies that the board shall not make any grants to local governments that ban indoor and outdoor commercial cannabis cultivation or ban retail sale of cannabis or cannabis products.

(RTC § 34019)

8) Prohibits the Legislature from changing the cannabis tax revenue funding allocations before July 1, 2028. (RTC § 34019(h))

9) Requires the Controller to periodically audit the Tax Fund to ensure that funds are used and accounted for in a manner consistent with what is required by law. (RTC § 34020)

THIS BILL:

1) Authorizes the BSCC to make grants to local jurisdictions that were previously ineligible because they ban both indoor and outdoor commercial cannabis cultivation or they ban the retail sale of cannabis or cannabis products.

2) Requires the BSCC to prioritize local governments whose programs seek to address the unlawful cultivation and sale of cannabis.

3) Makes various technical and clarifying changes.

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

COMMENTS:

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

> Districts like mine urgently need resources to combat the predominance of illicit cannabis grows. When this criminal activity is allowed to thrive, communities wonder what protections we have for public safety, our natural resources and for individual's labor. These bad actor are some of the most exploitive forces imaginable. We are allowing these criminal enterprises to plunder our operational autonomy. We need to crackdown on the illicit market to better protect California consumers and ensure that we are not forfeiting revenue.

Background.

California Cannabis Tax Fund. Excise tax and cultivation tax revenues are deposited into a special fund referred to as the California Cannabis Tax Fund and are then allocated for a variety of purposes in order of priority. First, expenditures incurred by state agencies responsible for implementing cannabis laws are to be paid for through the Tax Fund. After state agency cost reimbursement, Tax Fund revenue is next allocated to fund a series of specific programs designated under Proposition 64. These programs are to be provided with precise amounts of funding totaling $25 million and are to be appropriated annually until the 2028-29 fiscal year. This includes:

- $10 million to a public university to research and evaluate the implementation and effect of legal cannabis and make recommendations to the Legislature and Governor regarding possible changes to the law;

- $3 million to the California Highway Patrol to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired;

- $50 million to the Governor's Office of Business and Economic Development (GO-Biz) to administer a community reinvestment grants program; and

- $2 million to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the center, including the enhanced understanding of the efficacy and adverse effects of cannabis as a pharmacological agent.

After each of the above allocations has been made in sequential order, totaling $25 million, any *remaining* revenue in the Tax Fund is divided into sub-trust accounts according to a percentage outlined by Proposition 64. The division is as follows:

1) 60% of the remaining revenue is deposited in the Youth Education, Prevention, Early Intervention and Treatment Account, and disbursed by the Controller to the Department of Health Care Services for programs for youth that are designed to educate about and prevent substance use disorders and to prevent harm from substance use.

2) 20% of the remaining revenue is deposited in the Environmental Restoration and Protection Account, and disbursed by the Controller to the Department of Fish and Wildlife and the Department of Parks and Recreation to mitigate environmental harm resulting from cannabis cultivation and to combat cannabis activity on public lands.

3) 20% of the remaining revenue is deposited in the State and Local Government Law Enforcement Account and disbursed by the Controller to the California Highway Patrol for training, education, prevention, and enforcement of law related to driving under the influence of cannabis, and to the BSCC for making grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of Proposition 64. The BSCC is currently prohibited from awarding any grants to local governments that have banned the commercial cultivation or retail sale of cannabis.

Proposition 64 Public Health & Safety Grant Program. Existing law requires the BSCC to award grant funds to local governments engaged in or providing services related to law enforcement, fire protection, and public health and safety associated with the implementation of the Control, Regulate and Tax Adult Use of Marijuana Act. The funding is intended to support programs in four Project Purpose Areas: 1) Youth Development/Youth Prevention and Intervention; 2) Public Health; 3) Public Safety; and 4) Environmental Impacts.[1] Since September 2020, the BSCC has awarded over $30 million in grants to to 33 jurisdictions.[2]

In 2019, the law at that time prohibited the BSCC from awarding grants to any local government that has banned all indoor and outdoor cultivation, including cultivation for personal use, or the retail sale of cannabis or cannabis products.[3] In 2020, however, AB 1872 (Assembly Budget Committee) Chapter 93, Statutes of 2020, eliminated the prohibition on making grants to local jurisdictions that have banned indoor and outdoor cultivation, inclusive of personal cultivation.[4] The existing law today specifies that the BSCC shall not make any grants to local governments that ban indoor and outdoor commercial cannabis cultivation or ban the retail sale of cannabis or cannabis products.[5]

---

[1] Howard, K. T. (2022, October 19). NOTICE OF FUNDS AVAILABILITY (NOFA) AND RELEASE OF REQUEST FOR PROPOSALS (RFP).
[2] California Board of State and Community Corrections. (n.d.). *Proposition 64 Public Health & Safety Grant Program*. California Board of State and Community Corrections. Retrieved April 7, 2023, from https://www.bscc.ca.gov/proposition-64-public-health-safety-grant-program/
[3] Ibid.
[4] Ibid.
[5] RTC § 34019(f)(3)(C)

This bill would authorize the BSCC to provide grants to local governments that *have* banned the commercial cultivation and retail sale of cannabis. Additionally, this bill would require the BSCC to prioritize local jurisdictions whose programs seek to address the unlawful cultivation and sale of cannabis. A study published by the Reason Foundation, with support from Good Farmers Great Neighbors and Precision Advocacy (the lobbying firm representing this bill's sponsor), estimates that as much as two-thirds of cannabis sales in California occur in the illicit market, which is consistent with the widespread consensus that illegal cannabis has continued to proliferate notwithstanding the legalization of recreational adult-use cannabis in California.[6] The author and sponsor of this bill contend that the thriving illicit market for cannabis is discouraging local jurisdictions who have not legalized commercial cannabis in their city or county from doing so. At the time of this writing, 56% of cities and counties do not allow any type of cannabis business to operate within their jurisdictions.[7] They stipulate that allowing these jurisdictions to apply for funding is necessary to support and bolster enforcement activity so that more cities and counties may embrace commercial cannabis operations within their jurisdiction.

Current Related Legislation.

AB 1448 (Wallis) would authorize a local jurisdiction to establish administrative penalties for violations of local law relating to commercial cannabis activity, including a special lien. The bill would also authorize a local jurisdiction that has established procedures for collecting those administrative penalties to additionally collect specified civil penalties as administrative penalties. In addition, the bill would redirect specified portions of civil penalties collected for unlicensed commercial cannabis activity from the General Fund to the treasurers of the localities that brought the action for the penalties. *AB 1448 is pending in this committee.*

AB 1565 (Jones-Sawyer) would require the Controller, beginning July 1, 2028, to disperse $15,000,000 to DCC for the 2028-29 fiscal year and ever fiscal year thereafter. The bill would require DCC to use the disbursements to support local equity programs in eligible local jurisdictions to assist local equity applicants and licensees gaining entry into, and to successfully operate in, the state's regulated cannabis marketplace. This bill provides that the disbursement shall be the highest amount, up to $15,000,000, that would not result in a reduction to other specified funds. *This bill is pending in this committee.*

Prior Related Legislation.

AB 1872 (Assembly Budget Committee), Chapter 93, Statutes of 2020, as it relates to this bill, prohibited the Board of State and Community Corrections from making grants to local government that ban both indoor and outdoor commercial cannabis cultivation or that ban the retail sale of cannabis or cannabis products.

ARGUMENTS IN SUPPORT:

According to the *California Cannabis Industry Association*, the sponsor of this bill:

---

[6] Lawrence, G. M. (2022, May). *The impact of California's cannabis taxes on participation within the legal market*. Reason Foundation. Retrieved April 7, 2023, from https://reason.org/policy-study/the-impact-of-california-cannabis-taxes-on-participation-within-the-legal-market/

[7] Department of Cannabis Control. (n.d.). *Where cannabis businesses are allowed*. Department of Cannabis Control. Retrieved April 6, 2023, from https://cannabis.ca.gov/cannabis-laws/where-cannabis-businesses-are-allowed/

Under existing law, grant funding administered by the Board of State and Community Corrections (BSCC) is limited only to those cities and counties that authorize commercial cannabis cultivation or retail. While the original intent of these limitations was laudable and intended to incentivize jurisdictions to adopt commercial cannabis ordinances, the significant uptick in illicit market activity has had a chilling effect on jurisdictions most impacted by the illicit market. In other words, rather than implementing commercial cannabis programs, as hoped, cities and counties have opted to just say no to legal cannabis entirely.

With more than 60 percent of jurisdictions still banning commercial cannabis retail and legal cannabis sales on the decline, more funding is needed at the local level to combat the illicit market.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Cannabis Industry Association *(sponsor)*
California State Association of Counties
League of California Cities
Rural County Representatives of California
San Bernardino County
San Bernardino County Sheriff's Department
The Parent Company

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1703 (Wendy Carrillo) – As Amended March 16, 2023

SUBJECT: State Athletic Commission: boxing.

SUMMARY: Increases (1) the cap on the 5% fee on admissions that the California State Athletic Commission may collect from a combative sports promotion from $100,000 to $200,000 and (2) the threshold on the 5% fee on admissions that triggers the amount above the threshold to be split between the Boxers' Pension Fund and the commission from $70,000 to $140,000.

EXISTING LAW:

1) Regulates and licenses combat sports under the Boxing Act, which is also called the State Athletic Commission Act. (Business and Professions Code (BPC) §§ 18600-18887)

2) Establishes the State Athletic Commission within the Department of Consumer Affairs (DCA) to administer and enforce the Boxing Act. (BPC § 18602)

3) Defines "club" and "promoter" synonymously to mean a corporation, partnership, association, individual, or other organization which conducts, holds, or gives a boxing or martial arts contest, match, or exhibition. (BPC § 18622)

4) Defines a professional or amateur boxer or martial arts fighter as one who engages in a boxing or martial arts contest and who possesses fundamental skills in their respective sport. (BPC § 18623)

5) Defines "contest" and "match" synonymously to mean professional and amateur boxing, kickboxing, and martial arts exhibitions, and mean a fight, prizefight, boxing contest, pugilistic contest, kickboxing contest, martial arts contest, or sparring match, between two or more persons, where full contact is used or intended that may result or is intended to result in physical harm to the opponent. (BPC § 18625(a))

6) Defines an amateur contest or match to include a contest or match where full contact is used, even if unintentionally. (BPC § 18625(b)(1))

7) Provides that an amateur contest or match does not include light contact karate, tae kwon do, judo, or any other light contact martial arts as approved by the commission and recognized by the International Olympic Committee as an Olympic sport. (BPC § 18625(b)(2))

8) Defines "martial arts" as any form of karate, kung fu, tae kwon do, kickboxing or any combination of full contact martial arts, including mixed martial arts, or self-defense conducted on a full contact basis where a weapon is not used. (BPC §18627(a))

9) Defines "kickboxing" as any form of boxing in which blows are delivered with the hand and any part of the leg below the hip, including the foot. (BPC § 18627(b))

10) Defines "full contact" as the use of physical force in a martial arts contest that may result or is intended to result in physical harm to the opponent, including any contact that does not meet the definition of light contact or noncontact. (BPC § 18627(c))

11) Requires every promoter who conducts a boxing or martial arts contest or wrestling exhibition and charges admission to, within 72 hours after the determination of the contest or exhibition, give the commission the following:

    a) A written report showing the amount of the gross receipts, not to exceed $2,000,000, and the gross price for (1) the contest or exhibition charged directly or indirectly and (2) the price for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition without any deductions, except as specified. (BPC § 18824(a)(1))

    b) A fee of 5% of the amount paid for admission to the contest or wrestling exhibition, but no more than $100,000. The commission shall report to the Legislature on the fiscal impact of the $100,000 limit on fees collected by the commission for admissions revenues during its next sunset review. (BPC § 18824(a)(2))

    c) A fee of up to 5% of the gross price for the sale, lease, or other exploitation of broadcasting or television rights, but no less than $1,000 or more than $35,000.

12) Specifies that, if the fee on admissions for a boxing contest exceeds $70,000, the amount in excess of $70,000 shall be paid one-half to the commission and one-half to the Boxers' Pension Fund. (BPC § 18824(a)(2)(B))

THIS BILL:

1) Increases the cap on the amount of admissions revenue that promoters must report from $2,000,000 to $4,000,000.

2) Increases the cap on the admissions revenue fee from $100,000 to $200,000.

3) Increases the threshold on the collected admissions fee that triggers the excess amount to be split between the Boxers' Pension Fund and the commission from $70,000 to $140,000.

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

COMMENTS:

Purpose. This bill is sponsored by the *California State Athletic Commission*. According to the author, "[This bill] is a modest measure that will allow the operations of the California State Athletic Commission to continue without interruption or need for significant General Fund intervention. The Commission operates through fees collected on the contests in the Commission's jurisdiction. The Commission's revenues suffered significantly during the pandemic, and while revenues have since returned to normal, the Commission still faces insolvency in the coming months because of that loss. By raising the cap on fees that the Commission can collect from events for the first time since the year 2000, the Commission will be returned to a strong financial status."

Background. California, through the California State Athletic Commission, regulates most forms of professional and amateur combative sporting events, such as boxing and martial arts events, including MMA events. Specifically, the commission regulates events where the use of full contact may result in physical harm to an opponent, including amateur contests where full contact may be unintentionally used.

The need for regulation is the inherent risk of harm in combative sporting contests, particularly when held for the entertainment of viewers. Left unregulated, contests may lack safety equipment, mismatch contestants, or, in the case of professionals, fail to pay the contestants. To that end, the commission is tasked with ensuring that contestants who wish to participate in these sports may do so safely and fairly. This is done through the licensing of the fighters themselves, as well as the managers, corners, matchmakers, trainers, promoters, and officials.

This bill would increase the cap on the 5% fee that the commission can collect from a promoter of an approved combative sporting event from $100,000 to $200,000. The purpose of the increase is to help stabilize and rebuild the commission's fund. The question of whether the gate fees should be increased was raised during the commission's 2017 and 2019 Sunset Review.[1]

Commission Funding. The commission, like other DCA licensing boards, is a special fund entity and receives no support from the state general fund. It instead relies on revenues from licensing, administrative, and other regulatory fees to pay for its costs. However, the nature of the commission's licenses differs from other DCA licensing boards. Other DCA licensing boards focus on the competence of practitioners that deliver professional services to consumers, and the workload related to ensuring that competence is recouped through license renewal fees.

The commission only licenses fighters to ensure they have the skills to compete with other licensees safely. Instead, the bulk of the commission's workload is the regulation of the events that profit from the fighters' participation. As such, the commission primarily relies on fees on the revenues from the promoters of the events.

There are two types of event fees, a "gate" fee, and a "broadcasting or television" fee. The gate fee is 5% of an event's gross ticket sales, which is currently capped at $100,000. The "broadcasting or television" fee is 5% of the gross price for the sale, lease, or other capitalization of broadcasting or television rights. The broadcasting or television fee is capped at $35,000. More than 80% of the Commission's revenues come from its gate and broadcast fees.

Volatile Revenues. Because the bulk of the commission's revenue comes from the event fees, the commission's solvency is dependent on the number and size of fights held in California, which is impossible to predict. This bill seeks to increase the statutory caps, adding to the commission's overall revenue to potentially offset any low revenue years.

---

[1] The sunset review process provides an opportunity for the DCA, the Legislature, the boards, and interested parties and stakeholders to discuss the performance of the boards, and make recommendations for improvements. Each year, the Assembly Business and Professions Committee and the Senate Business, Professions, and Economic Development Committee hold joint sunset review oversight hearings to review the boards and bureaus. For more information on volatile revenues, see the background papers for the 2019 Joint Sunset Review Oversight Hearings, accessible at: https://abp.assembly.ca.gov/jointsunsethearings.

Since FY 2017-18, the commission's reserve has fluctuated between a high of 12.1 and a low of 3.8 months. The commission's current reserve level is $92,000, approximately half a month in reserve. While the commission has no mandated reserve level, the DCA Budget Office has typically recommended a contingency reserve fund of at least six months. This ensures that special fund entities have the fiscal resources to absorb unforeseen costs, such as drawn-out enforcement actions, salary increases, or litigation.

Gate Fee Caps. The current $100,000 fee cap was added under AB 52 (Cedillo), Chapter 436, Statutes of 2000. AB 52 was introduced after several news articles profiled the dissatisfaction of boxing promoters and Staples Arena officials with the 5% fee on boxing event admission receipts. The dissatisfied promoters were in the process of negotiating a championship boxing match at the Staples Arena in Los Angeles.

Gate Fees in Other States. One concern has been that an increase in fees may hurt the attractiveness of California as a venue for holding events. However, many other states where large events are held assess a comparable bee but do not have caps, including:

- Nevada: 8% gate fee and no cap (Nevada Revised Statutes § 467.107).
- Colorado: 8% gate fee and no cap (Colorado Revised Statutes § 12-110-114; *Colorado Combative Sports Commission Event/Promotion Surcharge Report, April 19 Update*)
- New York: 8.5% gate fee and no cap for MMA, although there is only a 3% fee and a cap of $50,000 for boxing and wrestling (New York Tax Law § 452).
- Florida: 5% gate fee with no cap (Florida Statutes § 548.06(5))
- Ohio: 5% gate fee with no cap (Ohio Revised Code § 3773.54).
- Arizona: 4% gate fee with no cap (Arizona Revised Statutes § 5-226(A.))
- Texas: 3% gate fee and no cap (Texas Occupations Code § 2052.151).

The highest gate in California was $5,290,213 for an MMA bout in FY 2021-22, and the commission collected $100,000 in gate fees. In the same FY, New York had an MMA bout with a gate of $11,562,807 and Nevada had an MMA bout with a gate of $10,409,553. On April 8, 2023, Florida held an MMA bout with a gate acticipated to be over $11 million.

Fund Condition with New Gate Fee. According to the DCA and the commission, the following tables show the projected differences before and after the increase in fee caps under this bill. However, the commission notes that the unpredictability of the number and size of events makes it difficult to provide accurate projections.

Projected Fund Condition Under Existing Law (Dollars in Thousands)							
	FY 18-19	**FY 19-20**	**FY 20-21**	**FY 21-22**	**FY 22-23**	**FY 23-24**	**FY 24-25**
Beginning Balance*	$1,007	$1,741	$1,467	$714	$322	$92	$150
Total Revenues	$2,771	$1,830	$894	$1,844	$2,124	$2,094	$2,084
Total Resources	$3,778	$3,571	$2,361	$2,558	$2,446	$2,186	$2,234
Total Expenditures	$2,001	$1,938	$1,626	$2,215	$2,354	$2,036	$2,094
Fund Balance	$1,777	$1,633	$735	$343	$92	$150	$140
Months in Reserve	11.0	12.1	4.0	1.7	0.5	0.9	0.8

*May not match prior fund balance due to prior year adjustments

Projected Fund Condition Under New Gate Fee (Dollars in Thousands)							
	FY 18-19	**FY 19-20**	**FY 20-21**	**FY 21-22**	**FY 22-23**	**FY 23-24**	**FY 24-25**
Beginning Balance*	$1,007	$1,741	$1,467	$714	$322	$92	$250
Total Revenues	$2,771	$1,830	$894	$1,844	$2,124	$2,244	$2,440
Total Resources	$3,778	$3,571	$2,361	$2,558	$2,446	$2,336	$2,690
Total Expenditures	$2,001	$1,938	$1,626	$2,215	$2,354	$2,149	$2,149
Fund Balance	$1,777	$1,633	$735	$343	$92	$240	$541
Months in Reserve	11.0	12.1	4.0	1.7	0.5	1.4	3.0

*May not match prior fund balance due to prior year adjustments

Current Related Legislation. AB 1136 (Haney), which is pending in the Assembly Committee on Arts, Entertainment, Sports, and Tourism, would require the commission to establish a pension plan for licensed martial artists who compete in MMA contests.

Prior Related Legislation. AB 1813 (Medina), Chapter 177, Statutes of 2022, clarified that the commission's executive officer is not liable for discretionary acts, including the approval of contests and the assignment of officials for contests, taken while performing duties pursuant to the Boxing Act.

SB 309 (Lieu), Chapter 370, Statutes of 2013, which was the commission's 2013 Sunset Review bill, required the gate fees to be furnished within 72 hours and required the commission to report to the Legislature on the fiscal impact of that $100,000 limitation during its next sunset review. It also increased the limit on the 5% fee for the sale, lease, or other exploitation of broadcasting or television rights to $35,000.

AB 52 (Cedillo), Chapter 436, Statutes of 2000, established the $100,000 cap on gate fees.

AB 2937 (Cedillo) of 2000, which died pending hearing in the Assembly Governmental Organization Committee, would have established a $50,000 cap on gate fees.

ARGUMENTS IN SUPPORT:

None on file

ARGUMENTS IN OPPOSITION:

None on file

IMPLEMENTATION ISSUES:

Decrease in Deposits to Boxing Pension Fund. This bill would increases the threshold on the collected 5% admissions fee that triggers the excess amount to be split between the Boxers' Pension Fund and the commission from $70,000 to $140,000. However, very few boxing promotions in California gross over $1,400,000, and even fewer gross $2,800,000. Therefore the increase may serve no purpose and inadvertently cut off a revenue stream for the Boxers' Pension Fund.

AMENDMENTS:

To ensure the Boxers' Pension Fund is not inadvertently impacted, the bill should be amended as follows:

On page 3 of the bill, after line 21:

> (B) If the fee for any one boxing contest exceeds ~~one hundred forty thousand dollars ($140,000),~~ *seventy thousand dollars ($70,000),* the amount in excess of ~~one hundred forty thousand dollars ($140,000)~~ *seventy thousand dollars ($70,000)* shall be paid one-half to the commission and one-half to the Boxers' Pension Fund.

REGISTERED SUPPORT:

California State Athletic Commission (sponsor)

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1707 (Pacheco) – As Amended March 16, 2023

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

SUBJECT: Health professionals and facilities: adverse actions based on another state's law.

SUMMARY: Protects licensed health care professionals, clinics, and health facilities from being denied a license or subjected to discipline in California on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state based solely on the application of that state's law that interferes with a person's right to receive care that would be lawful if provided in California.

EXISTING LAW:

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

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

3) Defines "board" as also inclusive of "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (BPC § 22)

4) Provides that all boards within the DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (BPC § 101.6)

5) States in myriad practice acts enforced by boards under the DCA that protection of the public shall be the highest priority. (BPC § 7301.1; § 2001.1; § 1601.2; § 2450.1; § 2460.1; § 2531.02; § 2570.25; § 2602.1; § 2708.1; § 2841.1; § 2920.1; § 3010.1; § 3320.1; § 3504.1; § 3710.1; § 4001.1; § 4501.1; § 4800.1; § 4928.1; § 4990.125; § 5000.1; § 5510.15; § 5620.1; § 6710.1; § 7000.6; § 7303.1; § 7501.05; § 7601.1; § 7810.1; § 8005.1; § 8520.1; § 9810.1; § 9880.3; § 18602.1; 19004.1; § 94770.1; *etc.*)

6) Limits the authority for most licensing boards under the DCA to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by another licensing board, with most offenses older than seven years no longer eligible for license denial. (BPC § 480)

7) Requires each board under the DCA to develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BPC § 481)

8) Enacts the Medical Practice Act, which provides for the licensure and regulation of physicians and surgeons by the Medical Board of California (MBC). (BPC §§ 2000 *et seq.*)

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

10) Empowers the MBC to take action against persons guilty of violating the Medical Practice Act. (BPC § 2220)

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

12) Provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician constitutes unprofessional conduct. (BPC § 2236)

13) Automatically suspends a physician's license during any time that the physician is incarcerated after conviction of a felony. (BPC § 2236.1)

14) Automatically places a physician's license on inactive status during any time that the physician is incarcerated after conviction of a misdemeanor. (BPC § 2236.2)

15) 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, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, 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)

16) Prohibits the MBC and the OMBC from denying an application for licensure or suspending or revoking the license of a physician and surgeon solely for performing an abortion in accordance with the provisions of the Medical Practice Act and the Reproductive Privacy Act, including in other states that have banned or restricted abortion. (BPC § 2253)

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

18) Prohibits the BRN from denying an application for licensure or suspending or revoking the license of a certified nurse-midwife (CNM) solely for performing an abortion in accordance with the provisions of the Nursing Practice Act and the Reproductive Privacy Act, including in other states that have banned or restricted abortion. (BPC § 2253)

19) Prohibits the BRN from denying an application for licensure or suspending or revoking the license of a nurse practitioner (NP) solely for performing an abortion in accordance with the provisions of the Nursing Practice Act and the Reproductive Privacy Act, including in other states that have banned or restricted abortion. (BPC § 2253)

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

21) Prohibits the PAB from denying an application for licensure or suspending or revoking the license of a physician assistant (PA) solely for performing an abortion in accordance with the provisions of the Physician Assistant Practice Act and the Reproductive Privacy Act, including in other states that have banned or restricted abortion. (BPC § 2253)

22) Provides for the licensure of health facilities by the Department of Public Health (CDPH). (Health and Safety Code (HSC) §§ 1250 *et seq.*)

23) Provides for the licensure of clinics by the CDPH. (HSC §§ 1200 *et seq.*)

24) Establishes the Reproductive Privacy Act. (HSC §§ 123460 *et seq.*)

25) Finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, including whether to choose to bear a child or to choose to obtain an abortion. (HSC § 123462)

26) Prohibits the state from denying or interfering with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman. (HSC § 123466)

THIS BILL:

1) Defines "healing arts board" as any board, division, or examining committee in the Department of Consumer Affairs that licenses or certifies health professionals.

2) Prohibits a healing arts board from denying an application for licensure or suspending, revoking, or otherwise disciplining a licensee solely on the basis of a civil judgment, criminal conviction, or disciplinary action in another state based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in California.

3) Prohibits a health facility from denying staff privileges to, removing from medical staff, or restricting the staff privileges of, a person licensed by a healing arts board solely on the basis of a civil judgment, criminal conviction, or disciplinary action in another state based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in California.

4) Prohibits the CDPH from denying or disciplining a license for a clinic or health facility on the basis of a civil judgment, criminal conviction, or disciplinary action in another state based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in California.

5) For all of the above prohibitions, specifies that the bill does not apply to any judgment, criminal conviction, or disciplinary action imposed by another state for which a similar claim, charge, or action would exist against the applicant or licensee under provisions of California law.

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

COMMENTS:

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

> "AB 1707 aims to protect California's reproductive health care providers by ensuring their ability to provide care is not at risk if they faced disciplinary action in another state related to

reproductive health care services. California's health care providers are becoming increasingly essential for providing care to residents in other states and it is critical to ensure that providers in California, abiding by California laws, are protected from adverse actions based on another state's hostile law. To ensure that providers in California are protected from hostile laws in these other states – we must do everything we can to strengthen California law to protect provider licensure, facility licensure, and providers' ability to practice. The intent of this bill is to shore up protections so that care in California can remain consistent and ensure that California lives up to its declaration as a reproductive freedom state."

Background.

In 2002, the Legislature enacted the Reproductive Privacy Act, which grants every woman in California with the fundamental right to choose to bear a child or to choose and to obtain an abortion. Under the act, the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman. The only restriction on abortion is when, in the good faith medical judgment of a physician, the fetus is viable and there is no risk to the life or health of the pregnant woman associated with the continuation of the pregnancy. Currently in California, medical providers who can perform abortions within their scope of practice are physicians and, under physician supervision, NPs, CNMs, and PAs.

The Reproductive Privacy Act codifies the right to choose whether to have an abortion as a form of exercising the implicit right to privacy under the Fourteenth Amendment of the United States Constitution, as affirmed by the Supreme Court of the United States in *Roe v. Wade*, which found that Texas's criminal abortion statute violated the Due Process Clause. The Court in *Roe* ruled that during the first trimester, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." The Court ruled that during the second trimester, a state may only choose to "regulate the abortion procedure in ways that are reasonably related to maternal health," but that states may ban abortion altogether during the third trimester, "except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

Recent judicial action in the United States has nationally imperiled the protections in *Roe*. In 2021, the Texas Legislature passed Senate Bill 8, referred to as the Texas Heartbeat Act. That bill criminalized abortion after the detection of embryonic or fetal cardiac activity, essentially banning abortion after approximately six weeks. The constitutionality of that bill was challenged in *Whole Woman's Health v. Jackson*, which sought to enforce the *Roe* precedent and overturn Senate Bill 8. However, the Court declined to enjoin the law, which many pro-choice advocates viewed as signaling a future decision by the Court to overturn or seriously diminish the protections outlined in *Roe*.

Subsequently, on December 1, 2021, the Court heard oral arguments in *Dobbs v. Jackson Women's Health Organization*, a case regarding a 2018 Mississippi state law that banned abortion after 15 weeks of pregnancy. *Dobbs* was a direct challenge to the legal precedent set in *Roe* and was the first time the Court ruled on the constitutional right to pre-viability abortion since *Roe*. On June 24, 2022, the Court ruled that abortion is not a constitutional right. This effectively overturned *Roe* and left the question of whether to ban it, and how, up to individual states.

Immediately after the Court's decision, State Senate President pro Tempore Toni Atkins sponsored SCA 10, which placed a proposition on the 2022 ballot titled *Constitutional Right to Reproductive Freedom*. Proposition 1 explicitly made abortion and access to contraceptives a constitutional right in California. The ballot proposition passed with over 66 percent of voters in favor, enshrining the protections of *Roe* into the state's constitution.

While California law protects a pregnant person's right to choose in a manner consistent with *Roe*, it has been estimated that approximately 26 states would likely seek to ban abortion with *Roe* overturned, resulting in 36 million women and other people who may become pregnant losing access to abortion care nationwide. In spite of this, medical professionals may still choose to provide abortions in defiance of another state's law. This potentially includes professionals licensed in California who may travel to other states to provide these services.

To provide reassurance to California health care professionals that they would not be subjected to discipline for continuing to provide abortion care and other reproductive services, California enacted AB 2626 in 2022. That bill reiterated that licensing boards may not subject licensed health care professionals to serious discipline for performing an abortion that is legal under California law, protecting the license of those who provide abortions in states that have banned abortion or to patients who have traveled from those states to California to seek care. While California licensing boards do not have direct jurisdiction over care provided in other states, they are notified when a licensee was either convicted of a crime in another state or subjected to discipline by another state's licensing board. When notified, the California boards may decide whether to take disciplinary action. AB 2626 prohibited boards from suspending or revoking a license solely for performing an abortion in accordance with California law.

This bill would further protect health care professionals who perform care prohibited in other states that patients would have a right to in California. Specifically, the bill would ban healing arts boards from denying or disciplining a license solely on the basis of a civil judgment, criminal conviction, or disciplinary action in another state based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in California. The bill would also enact similar prohibitions against discipline against health professionals by the CDPH or licensed health facilities. The protections in this bill are intended ensure that California provides safe harbor to health professionals who defend the rights of patients to receive essential care, even if other states have restricted those rights.

Current Related Legislation. AB 1646 (Stephanie Nguyen) would allow a medical school graduate who is engaged in a postgraduate training program outside of California to participant in guest rotations in California. *This bill is pending in this committee.*

Prior Related Legislation. AB 2626 (Calderon, Chapter 565, Statutes of 2022) prohibited specified licensing boards from suspending, revoking, or denying a license solely for performing an abortion that is lawful in California in accordance with the licensee's practice act.

AB 1666 (Bauer-Kahan, Chapter 42, Statutes of 2022) declare that another state's law authorizing a civil action against a person or entity that receives or seeks, performs or induces, or aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, is contrary to the public policy of this state.

ARGUMENTS IN SUPPORT:

Planned Parenthood Affiliates of California (PPAC) is sponsoring this bill. According to PPAC: "AB 1707 builds on existing protections for health care providers who face disciplinary or legal actions in another state based on another state's law restricting services within comprehensive sexual and reproductive health care. Specifically, this bill ensures healing arts licensees, as well as clinics and hospitals are not faced with denial, suspension, or revocation of their license in California as the result of disciplinary action in another state related to providing care that is lawful here, and that health care providers are not faced with denial, suspension, or revocation of their hospital privileges as the result of disciplinary action in another state related to providing care that is lawful in California. This bill is critical to ensuring that states with hostile laws cannot attack providers for what is legal and permissible in California."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

While the author and sponsors of this bill specifically acknowledge the Court's overturning of *Roe* as an urgent impetus for this legislation, its provisions are not limited to cases where a health professional provided abortion care in a state that has banned reproductive health services. Currently, the bill would prohibit disciplinary action for any care that would be lawful if provided in California. There are certainly other forms of care beyond abortion that California has sought to protect that have been under attack in other states. For example, the Legislature has introduced and enacted bills to expand access to gender affirming care, which encompasses a wide range of essential health services that have been regressively jeopardized in other states. However, the author may still wish to consider setting some parameters to the type of care that this bill protects to ensure that California would not provide safe harbor to professionals whose violation of other state's laws is less deserving of sympathy or support from this state.

AMENDMENTS:

To narrow the bill to specifically protect health professionals who provide sensitive services, including health care services related to sexual and reproductive health, gender affirming care, mental or behavioral health, sexually transmitted infections, substance use disorder, and intimate partner violence, amend each section of the bill to specify that adverse action shall not be taken based solely on the application of another state's law that interferes with a person's right to receive *sensitive services* that would be lawful if provided in this state, within the same meaning as the term is used in Section 56.05 of the Civil Code.

REGISTERED SUPPORT:

Planned Parenthood Affiliates of California *(Sponsor)*
California Chapter of the American College of Emergency Physicians
California Nurse Midwives Association
NARAL Pro-Choice California

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1731 (Santiago) – As Introduced February 17, 2023

SUBJECT: CURES database: buprenorphine.

SUMMARY: Exempts a health care practitioner who prescribes, orders, administers, or furnishes buprenorphine in the emergency department of a hospital from the duty to consult the state's prescription drug monitoring program (PDMP) database.

EXISTING LAW:

1) Allows only a physician, dentist, podiatrist, veterinarian, naturopathic doctor, registered nurse, certified nurse-midwife, optometrist, or out-of-state prescriber to write or issue a prescription. (Health and Safety Code (HSC) § 11150)

2) States that a prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice, and that the responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. (HSC § 11153)

3) Prohibits medical professionals from prescribing, administering, or dispensing a controlled substance to an addict, as defined. (HSC § 11156)

4) Establishes the Controlled Substance Utilization Review and Evaluation System (CURES), a PDMP maintained by the Department of Justice (DOJ) for the purpose of collecting records of dispensed controlled substances for review by licensed prescribers and dispensers, regulatory investigators, law enforcement, and statistical researchers. (HSC § 11165(a))

5) Requires pharmacists and other dispensers to report information to CURES within one working day relating to prescriptions of Schedule II, III, IV, and V controlled substances. (HSC § 11165(d))

6) Requires health care practitioners in receipt of a federal Drug Enforcement Administration (DEA) registration providing authorization to prescribe controlled substances, as well as pharmacists, to register for access to the CURES database. (HSC § 11165.1(a))

7) Allows the DOJ to conduct audits of CURES and its users and issue citations and fines for system misuse. (HSC § 11165.2)

8) Requires health care practitioners to consult the CURES database to review a patient's controlled substance history before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least once every six months thereafter if the substance remains part of the treatment of the patient. (HSC § 11165.4(a))

9) Exempts veterinarians and pharmacists from the duty to consult the CURES database. (HSC § 11165.4(b))

10) Exempts health care practitioners who prescribe, order, or furnish a controlled substance to be administered to a patient on the premises of specified facilities from the duty to consult the CURES database. (HSC § 11165.4(c)(1))

11) Exempts health care practitioners who prescribe, order, or furnish a controlled substance in the emergency department of a general acute care hospital from the duty to consult the CURES database when the quantity of the controlled substance does not exceed a nonrefillable seven-day supply. (HSC § 11165.4(c)(2))

12) Exempts health care practitioners who prescribe, order, or furnish a controlled substance in certain facilities as part of a patient's treatment for a surgical, radiotherapeutic, therapeutic, or diagnostic procedure from the duty to consult the CURES database when the quantity of the controlled substance does not exceed a nonrefillable seven-day supply. (HSC § 11165.4(c)(3))

13) Exempts health care practitioners who prescribe, order, administer, or furnish a controlled substance to a patient who is terminally ill from the duty to consult the CURES database. (HSC § 11165.4(c)(4))

14) Exempts health care practitioners from the duty to consult the CURES database when it is not reasonably possible for the practitioner to access the database in a timely manner, another practitioner is not reasonably available, and the quantity of the controlled substance prescribed does not exceed a nonrefillable seven-day supply. (HSC § 11165.4(c)(5))

15) Exempts health care practitioners from the duty to consult the CURES database when the database is nonoperational or cannot be accessed due to technology limitations. (HSC § 11165.4(c)(6-7)

16) Exempts health care practitioners from the duty to consult the CURES database when consultation would result in a patient's inability to obtain a prescription in a timely manner and thereby adversely impact the patient's medical condition, and the quantity of the controlled substance does not exceed a nonrefillable seven-day supply. (HSC § 11165.4(c)(8)

17) Provides that a health care practitioner who fails to consult the CURES database is subject to their state professional licensing board for administrative sanction. (HSC § 11165.4(d)

18) Provides dedicated funding for the CURES program through an annual license fee assessed for licensees authorized to prescribe or dispense controlled substances in California. (Business and Professions Code § 208)

THIS BILL:

1) Exempts health care practitioners who prescribe, order, administer, or furnish buprenorphine or other controlled substance containing buprenorphine in the emergency department of a general acute care hospital from the duty to consult CURES, with no limitation on quantity.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Chapter of the American College of Emergency Physicians**. According to the author:

> "AB 1731 is a time-saving measure that will help our emergency physicians provide quality care to their patients. Currently, emergency physicians are required to review CURES before prescribing more than seven days of a medication to ensure patients are not abusing controlled substances. While this system is an effective resource keeping our community members safe, there are instances in the Emergency Department (ED) where this requirement is unnecessary and time-consuming. When prescribing buprenorphine, an opioid antagonist that reduces opioid withdrawal symptoms, the requirement to review CURES will not change whether the emergency physician will write the patient a prescription. Being that California's EDs are overcrowded, we must ensure our physicians have the ability to use their time wisely. Removing the requirement to review CURES before prescribing buprenorphine to patients who are seeking a safe means to detox from addictive drugs will allow for emergency physicians to treat other patients in need of urgent care in a timely manner."

Background.

Overview of the Opioid Crisis. Opioids are a class of drugs prescribed and administered by health professionals to manage pain. The term "opioid" is commonly used to describe both naturally occurring opiates derived from the opium poppy as well as their manufactured synthetics. Common examples of prescription opioids include oxycodone (OxyContin, Percocet); hydrocodone (Vicodin, Norco, Lorcet); codeine; and morphine. Heroin is also an opioid, but is ineligible for lawful prescription in the United States.

In addition to providing pain relief, opioids can be used as a cough suppressant, an antidiarrheal, a method of sedation, and a treatment for shortness of breath. The majority of pharmaceutical opioids are Schedule II drugs under the federal Controlled Substances Act, considered by the DEA to have a high potential for abuse that may lead to severe psychological or physical dependence. However, combination drugs containing lower doses of opioids combined with other active ingredients are typically less restricted; for example, cough syrups containing low doses of codeine are frequently classified Schedule V medications.

In October of 2017, the White House declared the opioid crisis a national public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country. According to the Centers for Disease Control and Prevention (CDC), as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28 percent increase over the previous year. The California Department of Public Health estimated that nearly 2,000 Californians died of an opioid overdose in 2016.

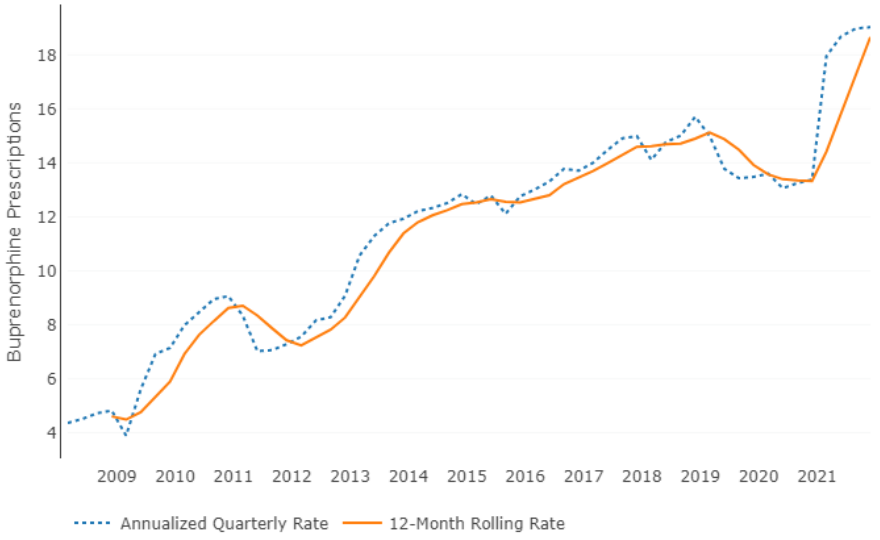
The nature of the country's opioid crisis has evolved over the past several years as illicitly manufactured fentanyl has replaced prescribed pain management medication as the dominant source of opioid-related overdoses. Fentanyl is a synthetic opioid that is up to 100 times stronger than morphine. Fentanyl is often pressed into pills to imitate more common (and less potent) pharmaceutical products, and other drugs can be unknowingly "laced" with fentanyl. Over 70,000 Americans died of a fentanyl overdose in 2021, including 5,961 deaths in California – approximately 83% of all opioid-related deaths in California.

The abuse of prescription drugs was historically viewed as a criminal concern analogous to street narcotics cases regularly investigated by law enforcement. In recent years, however, an expert consensus has evolved around the opinion that the opioid crisis must be addressed through the lens of public health policy. It is widely accepted that health professionals must continue to play a critical role in any meaningful solutions through safe-prescribing and the medication-assisted treatment of opioid use disorder.

Buprenorphine. Itself a type of opioid, buprenorphine is a Schedule III controlled substance used in medication-assisted treatment of opioid addiction. Buprenorphine is what is referred to as a partial opioid agonist; this essentially means that it provides a much lower degree of euphoria than other opioids like oxycodone and heroin, and is considered to be less prone to abuse or dependence. In medication-assisted treatment of addiction, buprenorphine is used similarly to methadone, but with reduced side effects. Buprenorphine is frequently marketed under the brand name Subutex, as well as Suboxone when combined with naloxone, an opioid antagonist.

As an opioid classified as a Schedule III controlled substance, buprenorphine can only be prescribed or administered by a licensed practitioner in possession of a DEA registration. Prior federal restrictions on buprenorphine under the federal Drug Addiction Treatment Act of 2000 allowed for only specially trained physicians to prescribe buprenorphine through an "X-waiver" process. Further restricting the availability of buprenorphine treatments was federal law limiting the number of patients a physician in receipt of an X-waiver may treat. The Drug Addiction Treatment Act of 2000 originally capped the number of patients per physician at ten; this cap was raised under the Obama administration to allow up to 100 patients to be treated with buprenorphine per approved physicians who have held the waiver for two years, and up to 275 patients at three years. In January of 2021, the federal Department of Health and Human Services announced that it was eliminating the X-waiver entirely.

As the federal restrictions on prescribing buprenorphine have incrementally loosened, the number of prescriptions has gone up substantially. The following chart is available through the California Department of Public Health's Opioid Overdose Surveillance Dashboard, which utilizes data from the CURES database. The chart shows the rate of buprenorphine prescriptions per 1,000 residents statewide.



CURES. The CURES database was first established in 1996 as a "technologically sophisticated" database containing prescription records collected through California's Triplicate Prescription Program, which provided the DOJ with copies of all Schedule II drug prescriptions. Subsequent legislation made CURES the state's sole prescription record repository and added Schedule III, IV, and V drugs to the database. In 2008, CURES was upgraded to function as a PDMP, allowing health professionals, regulators, and law enforcement to conduct web-based searches of the system to inform prescribing practices and support investigations.

Budget problems later plagued the database as the elimination of the DOJ's Bureau of Narcotics Enforcement effectively defunded the CURES program. Users of the system complained that the PDMP offered insufficient client support and was plagued with technical issues. In response, Attorney General Kamala Harris sponsored legislation to overhaul the database with revenue newly derived from a license fee charged to healing arts professionals. The resulting system, commonly referred to as "CURES 2.0," was considered to be a significantly improved, state-of-the-art tool for addressing the abuse and diversion of opioids and other prescription drugs.

Every dispenser of controlled substances and every health practitioner authorized by the DEA to prescribe controlled substances is required to obtain a login for access to CURES. For each dispensed Schedule II, III, IV, or V drug, pharmacists are required to report basic information about the patient and their prescription within one working day. This information is then made available to other system users in a variety of possible contexts. For example, physicians may query a patient's prescription history prior to writing a new prescription; pharmacists can check the system before agreeing to fill a prescription for a controlled substance; regulators may review a licensee's prescribing practices as part of a disciplinary investigation; and law enforcement can incorporate a search of the system into a potential criminal case of drug diversion. The vast majority of these searches (over 99%) are made by prescribers and dispensers seeking to review a patient's prescription history as a component of exercising informed clinical judgment before providing access to opioids or other controlled substances.

Access to CURES data is limited by a number of state and federal privacy laws. This includes the federal Health Insurance Portability and Accountability Act (HIPAA), the California Medical Information Act, and the Information Practices Act. Whether law enforcement use of the system implicates the Fourth Amendment's protections against unreasonable searches has historically been a topic of discussion. In 2017, the Supreme Court of California ruled in *Lewis v. Superior Court* that privacy interests are justified by the state's interest in preventing drug diversion.

As of October 2018, health practitioners are required to consult the CURES database prior to writing a prescription for a Schedule II, III, or IV drug for the first time, and then at least once every six months as long as the prescription continues to be renewed. There are a number of existing exemptions to this requirement:

1) If the health care practitioner is a veterinarian or a pharmacist;

2) If the health care practitioner prescribes, orders, or furnishes the controlled substance to be administered to a patient in a specified facility, or for us while on the facility premises;

3) If the health care practitioner prescribes, orders, administers, or furnishes the controlled substance in the emergency department of a general acute care hospital and the quantity of the controlled substance does not exceed a nonrefillable seven-day supply of the controlled substance to be used in accordance with the directions for use;

4) If the health care practitioner prescribes, orders, administers, or furnishes the controlled substance to a patient as part of the patient's treatment for a surgical, radiotherapeutic, therapeutic, or diagnostic procedure and the quantity of the controlled substance does not exceed a nonrefillable seven-day supply of the controlled substance to be used in accordance with the directions for use, in one of several specified facilities;

5) If the health care practitioner prescribes, orders, administers, or furnishes the controlled substance to a patient who is terminally ill;

6) It is not reasonably possible for a health care practitioner to access the information in the CURES database in a timely manner, another health care practitioner or designee authorized to access the CURES database is not reasonably available, and the quantity of the controlled substance prescribed, ordered, administered, or furnished does not exceed a nonrefillable seven-day supply of the controlled substance;

7) If the CURES database is not operational, as determined by the DOJ, or cannot be accessed by a health care practitioner because of a temporary technological or electrical failure;

8) If the CURES database cannot be accessed because of technological limitations that are not reasonably within the control of a health care practitioner; or

9) If consultation of the CURES database would, as determined by the health care practitioner, result in a patient's inability to obtain a prescription in a timely manner and thereby adversely impact the patient's medical condition, provided that the quantity of the controlled substance does not exceed a nonrefillable seven-day supply if the controlled substance were used in accordance with the directions for use.

Because buprenorphine is a Schedule III controlled substance, prescriptions of the drug are tracked in CURES, and health care practitioners are also required to consult CURES before prescribing buprenorphine consistent with the requirement for prescribing other opioids. However, the author and sponsors of this bill contend that the duty to consult CURES may not be practical for buprenorphine. The purpose of consulting CURES is to inform practitioners as to whether there is indication that a patient may have opioid use disorder before prescribing additional pain medication. In the case of buprenorphine, the prescription would be provided to *treat* opioid use disorder, such an indication would only further encourage the prescription.

Considering that buprenorphine still has some potential for abuse or diversion as a partial agonist, its federal classification as a Schedule III drug and its general inclusion in California's opioid abuse prevention laws is arguably appropriate. However, the author contends that the administrative impediment of consulting CURES in an emergency department setting prior to prescribing buprenorphine is not merited by the relatively lower risk of adverse consequences compared to prescriptions for pain management medication. Further, there is a cogent state interest in increasing the availability of buprenorphine, particularly as overdoses across the state continue to grow. This bill seeks to reflect that balance by exempting prescriptions for buprenorphine in hospital emergency departments from the duty to consult the CURES database.

Current Related Legislation. AB 663 (Haney) would allow for controlled substances approved for the treatment of opioid use disorder to be dispensed at mobile pharmacy units. *This bill is pending in this committee.*

Prior Related Legislation. AB 528 (Low, Chapter 677, Statutes of 2019) reduced the required timeframe in which pharmacists are required to report dispensed prescriptions to CURES from seven days to the following business day, added Schedule V drugs to CURES, and changed the requirement for health practitioners to continue consulting the CURES database from every four months to every six months beginning July 1, 2021.

AB 1751 (Low, Chapter 478, Statutes of 2018) provides a framework for the CURES PDMP to connect with other states that comply with California's patient privacy and data security standards.

AB 1753 (Low, Chapter 479, Statutes of 2018) allows the DOJ links uniquely serialized prescription pads with CURES.

AB 2086 (Gallagher, Chapter 274, Statutes of 2018) allows prescribers of controlled substances to review a list of patients for whom they are listed as being the prescriber in CURES.

AB 40 (Santiago, Chapter 607, Statutes of 2017) required the DOJ to facilitate interoperability between health information technology systems and the CURES database, subject to a memorandum of understanding setting minimum security and privacy requirements.

SB 482 (Lara, Chapter 708, Statutes of 2016) mandated that health practitioners consult a patient's history in CURES prior to prescribing them a Schedule II, III, or IV controlled substance for the first time and then at least once every four months as long as the prescription continued to be renewed.

SB 809 (DeSaulnier, Chapter 400, Statutes of 2013) established new healing arts license fees to fund the development and maintenance a new and improved "CURES 2.0" database.

AB 2986 (Mullin, Chapter 286, Statutes of 2006) added Schedule IV drugs to the CURES database.

SB 734 (Torlakson, Chapter 487, Statutes of 2005) created the framework to upgrade the CURES prescription database into a searchable, client-facing PDMP.

SB 151 (Burton, Chapter 406, Statutes of 2003) made CURES the state's permanent prescription tracking program and added Schedule III drugs to the database.

AB 3042 (Takasugi, Chapter 345, Statutes of 2002) first established CURES as a pilot project operating concurrently with the state's Triplicate Prescription Program.

ARGUMENTS IN SUPPORT:

The **California Chapter of the American College of Emergency Physicians** (California ACEP) is sponsoring this bill. According to California ACEP, "stopping to check CURES before prescribing to patients who are seeking a safe means to detox from opiates while awaiting treatment, takes away time that emergency physicians could use to treat a trauma victim or a patient in cardiac arrest. California's EDs are already overburdened and overcrowded; mandatory checking of CURES for buprenorphine prescriptions unnecessarily adds to the time spent away from patients."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Chapter of the American College of Emergency Physicians *(Sponsor)*

REGISTERED OPPOSITION:

None on file.

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