Vice-Chair
Flora, Heath

Members
Alanis, Juan
Alvarez, David
Bains, Jasmeet
Bonta, Mia
Chen, Phillip
Dixon, Diane
Gipson, Mike A.
Grayson, Timothy S.
Irwin, Jacqui
Jackson, Corey A.
Lee, Alex
Lowenthal, Josh
McCarty, Kevin
McKinnor, Tina
Nguyen, Stephanie
Patterson, Joe
Ting, Philip Y.

California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

Chief Consultant
Robert Sumner

Deputy Chief Consultant
Vincent Chee

Consultant
Kaitlin Curry
Annabel Smith

Committee Secretary
Christina Rocha

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

AGENDA

Tuesday, June 20, 2023
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

1.	ACR 86	Kalra	Animals: overpopulation: spay and neutering services.
2.	SB 285	Allen	Cannabis: retail preparation, sale, and consumption of noncannabis food and beverage products.
3.	SB 372	Menjivar	Department of Consumer Affairs: licensee and registrant records: name and gender changes.
4.	SB 373	Menjivar	Board of Behavioral Sciences, Board of Psychology, and Medical Board of California: licensees' and registrants' addresses.
5.	SB 385	Atkins	Physician Assistant Practice Act: abortion by aspiration: training.
6.	SB 508	Laird	Cannabis: licenses: California Environmental Quality Act.
7.	SB 601*	McGuire	Professions and vocations: contractors: home improvement contracts: prohibited business practices: limitation of actions.
8.	SB 630*	Dodd	Contractors State License Board: regulation of contractors.
9.	SB 669	Cortese	Veterinarians: veterinarian-client-patient relationship.
10.	SB 683	Glazer	Hotels and short-term rentals: advertised rates: mandatory fees.

COVID FOOTER

SUBJECT:

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
ACR 86 (Kalra) – As Introduced May 24, 2023

SUBJECT: Animals: overpopulation: spay and neutering services.

SUMMARY: Makes various declarations in support of an assertion that there is a pet overpopulation crisis in California; urges state and local action to address this crisis; and resolves that adequate funding for spay and neuter programs and enforcement efforts is urgently needed.

EXISTING LAW:

1) Enacts the Veterinary Medicine Practice Act, outlining the licensure requirements, scope of practice, and responsibilities of individuals practicing veterinary medicine in California. (Business and Professions Code (BPC) §§ 4811 *et seq.*)

2) Establishes the Veterinary Medical Board (VMB) under the jurisdiction of the Department of Consumer Affairs, responsible for enforcing the provisions of the Veterinary Medicine Practice Act, and regulating veterinarians, registered veterinary technicians, veterinary assistant substance controlled permit holders, and veterinary premises. (BPC § 4800)

3) Provides that protection of the public shall be the highest priority for the VMB in exercising its licensing, regulatory, and disciplinary functions. (BPC § 4800.1)

4) Declares that it is unlawful to practice veterinary medicine in California unless a person holds a valid, unexpired, and unrevoked license issued by the VMB, with certain exceptions. (BPC § 4825)

5) Defines the practice of veterinary medicine, surgery, and dentistry when a person engages in various acts, including representing themselves as a veterinarian; diagnosing or prescribing a drug, medicine, appliance, application, or treatment; performing a surgical or dental operation or manual procedure for diagnosis; or collecting blood. (BPC § 4826)

6) Outlines the requirements for obtaining a veterinarian license. (BPC § 4848)

7) Requires all premises where veterinary medicine, dentistry and surgery is practiced to be registered with the VMB; defines "premises" to include a building, kennel, mobile unit, or vehicle, and specifies that every registration of veterinary premises must include the name of the responsible licensee manager for the licensed premises. (BPC § 4853)

8) Specifies a list of prohibited activities for individuals licensed under the VMB, such as fraud, misleading advertising, and cruelty to animals; provides that the VMB may deny, revoke, or suspend a license or registration, or assess a fine, if any a person under its jurisdiction is found to have engaged in prohibited activities. (BPC §§ 4883 *et seq.*)

9) Establishes the Polanco-Lockyer Pet Breeder Warranty Act, which regulates the sale dogs by dog breeders. (Health and Safety Code (HSC) §§ 122045 *et seq.*)

10) Requires every dog breeder to deliver to each purchaser of a dog a specified written disclosure and record of veterinary treatment. (HSC § 122050)

11) Requires dog breeders to maintain a written record on the health, status, and disposition of each dog for a period of not less than one year after disposition of the dog. (HSC § 122055)

12) Prohibits a dog breeder from knowingly selling a dog that is diseased, ill or has a condition, which requires hospitalization or nonelective surgical procedures. (HSC § 122060)

13) Requires every breeder who sells a dog to provide the purchaser at the time of sale, and a prospective purchaser upon request, with a written notice of rights, including conditions to return a dog and be eligible to receive a refund for an animal or reimbursement for veterinarian fees. (HSC § 122100)

14) Authorizes cities and counties to enact dog breed-specific ordinances pertaining only to mandatory spay or neuter programs and breeding requirements, provided that no specific dog breed, or mixed dog breed, shall be declared potentially dangerous or vicious under those ordinances; directs any cities or counties enacting such ordinances to measure the effect of those programs by compiling specified statistical information on dog bites, and report the information to the State Public Health Veterinarian. (HSC § 122331)

15) Establishes the responsibilities of a pet store operator, including facility and maintenance requirements, standards for animal enclosures, animal care requirements, and record keeping protocols. (HSC §§ 122350 *et seq.*)

16) Prohibits a pet store operator from selling a live dog, cat, or rabbit in a pet store unless the animal was obtained from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group that is in a cooperative agreement with at least one private or public shelter. (HSC § 122354.5)

17) Provides that an animal control officer, humane officer, or peace officer, who detects a violation of law by a pet store, may issue a single notice to correct. (HSC § 122356)

18) 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.*)

19) 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)

20) 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)

21) 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)

22) 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 VMB:

    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)

23) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of a crime. (Penal Code (PEN) § 597)

24) Requires any peace officer, humane society officer, or animal control officer to convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely euthanized or shall be hospitalized under proper care and given emergency treatment. (PEN 597.1)

25) Requires that any person who impounds, or causes to be impounded in any animal shelter, any domestic animal, must supply it during confinement with a sufficient quantity of good and wholesome food and water. (PEN § 597e)

26) Provides that it is the policy of the state that no adoptable animal should be euthanized if it can be adopted into a suitable home. (PEN § 599d; Civil Code § 1834.4)

27) Establishes the Pet Lover's Fund within the Specialized License Plate Fund, which provides for grant funding to eligible veterinary facilities that offer low-cost or no-cost animal sterilization services. (Vehicle Code § 5168)

THIS BILL:

1) Declares that there is a pet overpopulation crisis in California.

2) Declares that California's private and public shelters are chronically underfunded while tasked with tackling many of the state's animal needs.

3) Declares that the state's shelters are experiencing overcrowding due to breeding and lack of access to spay and neutering services, and that this overcrowding is leading to shelters are turning away animals from intake.

4) Declares that there has been an influx of rabbits, horses, pigs, and other agricultural animals into shelters whose higher level of care puts further strain on shelter resources.

5) Declares that the COVID-19 pandemic exacerbated the challenges that shelters face due to shelter closures or highly reduced hours, staffing shortages, and functional interruptions.

6) Declares that the brief spike in demand for pets during the pandemic led to many Californians breeding dogs for monetary gain, contributing to the pet overpopulation crisis.

7) Declares that Californians are currently not adopting pets from shelters and rescues at the level needed and are instead buying unaltered "purebred" animals from both in-state and out-of-state breeders.

8) Declares that there is a shortage of pet-friendly housing in California, leading to increased owner relinquishment.

9) Declares that, due to the pandemic, veterinary clinics and shelters were not able to perform routine spay and neuter surgeries, perpetuating more unwanted litters.

10) Declares that there is insufficient community access to low-cost or free spay and neuter clinics, as well as a lack of resources needed to fully enforce state and local laws concerning licensing, breeding, spaying, and neutering.

11) Declares that there is a lack of affordable veterinary services available to Californians and their companion animals, which contributes to animal suffering and increased owner relinquishments.

12) Declares that the two veterinary schools in California are failing to meet the state's demand for licensed veterinarians.

13) Declares that there are not enough licensed veterinarians and registered veterinary technicians, particularly those trained to perform high-volume spay and neuter surgeries, to meet the service demands of California's shelters.

14) Declares that there is a mental health crisis among veterinarians and shelter and rescue volunteers and staff due to occupational stress, leading to reported suicide rates four to five times higher than the general population.

15) Declares that local jurisdictions spend over $400,000,000 per year in operating the state's shelters to house, adopt out, and euthanize homeless animals but that the only annual state funding for shelters is the roughly $500,000 allocated through the Pet Lover's specialized license plates program and a tax check-off program, and that millions of private and philanthropic dollars are spent every year to assist California's shelter animals.

16) Declares that the Legislature has failed to appropriate ongoing funds to carry out the mandates of Senate Bill 1785, authored by Senator Tom Hayden.

17) Resolves that the VMB, with support from the Governor, other state boards and agencies, and interested stakeholders, encourages out-of-state licensed veterinarians and registered veterinary technicians to become licensed in California to perform the necessary spay and neuter surgeries and other medical services in order to address pet overpopulation.

18) Resolves that state and local municipalities, in cooperation with public and private shelters, nonprofit rescue organizations, and private foundations, are encouraged to develop and fund high-volume spay and neuter clinics across the state to provide sterilization services.

19) Resolves that allocation of adequate funding for statewide spay and neuter programs and resources for broader enforcement of state and local licensing, breeding, and spay and neuter laws is urgently needed.

20) Resolves that the State of California is encouraged to conduct a public relations campaign urging Californians to adopt shelter animals rather than buying an animal from a breeder, and to always spay and neuter them.

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

COMMENTS:

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

> "California's animal shelters are overpopulated and overwhelmed. This had led to mounting costs, diminished conditions, and the euthanasia of countless healthy, adoptable animals who could have otherwise become lifelong members of Californian families. The best way to address this issue is through robust spay-and-neuter practices, which reduce cat and dog populations through safe and convenient sterilization surgeries. However, spay-and-neuter surgeries are expensive, and there are not enough affordable spay-and-neuter services to address demand. ACR 86 not only recognizes the multitude of causes that have contributed to the shelter overpopulation crisis, but encourages the state to pursue meaningful solutions that will fund and staff the high-volume spay-and-neuter services that Californians need."

Background.

Animal Welfare Laws. In 1966, the United States Congress enacted the Animal Welfare Act (AWA) to provide standards on the humane handling, care, and treatment of animals. Enforced by the United States Department of Agriculture (USDA), the AWA regulates animal rights in various settings, including scientific research, public exhibitions, or transportation. California is home to a number of additional animal protection laws intended to safeguard the wellbeing and life of animals in various settings. In terms of laws intended to protect animals from being harmed or discomforted by their owners, only certain categories of severe neglect or mistreatment are expressly unlawful. The malicious and intentional maiming, mutilation, torture, or wounding of any living animal is a crime under the Penal Code. Similarly, anyone who overdrives, overloads, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal is guilty of a crime. There are also provisions in the Penal Code that provide punishment for those who severely neglect an animal and allows those animals to be seized and treated. Similarly, laws like the Lockyer-Polanco-Farr Pet Protection Act establishes animal welfare and consumer protection requirements on pet dealers and the animals they sell.

Animal Breeding. California regulates the sale of dogs by dog breeders through the Polanco-Lockyer Pet Breeder Warranty Act. Under the Warranty Act, "dog breeders" are defined as a person, firm, partnership, corporation, or other association that has sold, transferred, or given away all or part of three or more litters or 20 or more dogs during the preceding 12 months that were bred and reared on the premises of the person, firm, partnership, corporation, or other association. Broadly, the Warranty Act allows a consumer to receive a refund or reimbursement should they purchase a sick pet, or a pet that is found to have a hereditary or congenital condition requiring surgery or hospitalization. The Warranty Act further regulates California dog breeders by requiring breeders to provide specific written disclosures, including the breeder's name, address, information on the dog, as well as signed statements that the dog has no known diseases or illnesses, as well as a notice of the purchaser's rights to obtain a refund or reimbursement.

Professional breeders are generally recognized as responsible breeding operations who adhere to strict animal health, safety, and breeding standards; maintain active membership in their kennel clubs, and conduct extensive research on breed lineage, health risks, and canine or feline obstetrics. Professional breeders comply with all existing state laws when selling an animal, and ensure that contracts meet existing requirements on health guarantees such as the ones outlined in the Warranty Act.

Commercial breeders—sometimes referred to "puppy mills" or "kitten factories"—generally refer to commercial, high-volume breeding facilities that mass produce animals for retail sale. Although commercial breeders are required to abide by the federal AWA, with some operations even licensed under the USDA, there is limited oversight and enforcement of the requirements. According to several animal welfare groups, mills often rear animals in squalid and inhumane conditions, with certain facilities having long and documented histories of repeated violations of the AWA. Over the years, public scrutiny and subsequent legislative action has been placed curbing the sale of animals coming from large-scale commercial operations. AB 485 (O'Donnell) was enacted in 2017 to prohibit pet store operators from selling a live cat, dog, or rabbit unless the animal is offered through a public animal control agency or shelter, specified nonprofit, or animal rescue or adoption organization. That bill attempted to address both overcrowding in California animal shelters and reduce sales from out-of-state puppy mills.

"Backyard breeder" is an informal catch-all term referring to breeders with little experience or knowledge in the practice of animal breeding. While such breeders are not necessarily unethical, breeding without the training, knowledge, or even support of a kennel club can lead to genetic issues and put the health and safety of the animal and their offspring at risk. Untrained breeders may have various reasons for breeding an animal, from making extra income, or having extra puppies or kittens for their own family. Over the years, local jurisdictions have reported untrained breeders selling sick or injured animals who were raised in inhumane conditions. This resolution further contends that the COVID-19 pandemic has led to a spike in demand for pets that caused many Californians "seeking an economic opportunity" to begin backyard breeding, contributing to pet overpopulation and overcrowding at shelters.

Efforts to Reduce Euthanasia of Adoptable Animals. 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.

Much of the Hayden law has not been effectively implemented due to fiscal challenges. In 2000, local governments successfully obtained a decision from the Commission on State Mandates that costs incurred by cities and counties in complying with the law must be reimbursed by the state. Subsequently beginning with the Budget Act of 2009, the state has not provided funding for this reimbursement. While a proposal by Governor Jerry Brown to repeal portions of the Hayden Law in 2012 were rejected by the Legislature, animal welfare advocates have argued that the bill was effectively annulled through its lack of funding, as referenced by this resolution.

Since the enactment of the Hayden Law, euthanasia rates in California animal shelters have remained high. According to data from the California Department of Public Health, 158,191 dogs and cats were euthanized in 2016. 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.

After a successful campaign by the sponsor of this resolution and the VMB, a Pet Lover's License Plate program was established in 2012, and in 2014, Senate Bill 1323 (Lieu) was enacted to allocate the proceeds from purchases of this specialty license plate to fund a grant program to eligible veterinary facilities that offer low-cost or no-cost animal sterilization services under the VMB. Legislation enacted in 2015 clarified that the VMB had authority to utilize nonprofits to assist with the disbursement of grant funds, and in 2017 the Legislature shifted responsibility for the program from the VMB to the California Department of Food and Agriculture (CDFA) after members of the VMB raised conflict-of-interest concerns. The most recent distribution of grand funding by the CDFA in 2023 allocated approximately $488,000, with an estimated amount of $25,000 – $50,000 per award.

The Legislature additionally enacted Assembly Bill 485 (Williams) in 2015 to establish a voluntary checkoff to the state's personal income tax return to provide revenue to a Prevention of Animal Homelessness and Cruelty Fund. The intent of this checkoff was to fund a program through which the CDFA would allocate money to local animal control agencies and shelters to support spay and neuter activities and to prevent and eliminate dog and cat homelessness. In 2022, a total of $308,449 was contributed through the checkoff, and approximately $250,000 was awarded that year to eligible agencies, with an estimated amount of $7,500 – $22,500 per award.

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 in its report:

> "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."

This resolution notes that the Pet Lover's License Plate program and the voluntary checkoff are the only annual state funding sources for shelters. Meanwhile, the resolution asserts that millions of private and philanthropic dollars are spent to assist shelter animals in California. This bill would resolve that "the allocation of adequate funding for statewide spay and neuter programs and resources for broader enforcement of state and local licensing, breeding, and spay and neuter laws is urgently needed." Such an allocation would have to be discussed and approved for a future fiscal year through the Legislature's budget process.

Veterinary Medical Board. The VMB traces its origins back to 1893, originally established as the State Board of Veterinary Examiners. Over the next century, the VMB has regulated the veterinary medical profession through many of its changes and evolution: from opening the first California veterinary college in 1894, to helping eradicate the Hog cholera in 1972, to the creation of the animal health technician profession in 1975. Today, the VMB licenses and regulates veterinarians, registered veterinary technicians (RVTs), veterinary assistant controlled substances permit (VACSP) holders, veterinary schools, and veterinary premises.

The VMB derives its authority through the enforcement of the Veterinary Medicine Practice Act. The goal of the VMB is to protect the California public from the incompetent, unprofessional, and unlicensed practice of veterinary medicine. The VMB requires adherence to strict licensure requirements for California veterinarians, RVTs, and VACSP holders, and ensures that each licensee possesses the level of competence required to perform animal health care services. The VMB further protects the public by investigating complaints—and if violations are found, take disciplinary actions against licensees.

If shelters are providing veterinary care, they are practicing veterinary medicine and are subject to the VMB's authority, and only licensed veterinarians may perform spay and neuter surgeries. Microchipping is not considered to be veterinary medicine and may therefore be performed by an RVT or veterinary assistant, as well as certain emergency procedures and forms of euthanasia. In order for state programs to increase access to spay and neuter programs to be effective, there must be an adequate supply of licensed veterinarians to perform those surgeries.

While advocates and policymakers have highlighted affordable spay and neuter programs as a key component to addressing animal overpopulation, this resolution asserts that there is an insufficient number of licensed veterinarians and RVTs in the state, "particularly those trained to perform high-volume spay and neuter surgeries, to meet the service demands of California's shelters, leading to shelter animals being adopted unaltered, thus adding to the pet overpopulation crisis." The resolution further argues that the two veterinary schools in California have limited seating and "fail to meet the state's demand for licensed veterinarians." This resolution therefore resolves that the VMB, with support from other agencies and stakeholders, "[encourage] out-of-state licensed veterinarians and [RVTs] to become licensed in California to perform the necessary spay and neuter surgeries and other medical services in order to address pet overpopulation."

Current Related Legislation.

SB 669 (Cortese) would authorize a veterinarian to allow an RVT to act as their agent for the purpose of establishing the veterinarian-client-patient relationship and administrating preventative or prophylactic vaccines or medications. *This bill is pending in this committee.*

AB 1399 (Friedman) would expand the authority of a licensed veterinarian to establish a veterinarian-client-patient relationship and practice veterinary medicine through the use of telehealth. *This bill is pending in the Senate Committee on Rules.*

AB 595 (Essayli) would have required every animal shelter to provide public notice at least 72 hours before euthanizing any dog, cat, or rabbit and would have required the CDFA to conduct a study on animal shelter overcrowding. *This bill was held on the Assembly Committee on Appropriations suspense file.*

AB 491 (Essayli) is identical to AB 595. *This bill is pending in the Senate Committee on Rules.*

Prior Related Legislation.

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 2380 (Maienschein, Chapter 548, Statutes of 2022) prohibited, under the Lockyer-Polanco-Farr Pet Protection Act, an online pet retailer from offering or facilitating a loan or other financing for the adoption or sale of a dog, cat, or rabbit.

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 1535 (Committee on Business and Professions, Chapter 631, Statutes of 2021) extended the sunset date for the Veterinary Medical Board and made additional changes resulting from the sunset review process.

AB 702 (Santiago) from 2021 would have required local jurisdictions, animal control agencies, or the entities responsible for enforcing animal-related laws, to establish permit programs regulating the breeding of cats and dogs. *This bill died in this committee.*

AB 2152 (Gloria, Chapter 96, Statutes of 2020) prohibited a pet store from selling dogs, cats, or rabbits, but allows a pet store to provide space to display animals for adoption if the animals are displayed by either a shelter or animal rescue group, as defined, and establishes a fee limit, inclusive of the adoption fee, for animals adopted at a pet store.

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.

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.

AB 2445 (O'Donnell, Chapter 145, Statutes of 2018) required a pet store operator to maintain records to document the health, status, and disposition of each animal it sells for a period of not less than two years, and provide to the prospective purchaser of any animal the veterinary medical records, as specified, and the pet store return policy including the circumstances, if any, under which the pet store will provide follow-up veterinary care for the animal in the event of illness.

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 485 (O'Donnell, Chapter 740, Statutes of 2017) prohibited, beginning January 1, 2019, a pet store operator from selling a live cat, dog, or rabbit in a pet store unless they are offered through a public animal control agency or shelter, specified nonprofit, or animal rescue or adoption organization, as defined; permits a public or private shelter to enter into a cooperative agreement with animal rescue or adoption organizations regarding rabbits; requires dogs or cats sold in a retail pet store to comply with current spay and neuter laws; provides specified exemptions to the pet warranty law; and permits an animal control officer, a humane officer, or a peace officer to enforce the pet store prohibition.

AB 1491 (Caballero, Chapter 731, Statutes of 2017) declares as void against public policy a contract for the purchase of a dog or cat which is made contingent on making of payments over a period of time, or other types of lease-to-own agreements that do not immediately transfer ownership of the animal to the purchaser.

SB 673 (Newman, Chapter 813, Statutes of 2017) transferred administration of the Pet Lover's specialized license plate program from the VMB to the CDFA.

AB 485 (Williams, Chapter 557, Statutes of 2015) established a voluntary checkoff to the state's personal income tax return to provide revenue to a Prevention of Animal Homelessness and Cruelty Fund.

AB 1323 (Lieu, Chapter 375, Statutes of 2014) required the Department of Motor Vehicles to deposit fees collected for a specialized license plate issued under the Pet Lover's Specialized License Plate Program into the Pet Lover's Specialized License Plate Fund.

AB 610 (Solorio, Chapter 9, Statutes of 2012) provided an additional 12 months for the collection of the 7,500 paid applications necessary for the VMB to successfully sponsor a specialized license plate.

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:

The sponsor of this bill is **Social Compassion in Legislation** (SCIL). SCIL writes: "ACR 86 shines a spotlight on the dire pet overpopulation we are facing. By passing this resolution, the California legislature will give the issue the spotlight it deserves and buoy all stakeholders to come together to drive both short-term and long-term solutions needed to ultimately solve this issue."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Social Compassion in Legislation *(Sponsor)*
4 Dogs Farm Rescue
The Animal Rescue Mission
Animal Welfare Data Center
Association of German Shepherd Rescuers, Inc.
Cal Coast Pet Rescue
Caring Friends Cat Rescue
CAUSE for SB Paws
Coastside Feral Care
Compassionate Bay
Dogwood Animal Rescue
Feline the Love
Four Paws to Love
The Frank and Lucy Project
Fresno Furry Friends, Inc.
Friends of Plumas County Animals
Front Harness by the Front Dog
Gingeroo Animal Rescue Network
Greater Los Angeles Animal Spay Neuter Collaborative
Holstein Haven Calf Rescue
Latino Alliance for Animal Care Foundation
Los Angeles Democrats for the Protection of Animals
Lufa World
Mendocino Coast Humane Society
Michelson Center for Public Policy
Milo Foundation
Motherlode Feral Cat Alliance
Muttville Senior Dog Rescue
One Love CBD
Our Honor
Outta the Cage
Partners in Animal Care & Compassion
The Pepper Foundation
Pink Paws for the CAUSE
Project Minnie
Project Purr
The Puppy Coalition
Seeds 4 Change Now Animal Rescue
Singer Sanctuary
Soul 2 Soul Animal Rescue
Starfish Animal Rescue
Take Me Home Rescue
Tippedears

UnchainedTV
United Spay Alliance
Urban Panthers Rescue
Vegan Flag
Ventura County Animal Services
Women United for Animal Welfare
532 Individuals

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 285 (Allen) – As Amended April 11, 2023

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

SENATE VOTE: 33-3

SUBJECT: Cannabis: retail preparation, sale, and consumption of noncannabis food and beverage products

SUMMARY: Authorizes a local jurisdiction to allow for the preparation or sale of non-cannabis food or beverage products by a licensed cannabis retailer or microbusiness in an area where the consumption of cannabis is allowed, if certain conditions are met, and to allow for the sale of prepackaged, non-cannabis-infused, nonalcoholic food and beverages by a licensed retailer.

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

6) 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)

7) 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))

8) 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 for the preparation or sale of non-cannabis food or beverage products by a licensed retailer or microbusiness licensed in the area where the consumption of cannabis is allowed.

2) Requires all non-cannabis food or beverage products to be prepared and sold in compliance with all applicable provisions of the California Retail Food Code.

3) Provides that the existing limitations on a local jurisdiction allowing for the consumption of cannabis on licensed retail premises apply to the sale non-cannabis food and beverages.

4) Additionally authorizes a local jurisdiction to allow for the sale of prepackaged, non-cannabis-infused, nonalcoholic food and beverages by a licensed cannabis retailer.

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

COMMENTS:

Purpose. This bill is sponsored by the **West Hollywood Chamber of Commerce**. According to the author:

> "Due to state regulations, cannabis lounges legally allowed to operate within a jurisdiction are unable to prepare or serve customers with freshly made non-cannabis food and non-alcoholic beverages, and other retailers are unable to sell even pre-packaged items. SB 285 provides local governments with the ability to allow authorized cannabis consumption lounges to prepare and serve non-cannabis-infused, non-alcoholic beverages and food. Additionally, SB 285 would allow locals to authorize the sale of pre-packaged food and beverage items to any cannabis retailer. This simple proposal supports small businesses while preserving local control over the operation of cannabis retailers. In no way does this measure expand indoor smoking as cannabis consumption in these lounges is already permissible under existing law."

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. 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.

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 prior bills like this one 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."

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. 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. 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.

Additionally, this bill would expand the current authority for cannabis retailers to sell prepackaged, non-cannabis-infused, non-alcoholic food and beverages with local approval.

---

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

While the Department's regulations currently limit these sales to within an authorized consumption area, this bill would extend the authority of local governments to allow for any cannabis retailer to sell prepackaged food and beverages, including those that conduct sales exclusively through delivery. This provision of the bill is intended to expand the amount of non-cannabis commercial activity a retailer may engage in.

Current Related Legislation. AB 374 (Haney) would authorize local jurisdictions to allow cannabis retailers to prepare and serve non-cannabis food and beverages, and to hold and sell tickets to live musical or other performances, in the area of the premises where consumption of cannabis and cannabis goods is authorized. *This bill is pending in the Senate Committee on Rules.*

Prior Related Legislation. AB 1034 (Bloom) would have authorized a local jurisdiction to allow for the preparation or sale of non-cannabis 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 non-cannabis 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 Cannabis Industry Association** (CCIA) supports this bill. According to the CCIA: "Some jurisdictions, including San Francisco and West Hollywood, allow the consumption of cannabis within the premises of a cannabis retailer. These 'consumption lounges' provide a place for customers to smoke, vape, or otherwise ingest cannabis and cannabis products." CCIA argues that "SB 285 would enhance local governments' ability to permit and regulate licensed cannabis in their jurisdictions, while expanding opportunities for cannabis retailers to offer new customer experiences."

ARGUMENTS IN OPPOSITION:

The **American Cancer Society Cancer Action Network**, the **American Heart Association**, the **American Lung Association**, and the **Campaign for Tobacco Free Kids** write jointly in opposition to this bill, arguing that it "would circumvent current smoke-free laws by creating a new law to permit smoking and vaping cannabis or cannabis products in restaurants if approved by a local jurisdiction." The coalition states that "secondhand marijuana smoke contains many of the same toxins and carcinogens found in directly inhaled marijuana smoke, in similar amounts if not more." According to the coalition, "California has fought hard to protect workers and ensure a safe, healthy, smoke free work environment. SB 285 will undo that by re-creating the harmful work environments of the past."

POLICY ISSUES:

Prepackaged Food and Beverage Sales. In addition to allowing cannabis retailers to sell freshly prepared non-cannabis food and beverages within their authorized consumption areas, this bill would allow any licensed cannabis retailer to sell prepackaged non-cannabis food and beverages as part of its general retail operations. This would mean that a cannabis retailer could feature bags of chips or cans of soda on its shelves alongside cannabis products, and that a nonstorefront retailer could deliver these types of items. As previously discussed, the Department's regulations currently only allow for these items to be sold within an approved consumption area.

While it may appear reasonable to allow a cannabis retailer to additionally sell non-cannabis goods that may be appealing to its customers, this expansion may open the door to the incorporation of cannabis sales into otherwise non-cannabis oriented enterprises. For example, if a cannabis retailer may sell grocery items, there is nothing that would necessarily prevent a local grocery store from obtaining a cannabis license. This is arguably not what the voters envisioned when they approved Proposition 64.

It should be noted that the bill would only allow for such sales of non-cannabis food and beverage goods if a local government chooses to allow it. Retail stores would be prohibited from selling tobacco or alcohol products, which may discourage them from choosing to obtain a cannabis retail license, and they would have to comply with a litany of additional regulations under MAUCRSA that do not currently apply to grocery stores. However, given that the Department's regulations have historically sought to limit the extent to which a cannabis retailer may offer other goods and services to consumers, the author may wish to consider whether this is an appropriate step to take in the direction of expanding where cannabis and non-cannabis food products may be sold concurrently.

Attractiveness to Children. Another potential issue with the proposal to broaden the sale of prepackaged non-cannabis food and beverage products involves potential conflict with protections in Proposition 64 relating to attractiveness to children. The AUMA includes a number of specified safeguards for minors, including a prohibition against cannabis products that are "designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana." It would arguably be inconsistent with the intent of the initiative to allow for cannabis retailers to sell cannabis products alongside the actual candy they are prohibited from resembling.

Hemp Products. In addition to the above issues, the author may wish to consider whether the proposal to broaden the sale of prepackaged non-cannabis food and beverage products may have unintended consequences in terms of allowing hemp products to be sold by cannabis retailers. Notwithstanding the biological and chemical similarities of cannabis and hemp, hemp products are considered "non-cannabis goods" for purpose of MAUCRSA. While presumably an individual or entity could both engage in a licensed cannabis business and in a business involving hemp, it is understood that the two supply chains must remain fully distinct. Whether hemp and cannabis products should be allowed to coexist in a regulatory context has been debated consistently over the past several years, and legislation is currently pending on this topic. If the provision in this bill relating to general sales of prepackaged non-cannabis food and beverage products is retained, the author may wish to exclude the sale of non-cannabis hemp products.

REGISTERED SUPPORT:

Americans for Safe Access
Angeles Emeralds
California Cannabis Industry Association
California Cannabis Manufacturers Association
California Minority Alliance
California NORML
City of West Hollywood
Coachella Valley Cannabis Alliance Network
Fantom Flower
Lompoc Valley Cannabis Association, Santa Barbara County
Long Beach Collective Association
The Parent Company
pureBar
San Francisco Cannabis Retailers Association
Social Equity LA
United Cannabis Business Association
Villa Noble
Where Eagles Fly
The Woods WeHo

REGISTERED OPPOSITION:

American Cancer Society Cancer Action Network INC.
American Heart Association
American Lung Association in California
Public Health Institute
Tobacco - Free Kids Action Fund

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 372 (Menjivar) – As Amended June 12, 2023

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

SENATE VOTE: 33-4

SUBJECT: Department of Consumer Affairs: licensee and registrant records: name and gender changes

SUMMARY: Requires a board under the Department of Consumer Affairs (DCA) to replace references to a licensee's former name or gender on their license and on any website upon request when the licensee's name has been changed due to a court-ordered change in gender or under circumstances that resulted in participation in state's address confidentiality program.

EXISTING LAW:

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

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

3) Defines "board" as also inclusive of "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (BPC § 22)

4) Enacts the Public Records Act (PRA), which gives every person a right to inspect any public record, except as specifically exempted. (Government Code (GOV) §§ 6250 *et seq.*)

5) Enacts the Information Practices Act (IPA), which limits government collection and disclosure of individuals' personal information. (Civil Code §§ 1798 *et seq.*)

6) Requires entities within the DCA to publish on the internet information regarding every license issued by that entity in accordance with the PRA and the IPA; specifically requires entities to include information on suspensions and revocations of licenses issued by the entity and other related enforcement action. (BPC § 27)

7) Requires every board under the DCA to adopt regulations to require its licensees to provide notice to their clients or customers that the practitioner is licensed by this state. (BPC § 138)

8) Requires healing arts boards to each create and maintain a central file of the names of all persons who hold a license or similar authority from the board confidentially containing an individual historical record for each licensee containing, among other things, disciplinary information. (BPC § 800)

9) Requires certain healing arts boards to disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee, including probationary status and limitations on practice. (BPC § 803.1)

10) Requires the Medical Board of California to post on its internet website the current status of its licensees; any revocations, suspensions, probations, or limitations on practice, including those made part of a probationary order or stipulated agreement; historical information regarding probation orders by the board, or the board of another state or jurisdiction, completed or terminated. (BPC § 2027)

11) Provides for a process through which an individual may petition the court for a legal name change, including a change of name to conform to the petitioner's gender identity, which is exempt from any publication requirements. (Code Civil Procedure § 1277.5)

12) Provides for a process through which an individual may petition the court seeking a judgment recognizing the change of gender and sex identifier to female, male, or nonbinary, which may include an order for a new birth certificate or marriage license reflecting that change. (Health and Safety Code § 103425)

13) Establishes a program under the Secretary of State for the purpose of enabling state and local agencies to respond to requests for public records without disclosing the changed name or location of a victim of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse through use of a substitute mailing address. (GOV §§ 6205 *et seq.*)

THIS BILL:

1) Requires a board to update references to a licensee's former name or gender on their license upon a request from a licensee who provides documentation demonstrating that their name and/or gender was legally changed under specified circumstances.

2) Additionally requires a board that operates an online license verification system to replace references to a licensee's former name or gender with the individual's current name or gender on the publicly viewable information displayed on the internet about the licensee and prohibits the licensee's former name or gender from being published online.

3) Provides that a licensee qualifies for the above actions by a board if the licensee provides government-issued documentation demonstrating that they legally changed their name either as part of a court-ordered change in gender or under circumstances that resulted in their participation in the Secretary of State's Safe at Home address confidentiality program.

4) Specifies the types of documents that are sufficient to demonstrate a gender change.

5) Prohibits a board from publishing enforcement records for an individual whose name was changed under the above circumstances, but requires that the board post a statement directing the public to contact the board for more information about the licensee's enforcement history.

6) Requires boards to ensure compliance with the PRA in implementing the above requirement, including by responding to a request within 10 days of receipt.

7) Requires a board to reissue a license created by the board and conferred upon the licensee upon request, and prohibits a board from charging a higher fee for reissuing that document that it ordinarily charges for reissuing documents with other updated information.

8) Finds and declares that the bill's imposition of a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies is necessary in order to protect the privacy rights and safety of individuals.

FISCAL EFFECT: According to the Senate Committee on Appropriations, a prior iteration of this bill would cost various amounts to specified boards within the DCA in addition to $347,000 to the DCA's Office of Information Services to make updates to the Consumer Affairs System.

COMMENTS:

Purpose. This bill is co-sponsored by the **California Association of Marriage and Family Therapists**; the **California State Association of Psychiatrists**; the **California Association of Social Rehabilitation Agencies**; the **California Council of Community Behavioral Health Agencies**; the **California Psychological Association**; the **California Association for Licensed Professional Clinical Counselors**; the **National Association of Social Workers, California Chapter**; and the **Psychiatric Physicians Alliance of California**. According to the author:

> "The Department of Consumer Affairs (DCA) licenses professionals ranging from accountants to mental health professionals to nurses, who are all catalogued under the their BreEZe online license verification system. Currently, however, transgender and non-binary licensees who have gone through the process of legally changing their names still have their original or "dead" names listed on the DCA's online site. When trans or non-binary people transition or come out, they may choose a new name to affirm their identity. Research has shown that referring to someone using their chosen name can reduce depressive symptoms and even suicidal ideation for trans people. DCA's current practice can both negatively impact the mental health as well as the physical safety of all DCA licensees who are identified by their deadname online. SB 372 takes a simple and much-needed step to protect the safety and privacy of transgender and non-binary people licensed under DCA by requiring DCA to update its site to only identify its licensees by their current legal name upon request."

Background.

Licensee Information Disclosure Requirements. Provisions of law generally applicable to entities under the DCA requires boards "provide on the internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act … and the Information Practices Act." The statute specifically requires that the public information include "information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act … taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity." Additional statutes provide for further requirements for individual boards within the DCA to post specified information about licensees on their websites.

Deadnaming. The term "deadnaming" refers to the act of using a transgender person's name assigned to them at birth, after they have transitioned and chosen a new name that aligns with their gender identity. Emerging research has demonstrated that the practice of deadnaming and misgendering can be detrimental to a transgender individual's mental health and physical safety by contributing to anxiety and psychological distress, triggering or exacerbating gender dysphoria, and damaging both the individual's identify affirmation and social acceptance. Studies by researchers have concluded that use of a transgender individual's chosen name reduces mental health risks such as depression, suicidal ideation, and suicidal behavior.[1]

Recognition of a transgender person's identify on government documentation is both socially and legally significant. In 2013, then-Assemblymember Toni Atkins authored legislation that created an administrative procedure for a transgender person to amend the gender and name on their birth certificate without first obtaining a court order. In 2017, Senators Toni Atkins and Scott Wiener passed additional legislation enacting the Gender Recognition Act, which further improved the procedures that allow transgender and nonbinary individuals to change their name and gender marker to conform with their gender identity in a variety of documents, including a birth certificates and driver's licenses.

For transgender individuals who transition while in possession of a professional or vocational license, there has been discussion over the past several years as to how to ensure that public information and documentation about the licensee accurately reflects the licensee's correct identity without compromising the public's access to information that is published to protect consumers and patients. Currently, the DCA provides for a process through which an applicant or licensee under a board operating on the BrEZe system can request recognition of a legal name change "if the change is not made for fraudulent purposes and is not misleading to the public." However, the author of this bill contends that this process does not necessarily prevent a licensee's former name from remaining published online in connection with their current name, including through the publication of disciplinary records that still contain a former name.

This bill would require each board under the DCA, upon request, to replace references to a licensee's former name or gender both on any license that has been issued when the licensee's name has been changed due to a court-ordered change in gender. For a board that operates an online license verification system, any references to the licensee's former name or gender would also be required to be replaced with the individual's current name or gender. If a licensee was previously subjected to an enforcement action, the board would be prohibited from posting those records online, but would instead be required to post a statement directing the public to contact the board for more information about the licensee's or registrant's prior enforcement action. The board would be expected to respond to these requests within ten days.

The author and supporters of this bill believe that its current approach strikes an appropriate balance between protecting the public and recognizing the importance of eliminating the publication of deadnames for transgender licensees. Language recently amended in the bill was crafted in consultation with the DCA. The author states that the bill "will limit discrimination and harassment of licensees under DCA, making them feel safer in their roles."

---

[1] Russell, Stephen T. *et al*. "Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth." *The Journal of Adolescent Health* vol. 63, 4 (2018).

Other Name Changes. In addition to recognizing name changes resulting from a legal change in gender, this bill would also apply its requirements upon the request of licensees whose names have changed under other circumstances. Specifically, a licensee would be allowed to request that their former name be removed from their license and any website if they demonstrate that they are participating in the Secretary of State's Safe at Home address confidentiality program. Under the Safe at Home Program, eligible individuals can apply to have their address kept confidential. Instead of using their actual residential address, they are provided with a substitute address that can be used for various official purposes, such as voter registration, driver's license, and public records.

Individuals are eligible to participate in the Safe at Home program if they are victims of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse, or if they are employees or volunteers working in the reproductive health care field. While the reasons for removing any connection between these individuals' former and current names on public information are unrelated to the practice of deadnaming, the author fairly believes that there are other cogent reasons to apply the same provisions to these licensees. This bill would extend its requirements and prohibitions to those individuals who have changed their names and are participating in the Safe at Home Program.

Current Related Legislation. SB 373 (Menjivar) would prohibit the Board of Behavioral Sciences (BBS) and the Board of Psychology from disclosing the full address of record of its licensees on the internet. *This bill is pending in this committee.*

Prior Related Legislation. AB 184 (Mathis) from 2019 would have required the BBS to withhold from the public information regarding a licensee or applicant's address of record, upon the applicant's request, if that address is a home address. *This bill died in this committee.*

ARGUMENTS IN SUPPORT:

A coalition letter was submitted on behalf of the numerous co-sponsors of this bill, including the **California Psychological Association, California Association of Marriage and Family Therapists, California State Association of Psychiatrists, National Association of Social Workers – California Chapter, California Psychiatric Alliance, California Association for Licensed Professional Clinical Counselors, California Association of Social Rehabilitation Agencies,** and the **California Council of Community Behavioral Health Agencies**. The letter states: "When a licensed professional legally changed their name, their original name, or deadname, appears on the DCA's Breeze online license verification system. This practice negatively impacts all licensees under the DCA who are identified by their previous name, when they prefer their legal name to be publicly shared. By limiting what is shared on the website, the safety and privacy of transitioned persons and others who have changed their licensed name under DCA is protected. Victims of domestic violence that have legally changed their name may wish for their information to be kept confidential. Individuals that have transitioned may be harassed or discriminated against when their transition is shared by listing their former name on the Breeze system."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Association for Licensed Professional Clinical Counselors *(Co-Sponsor)*
California Association of Marriage and Family Therapists *(Co-Sponsor)*
California Association of Social Rehabilitation Agencies *(Co-Sponsor)*
California Council of Community Behavioral Health Agencies *(Co-Sponsor)*
California Psychological Association *(Co-Sponsor)*
California State Association of Psychiatrists *(Co-Sponsor)*
National Association of Social Workers, California Chapter *(Co-Sponsor)*
Psychiatric Physicians Alliance of California *(Co-Sponsor)*
AFSCME
Asian Americans for Community Involvement
Board of Behavioral Sciences
California Academy of Family Physicians
California Access Coalition
California Consortium of Addiction Programs and Professionals
California Dental Association
County Behavioral Health Directors Association of California
Equality California
The Kennedy Forum
Pathpoint
Steinberg Institute
Sycamores

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 373 (Menjivar) – As Amended April 20, 2023

SENATE VOTE: 36-0

SUBJECT: Board of Behavioral Sciences, Board of Psychology, and Medical Board of California: licensees' and registrants' addresses

SUMMARY: Prohibits the Board of Behavioral Sciences (BBS) and the Board of Psychology (BOP) from disclosing on the internet the full addresses of record of their licensees and requires these boards to establish an alternative process for providing a complete address upon receipt of a request that is related to a court proceeding against or request for records from the licensee.

EXISTING LAW:

1) Enacts the Public Records Act (PRA), which gives every person a right to inspect any public record, except as specifically exempted. (Government Code (GOV) §§ 6250 *et seq.*)

2) Enacts the Information Practices Act (IPA), which limits government collection and disclosure of individuals' personal information. (Civil Code §§ 1798 *et seq.*)

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

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

5) Establishes the BBS within the DCA, responsible for licensing and regulating marriage and family therapists, clinical social workers, professional clinical counselors, and educational psychologists. (BPC §§ 4990 *et seq.*)

6) Establishes the BOP within the DCA, responsible for licensing and regulating psychologists (BPC §§ 2920 *et seq.*)

7) Requires entities within the DCA to publish on the internet information regarding every license issued by that entity in accordance with the PRA and the IPA; specifically requires entities to include a licensee's address of record, but requires those entities to accept a post office box number or other alternate address, instead of a home address. (BPC § 27)

THIS BILL:

1) Prohibits the BBS and the BOP from disclosing on the internet the full address of record of their licensees and registrants.

2) Requires the BBS and the BOP to instead disclose the city, state, county, and ZIP Code of the address of record for their licensees and registrants.

3) Provides that the above prohibition does not apply to any secondary documents linked to one of the boards' internet websites which may contain an address of record.

4) Requires the BBS and the BOP to each respectively establish a process for providing a licensee's or registrant's complete address upon receipt of a request that is related to a court proceeding against or request for records from the licensee or registrant.

5) Specifies that the process for providing a complete address shall ensure that the request is completed within 10 business days in compliance with the PRA.

6) Finds and declares that the bill's restrictions on the public's access licensee addresses of record balances the public's right to access records of the entities within the DCA with the need to protect the privacy of licensees.

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

COMMENTS:

Purpose. This bill is co-sponsored by the **California Association of Marriage and Family Therapists**, **California State Association of Psychiatrists**, **California Association of Social Rehabilitation Agencies**, **California Council of Community Behavioral Health Agencies**, **California Psychological Association**, **California Association for Licensed Professional Clinical Counselors**, **National Association of Social Workers – California Chapter**, and **Psychiatric Physicians Alliance of California**. According to the author:

> "We trust professionals licensed under the Boards of Behavioral Sciences and Psychology – including our therapists, counselors, social workers, and psychologists – to provide essential behavioral health services to Californians across the state. However, currently, these licensees are required to risk their safety by disclosing their personal addresses on the Department of Consumer Affairs' (DCA) online license verification system if they work from their homes. Requiring these professionals to list their personal addresses potentially exposes them to angry clients, stalking, or harassment. Many of these providers serve vulnerable populations, including those that work in domestic violence nonprofits or in Child Welfare Services. SB 373 is a simple fix to keep licensed professionals under the Board of Behavioral Sciences and the Board of Psychology safe by requiring DCA to update the BreEZe online license."

Background.

Board of Behavioral Sciences. The BBS is a regulatory board within the DCA. The BBS licenses and regulates healing arts professionals engaged in the practice of providing certain behavioral health services to patients. Specifically, the BBS provides for the oversight of Licensed Marriage and Family Therapists (LMFTs); Licensed Clinical Social Workers (LCSWs); Licensed Professional Clinical Counselors (LPCCs); Licensed Educational Psychologists (LEPs); and associates completing supervised training requirements for full licensure.

As licensed therapists, LMFTs perform services "wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments." These services are not limited to family or marriage counseling, but extend to a broad spectrum of professional therapy. LMFTs are one of several mental health practitioner professions in California, alongside psychologists licensed by the Board of Psychology and psychiatrists licensed by the Medical Board of California.

LCSWs use counseling and therapeutic techniques to assist individuals, couples, families, and groups. The application of social work principles and methods includes counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; or doing research related to social work.

LPCCs focus exclusively on the application of counseling interventions and psychotherapeutic techniques for the purposes of improving mental health, and does not include other, nonmental health forms of counseling. LPCCs use counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. Professional clinical counseling includes conducting assessments for the purpose of establishing goals and objectives to empower individuals to deal adequately with their life situations, reduce stress, experience growth, change behavior, and make well-informed, rational decisions.

LEPs perform professional functions pertaining to academic learning processes or the education system. LEPs engage in educational evaluation, the diagnosis of psychological disorders related to academic learning processes, and the administration and interpretation of diagnostic tests related to academic learning processes including tests of academic ability, learning patterns, achievement, motivation, and personality factors. LEPs consult with other educators and parents on issues of social development and behavioral and academic difficulties.

Board of Psychology. The BOP regulates licensed psychologists, registered psychological assistants, and registered psychologists through the enforcement of the Psychology Licensing Law. The practice of psychology is defined as the application of "psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations." As of the BOP's last sunset review, there were approximately 18,719 actively licensed psychologists in California.

Public Records Act. The PRA was enacted in 1968 with a statement from the Legislature that while "mindful of the right of individuals to privacy," "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The PRA requires that "public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record."

Numerous exemptions are included in the PRA to protect certain information of a sensitive nature from disclosure, and some court decisions have ruled that personal contact information *may* be allowed an exemption from disclosure if there is an important public interest in that nondisclosure that outweighs the public interest in disclosure.

Information Practices Act. The IPA prohibits an agency from disclosing "any personal information in a manner that would link the information disclosed to the individual to whom it pertains" except under certain circumstances. Disclosures are allowed pursuant to the PRA. If information is considered to be a "public record" for purposes of the PRA, the information must be disclosed unless an applicable exemption in the PRA applies.

Licensee Information Disclosure Requirements. Under provisions of law generally applicable to entities under the DCA, numerous boards and bureaus are required to "provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act … and the Information Practices Act." The BBS and BOP are each respectively required to "disclose information on its licensees and registrants."

This section of law specifically states that "each entity shall disclose a licensee's address of record." Statute specifically states that this address does *not* need to be a home address; in fact, it specifically requires that "each entity shall allow a licensee to provide a post office box number or other alternate address, instead of [their] home address, as the address of record." Boards are allowed to require a physical business address or residence address for its internal administrative use; however, that information would not be disclosed if an alternate address of record has been provided.

For example, the most recent application for an initial license from the BBS requires that an applicant provide a "public address of record." That form field contains an asterisk, which points to a footnote stating the following:

> "The address you enter on any Board form is public information and will be placed on the Internet pursuant to Business and Professions Code section 27. If you do not want your home or work address available to the public, use an alternate mailing address, such as a post office box. California law requires all persons regulated by the Board to notify the Board in writing within 30 days of any change of address."

The BBS's initial license application form also collects the applicant's telephone number and (optionally) their email address; however, this information is not disclosed as public information. According to data supplied by the BBS in 2019, of the approximately 115,000 licensees and registrants under the board, over 18,000 licensees utilize a post office box as their address of record (or slightly more than 15%). Information was not available as to whether the remaining 85% of licensee addresses of record are places of business or home addresses.

While most boards are required to collect and publish full addresses of record for their licensees, some boards have less restrictive requirements. According to research provided by the author, nine boards currently only disclose the city, state, county, and ZIP code for their licensees online, and several boards and bureaus do not have any applicable disclosure requirement. This would be the form of limited disclosure requirement sought by the author of this bill for licensees of the BBS and BOP.

One of the principal reasons for requiring the collection and publication of a licensee's address of record is to ensure that consumers and patients are able to engage in the service of process in the event that litigation is brought against a licensee. This can be accomplished a number of ways, including either personal service or service by mail. When a licensee is practicing out of a commercial office space or on the premises of a health care setting, they can be served at that location. However, many licensees work out of their domicile, and those who do not possess a post office box would be required to submit their home address to the board for publication. The author and supporters of this bill contend that this presents a significant risk of public safety to therapists who often have sensitive relationships with their clients and the public.

This bill would limit the disclosure of licensee addresses of record for both the BBS and the BOP. To preserve the public's ability to engage in service of process and other interests, each board would be required to establish a process for providing a licensee's complete address upon receipt of a request that is related to a court proceeding against or request for records from the licensee or registrant. The process is required to ensure that the request is completed within 10 business days and is in compliance with the PRA. The author believes that these provisions effectively balance the public's right to access records of the entities within the DCA with the need to protect the privacy of licensees.

Current Related Legislation.

SB 372 (Menjivar) would require boards to replace references to a licensee's former name or gender on any website when the licensee's legal gender has changed or when they are participating in state's address confidentiality program. *This bill is pending in this committee.*

Prior Related Legislation.

AB 184 (Mathis) from 2019 would have required the BBS to withhold from the public information regarding a licensee or applicant's address of record, upon the applicant's request, if that address is a home address. *This bill died in this committee.*

SB 1889 (Figueroa, Chapter 927, Statutes of 2000) established the requirement that an address of record is required for submission to, and disclosure by, boards under the DCA, but clarified that licensees are allowed to provide an alternative address to their home address.

ARGUMENTS IN SUPPORT:

A joint letter was submitted by the sponsors of this legislation—the **California Association of Marriage and Family Therapists**, **California State Association of Psychiatrists**, **California Association of Social Rehabilitation Agencies**, **California Council of Community Behavioral Health Agencies**, **California Psychological Association**, **California Association for Licensed Professional Clinical Counselors**, **National Association of Social Workers – California Chapter**, and the **Psychiatric Physicians Alliance of California**. The letter states: "It is critical that necessary safety measures are in place to protect our therapists, psychologists, counselors, and social workers so they can continue to provide essential mental and behavioral health services for all Californians. As we are experiencing a workforce shortage in the behavioral health industry, we need to ensure that we are proving a safe environment for providers and remove any unnecessary burdens to encourage students entering this profession."

The **Board of Behavioral Sciences** (BBS) supports this bill. The BBS writes: "The Board agrees that this bill strikes a balance of protecting the safety of licensees and registrants, while still providing a process for a consumer to obtain an address of record upon request if it is needed."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

Necessity. While many licensees work out of their homes, particularly in an age when telehealth options have expanded, this does not necessarily mean that those licensees are currently required to provide their home addresses for disclosure. Statute expressly provides that a post office box is an acceptable alternative to a home or business address. The author has argued that obtaining a post office box is "costly and creates an unnecessary burden for pre-licensed associates who may have unpaid internship and are balancing pursing their career, paying off student loan debt, and supporting themselves and their families." While post office boxes can cost as little as $4.50 per month and appear to average under $15 a month in California, this arguably adds up to a sum that is not necessarily negligible for some licensees. However, the author should weigh this financial cost to licensees against the current public access and protection merits of the existing disclosure requirements for licensee addresses of record.

Limited Scope. Currently, this bill's provisions are limited to therapists and psychologists who are licensees of the BBS and the BOP. While twelve other boards, bureaus, and programs under the DCA already do not disclose full address of records for licensees, there would remain a number of entities that would continue to publish that information for their licensed professionals. This board initially would have included physicians practicing psychiatry; however, these provisions are struck from the bill following concerns raised by the Medical Board of California. Arguably, concerns for the privacy and safety of many of these professions are also pressing, raising a question as to why only certain boards should be provided with an alternate process for disclosure.

For example, representatives of the veterinary medicine profession have requested inclusion in the bill. While the circumstances under which a veterinarian or related professional would not want their home address posted online are somewhat different than those applying to therapists, a cogent argument could be made that similar protections are warranted. If provisions of this bill relating to the BBS and BOP are deemed necessary to preserve the interests of those professions, the author may wish to consider extending the same provisions to licensees of the Veterinary Medical Board.

AMENDMENTS:

To expand the provisions of the bill to additionally include representatives of the veterinary medicine profession, this bill should be amended to add new subdivisions applying the same language currently applicable to the BBS and the BOP to the Veterinary Medical Board and its licensees.

REGISTERED SUPPORT:

California Association for Licensed Professional Clinical Counselors *(Co-Sponsor)*
California Association of Marriage and Family Therapists *(Co-Sponsor)*
California Council of Community Behavioral Health Agencies *(Co-Sponsor)*
California Psychological Association *(Co-Sponsor)*
California State Association of Psychiatrists *(Co-Sponsor)*
California Association of Social Rehabilitation Agencies *(Co-Sponsor)*
National Association of Social Workers, California Chapter *(Co-Sponsor)*
Psychiatric Physicians Alliance of California *(Co-Sponsor)*
AFSCME
Board of Behavioral Sciences
California Access Coalition
California Council of Community Behavioral Health Agencies
Community Solutions for Children, Families and Individuals
County Behavioral Health Directors Association of California
DBSA California
Pathpoint
Psychiatric Physicians Alliance of California
Tarzana Treatment Centers, Inc.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 385 (Atkins) – As Introduced February 9, 2023

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

SENATE VOTE: 28-8

SUBJECT: Physician Assistant Practice Act: abortion by aspiration: training

SUMMARY: Expands the training options for physician assistants (PAs) seeking to perform abortions by aspiration techniques.

EXISTING LAW:

1) Guarantees, under the Reproductive Privacy Act, an individual's right to choose or obtain an abortion before the viability of the fetus, or when the abortion is necessary to protect the life or health of the individual. (Health and Safety Code (HSC) §§ 123460-123468)

2) Defines "abortion" as any medical treatment intended to induce the termination of a pregnancy except to produce a live birth. (HSC § 123464(a)).

3) 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)

4) 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 PA. (BPC § 3501(e))

5) Defines "supervision" as physician and surgeon oversight and accepted responsibility over the activities of the medical services rendered by a PA. (BPC § 3501(f)(1))

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) 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))

8) 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))

9) 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))

10) Requires a PA, to perform an abortion by aspiration techniques under a practice agreement, to complete training through: (1) training programs approved by the PAB, (2) training to perform medical services authorized under specified PAB regulations, or (3) through the training and clinical competency protocols established by Health Workforce Pilot Project (HWPP) No. 171 through the Department of Health Care Access and Information. (BPC § 3502.4)

THIS BILL:

1) Clarifies that training for PAs to perform an abortion by aspiration techniques must include a didactic and clinical component.

2) Expands the abortion by aspiration technique training options for PAs to include:

   a) A course offered by a state or national health care professional or accreditation organization.

b) Training and evaluation of clinical competency, performed at a clinic or hospital, on performing abortions by aspiration techniques provided by any of the following who have performed the procedure themselves:

   i) A nurse practitioner or certified nurse-midwife authorized to perform abortions by aspiration techniques.

   ii) A PA authorized to perform abortions by aspiration techniques.

3) Clarifies that a trained PA may perform an abortion by aspiration techniques without the personal presence of a supervising physician unless specified in their practice agreement.

4) Clarifies that a PA performing an abortion by aspiration must do so consistent with the standard of care and within the scope of their practice agreement.

5) Clarifies that a person authorized to perform abortion by aspiration techniques may not be punished, held liable for damages in a civil action, or denied any right or privilege, for any action relating to the evaluation of clinical competency of a PA.

6) Clarifies that the provisions of this bill do not authorize a PA to perform an abortion by aspiration techniques after the first trimester of pregnancy.

7) Specifies that online or simulation-based training programs that do not include mandatory clinical hours involving direct patient care do not meet the clinical training requirements.

8) Makes other technical changes.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "[This bill] would expand and modernize reproductive care training options for physician assistants. This bill builds off the success of AB 154 (Atkins, 2013), which authorized advanced practice clinicians to provide abortion care, and SB 1375 (Atkins, 2022) which streamlined abortion training standards for nurse practitioners and certified nurse midwives. Current abortion training requirements have presented barriers to providers seeking to provide reproductive care due to a lack of available trainers and training opportunities. [This bill] will address these barriers by better aligning abortion training to physician assistant scope of practice and provide multiple options for physician assistants to get trained in abortion care, including Physician Assistant Board approved courses and programs, courses offered by state or national health care professional or accreditation organizations, or training in clinics and hospitals."

Background. PAs are healthcare providers that can provide a wide range of medical services under the supervision of a physician 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.

Abortion by Aspiration Techniques. Abortion by aspiration techniques, or vacuum aspiration, is a common method for first-trimester abortions. It involves inserting a flexible tube into the cervical opening of the uterus and using suction to remove fetal tissue. The risk of complications, particularly those requiring medical intervention, is very low (depending on the study, around <5% for minor complications and <0.6% for more serious complications). Where complications requiring interventions do occur, the patient is referred out for appropriate care.

PA Training Options. Existing law authorizes PAs to perform abortions by aspiration technique if they meet specified training and supervision requirements. Some of those training requirements were established as part of the Health Workforce Pilot Project (HWPP) No. 171 under the Office of Statewide Health Planning and Development, now known as the California Department of Health Care Access and Information.

As part of the HWPP No. 171 study (2007-2013), UCSF's Advancing New Standards in Reproductive Health researchers utilized a standardized, competency-based curriculum and training plan for the education of primary care clinicians in early abortion care. That curriculum is one option for PAs to obtain training to perform an abortion by aspiration and was adopted as the training method for nurse practitioners and certified nurse-midwives by the BRN.

However, the California Future of Abortion Council, which was established in 2021 and comprised of reproductive freedom and sexual and reproductive health care allies, partners, and leaders, recently reviewed the curriculum and found that it may be overly rigid. The council released a blueprint outlining several policy recommendations to protect, strengthen, and expand access to abortion care. Among those recommendations was that policymakers should review competency requirements for abortion training for nurse practitioners, certified nurse-midwives, and PAs under the HWPP No. 171 and ensure requirements are aligned with other medical procedures with a similar safety record.

This bill seeks to incorporate that recommendation by providing two additional training options for PAs, training offered by healthcare organizations and direct training by a nurse practitioner, certified nurse-midwife, or another PA. The changes are consistent with recent updates to the training options available to nurse practitioners and certified nurse-midwives.

Prior Related Legislation. SB 1375 (Atkins), Chapter 631, Statutes of 2022, expanded the training options for nurse practitioners and certified nurse-midwives seeking to perform abortions by aspiration techniques.

AB 154 (Atkins), Chapter 662, Statutes of 2013, authorized a nurse practitioner, certified nurse-midwife, or physician assistant to perform an abortion by aspiration techniques during the first trimester of pregnancy if they complete training under HWPP No. 171 or approved by the relevant licensing board.

ARGUMENTS IN SUPPORT:

The American College of Obstetricians and Gynecology (ACOG) District IX writes in support:

> In the months since the Supreme Court's decision to overturn *Roe v. Wade*, approximately one in three women in this country has lost abortion access. The

decision has opened the door for states to ban and criminalize abortion services – impacting patients and providers across the U.S. Currently, 18 states have enacted a ban on abortion services or have severely restricted access to abortion.

In California, ACOG District IX is committed to mitigating the fallout of the Dobb's decision, working with our partners to find ways to accommodate patients seeking care from outside our borders to the best of our ability and capacity. As California prepares for more patients seeking abortion services and reproductive health care in our state, we must ensure the state has an ample supply of appropriately trained abortion providers qualified to provide that care. [This bill] helps in this effort by building on existing law, expanding the trained pool of qualified non-physician providers to meet this demand during the first trimester.

ARGUMENTS IN OPPOSITION:

The *California Catholic Conference* and the *Right to Life League* oppose this bill because they oppose decreased physician oversight of abortions and increased access to abortions.

The *Physician Assistant Board* is opposed to this bill because it believes this bill "would require additional specified training requirements and clarifies physician assistant scope of practice in relation to abortion by aspiration techniques, which are determinations that should remain at the practice level between a physician assistant and their supervising physician."

REGISTERED SUPPORT:

American Association of University Women - California
American College of Obstetricians and Gynecologists District IX
Attorney General Rob Bonta
California Legislative Women's Caucus
California Nurse Midwives Association
California State Council of Service Employees International Union
Indivisible CA StateStrong
NARAL Pro-Choice California

REGISTERED OPPOSITION:

California Catholic Conference
Physician Assistant Board
Right to Life League

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 508 (Laird) – As Amended May 9, 2023

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

SENATE VOTE: 36-0

SUBJECT: Cannabis: licenses: California Environmental Quality Act

SUMMARY: Establishes conditions under which the Department of Cannabis Control is not required to serve as a responsible agency under the California Environmental Quality Act (CEQA).

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 (MAUCRSA) and establishes the Department of Cannabis Control (DCC) to administer and enforce the act. (Business and Professions Code (BPC) §§ 26000-26260)

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

3) Declares that cannabis is an agricultural product, requires the DCC to consider issues including water use and environmental impacts when issuing cannabis cultivation licenses, and prohibits the DCC from issuing new licenses or increasing the total number of plant identifiers within a watershed or geographic area if the State Water Resources Control Board or the Department of Fish and Wildlife finds that cannabis cultivation is causing significant adverse impacts in that watershed or area. (BPC § 26060)

4) Gave the DCC, until June 30, 2022, discretion to issue provisional licenses to applicants who were not yet in compliance with CEQA if they provided specified evidence that compliance was underway. (BPC § 26050.2)

5) Exempted from CEQA, until July 1, 2021, the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity if the discretionary review in the law, ordinance, rule, or regulation included any applicable environmental review under CEQA. (BPC § 26055(h))

6) Regulates, under CEQA, the approval of projects proposed to be carried out or approved by public agencies that may impact the environment. (Public Resources Code (PRC) §§ 21000-21189.70.10)

7) Defines "environmental impact report" as, among other things: (1) a detailed statement setting forth (a) all significant effects on the environment, (b) any significant effects that are unavoidable or irreversible, as specified, (c) proposed mitigation measures, (d) alternatives to the proposed project, (e) the growth-inducing impact of the proposed project, and a statement briefly indicating reasons effects are not significant and (2) an informational document which, when required under CEQA, shall be considered by every public agency prior to its approval or disapproval of a project. (PRC §§ 21061, , 21100, 21100.1)

8) Specifies that the purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project. (PRC § 21061)

9) Defines "lead agency" as the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment. (PRC § 21067)

10) Defines "project" as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

    a) An activity directly undertaken by any public agency. (PRC § 21065(a))

    b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (PRC § 21065(b))

    c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (PRC § 21065(c))

11) Defines "responsible agency" as a public agency, other than the lead agency, which has responsibility for carrying out or approving a project. (PRC § 21069)

12) Defines "negative declaration" as a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report. (PRC § 21064)

13) Defines "mitigated negative declaration" as a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment. (PRC § 21064.5)

14) Requires a lead agency, once a lead agency has determined that an activity is a project subject to CEQA, to determine whether the project is exempt from CEQA. (California Code of Regulations, Title 14, § 15061(a))

15) Specifies that a project is exempt from CEQA if:

    a) The project is exempt by statute. (CCR, tit. 14, § 15061(b)(1))

    b) The project is exempt pursuant to a categorical exemption and the application of that categorical exemption is not barred by one of the specified exceptions. (CCR, tit. 14, § 15061(b)(2))

    c) The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. (CCR, tit. 14, § 15061(b)(3))

    d) The project will be rejected or disapproved by a public agency. (CCR, tit. 14, § 15061(b)(4))

    e) The project is one of the exemptions for agricultural housing, affordable housing, or residential infill projects. (CCR, tit. 14, § 15061(b)(5))

16) Authorizes a public agency to file a notice of exemption if it find that the project is exempt and has been approved. State agencies file the notice with the Office of Planning and Research and local agencies file the notice with the county clerk of each county in which the project will be located. An applicant files the notice depending on what type of agency approved the project. (CCR, tit. 14, § 15062(c))

17) Requires a lead agency to be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for any project subject to CEQA and specifies that the determination is final and conclusive on all persons, including responsible agencies, unless challenged, as specified. (PRC § 21080.1)

18) Requires all lead agencies to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. (PRC §§ 21100, 21151)

19) Requires a public agency, whenever it has completed an environmental document, to cause a notice of completion of that report to be filed with the Office of Planning and Research using the Office of Planning and Research's online process. (PRC § 21161)

20) Requires the Office of Planning and Research to prepare and develop proposed guidelines for the implementation of CEQA by public agencies, including objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations. (PRC § 21083(a))

THIS BILL:

1) Specifies that, in connection with the issuance of a license under MAUCRSA, the DCC is not required to serve as a responsible agency under CEQA for projects if all of the following criteria are met:

    a) A local jurisdiction, acting as lead agency under CEQA, has filed either of the following with the Office of Planning and Research upon a decision to carry out or approve a commercial cannabis activity for which the applicant is seeking a license from the DCC:

        i) A notice of determination for the commercial cannabis activity, following the adoption of a mitigated negative declaration.

        ii) A notice of determination for the commercial cannabis activity, following certification of an environmental impact report.

        iii) A notice of exemption for a retail commercial cannabis project.

    b) The commercial cannabis activity for which the applicant is seeking a license from the DCC conforms to the scope of the commercial cannabis activity analyzed by the local jurisdiction acting as the lead agency under CEQA.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "As the legal cannabis market struggles, we must ensure those coming into the legal market transition from provisional licenses to annual licenses with ease. To aid this transition, [this bill] streamlines the review and approval of cannabis licenses by eliminating a redundant review after a local jurisdiction completes CEQA. A robust CEQA review by local jurisdictions will remain a vital piece to obtain an annual license, and the Department of Cannabis Control [(DCC)] will continue to complete CEQA review where local approval of a project is ministerial. The additional time and resources spent by applicants and DCC staff during this duplicative process slows licensure. Streamlining this process will improve the transition of provisional licenses to annual licenses. Shortening the time it takes to issue annual licenses will help ensure those in the legal cannabis market remain."

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 laws.

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.

MAUCRSA also allows local jurisdictions to regulate or restrict commercial cannabis activity. In localities that authorize and regulate commercial cannabis activity, a cannabis business must also comply with any local approval or permitting processes.

Cannabis License Applications and CEQA. The goal of CEQA is to inform government decision-makers and the public about the potential environmental effects of proposed activities and to prevent or mitigate damage to the environment. To that end, CEQA requires that any activity or "project" that may cause a reasonably foreseeable physical change in the environment and is carried out or approved by a public agency, including an activity that requires a local permit or state license, undergo an environmental review.

Because commercial cannabis activity (such as cultivation or manufacturing) may cause significant physical changes to the environment and requires approval from public agencies (the DCC and local jurisdictions), cannabis businesses seeking a license must undergo CEQA review. Because a local permit is required before licensure by the DCC, the local government usually acts as the "lead agency," DCC acts as the "responsible agency."

A lead agency is the public agency principally responsible for carrying out or approving the project. In the case of cannabis, a lead agency is often the local government agency with jurisdiction over the land where the project will take place. If the local government agency does not have significant discretion in approving the land use (i.e. the process is ministerial), then DCC is the lead agency.

A responsible agency is one with some discretion or authority over the approval of the project and supports the lead agency. Any responsible agencies consult with the lead agency and provide comments on the appropriateness of the CEQA review and outcomes.

CEQA Review Process. Once a lead agency determines CEQA applies to a project, there are three potential stages in the review process before a project can be approved. In the first stage, the lead agency determines whether the project qualifies for a statutory or categorical exemption. If the agency finds the project is exempt, the agency may move forward with approval. Upon approval, the agency or applicant may file a notice of exemption (NOE). An NOE is a written statement briefly describing the project and exemption findings.

If the lead agency is a local jurisdiction the NOE is filed with the county clerk. If the lead agency is DCC, the NOE is filed with the Office of Planning and Research. While filing an NOE is not required, filing an NOE reduces the statute of limitations on challenges to the approval to 35 days, otherwise, the statute of limitations is 180 days.

If no exemption applies, then the lead agency proceeds to the second stage, an initial study. The initial study analyzes whether there will be a significant effect on the environment. The initial study will recommend the level of review needed for stage three.

Stage three has three levels of review, all of which include a public review process:

1) *Negative Declaration (ND)*. If the initial study finds that there is no evidence of a significant effect, the lead agency prepares an ND. An ND is a written statement briefly describing why there will be no significant environmental impact.

2) *Mitigated Negative Declaration (MND)*. If the study finds that there would be a significant effect but the effect can be mitigated, the lead agency prepares an MND. An MND is a written statement stating that the project proposal was revised to include those mitigations and will no longer have a significant effect.

3) *Environmental Impact Report (EIR)*. If the study finds evidence of a significant effect that is not mitigated, the lead agency prepares an EIR. An EIR is a comprehensive report that evaluates the effects on various aspects of the environment and objects of historic or cultural significance as well as mitigation measures and project alternatives.

Once the appropriate level of review is complete, the lead agency may adopt the ND or MND or certify the EIR and may approve the project. If approved, the lead agency then files a notice of determination discussing the approval and the effect on the environment with the Office of Planning and Research.

DCC as the Responsible Agency. During the CEQA process, a responsible agency considers the ND, MND, or EIR prepared by the lead agency and may own conclusions on whether and how to approve the project involved. If the responsible agency is the DCC, then it may withhold issuing a cannabis license until there is an agreement with the lead agency.

This bill would specify that the DCC is not required to be the responsible agency if the local jurisdiction is the lead agency and has filed a notice of determination following the adoption of an NMD or certification of an EIR or has filed a notice of exemption in the case of cannabis retail licenses. According to the author and supporters, the goal is to reduce licensing timelines by freeing up DCC staff time in cases where a thorough review has already been performed by the local lead agency.

CEQA and Provisional Cannabis Licenses. MAUCRSA initially authorized cannabis licensing authorities to issue “temporary” licenses to applicants. Temporary licenses did not require fees or access to the state’s track and trace system. This allowed for lawful cannabis activity while local governments were still establishing their processes and reviewing applications for local approval.

While the goal was to transition businesses to full annual licensure no later than December 31, 2018, many local jurisdictions were still struggling to launch their approval programs. One reason cited for the delay was CEQA. To allow for more time to come into compliance with CEQA while still transitioning away from temporary licenses, DCC was instead temporarily authorized to issue “provisional” licenses. Provisional licenses required a fee and compliance with track and trace requirements but did not require proof of CEQA compliance.

The provisional license authority was originally scheduled to expire on January 1, 2020, but it was extended twice, eventually prohibiting the DCC from renewing provisional licenses after January 1, 2025, and ending the provisional licensing program on January 1, 2026. According to the author, there is still concern that provisional licenses are still experiencing delays due to CEQA and may not be able to transition to a full license. As a result, one of the goals of removing DCC as a responsible agency in some cases is to assist with the transition of provisional licensees to full licensees.

Current Related Legislation. AB 1719 (Bonta), which is pending in the Assembly Natural Resources Committee, would exempt specified actions taken by the DCC or a local jurisdiction that authorize commercial cannabis activity consisting of retail, distribution, manufacture, or laboratory testing if specified conditions related to the premises are met.

SB 51 (Bradford), which is pending in this Committee, among other things, would exempt local equity applicants for provisional licenses from requiring full CEQA review.

Prior Related Legislation. SB 1148 (Laird) of 2022 was similar to this bill but would have exempted the issuance of a cannabis license from CEQA if the local jurisdiction as a lead agency approved the project and (1) filed with the Office of Planning and Research a notice of determination after adopting a negative declaration or mitigated negative declaration for the project or certifying an environmental impact report for the project or (2) determined that the project complies with a local ordinance governing commercial cannabis activity for which an environmental impact report has been certified and the project does not result in an impact that was not analyzed in that environmental impact report. SB 1148 died pending a hearing in the Assembly Appropriations Committee.

SB 1459 (Cannella), Chapter 857, Statutes of 2018, established a provisional cannabis license until January 1, 2020, and exempted provisional licenses from requiring full CEQA review until that date.

SB 94 (Committee on Budget & Fiscal Review), Chapter 27, Statutes of 2017, was the cannabis budget bill, and among other things, created a temporary CEQA exemption for local ordinances until July 1, 2019.

ARGUMENTS IN SUPPORT:

The *California Cannabis Industry Association (CCIA)* writes in support:

> Because many local jurisdictions require a local permit to engage in commercial cannabis activity, the site-specific CEQA analysis is most often completed during the local permitting process. However, obtaining a local discretionary permit and meeting the state's existing CEQA requirements have proven to be time consuming for both applicants and local jurisdictions, and adds to the overwhelming cost of obtaining a commercial cannabis license.
>
> Moreover, many local jurisdictions that allowed commercial cannabis businesses to operate prior to the enactment of Prop. 64, have high volumes of legacy applicants, which has resulted in backlogs in permit processing, significantly

> delaying the issuance of local permits and state annual licenses. Furthermore, the current duplicative implementation of CEQA greatly increases the cost of engaging in the legal commercial marketplace as applicants pay leases and/or mortgages to maintain control of the project's location during the project specific CEQA review.
>
> In an effort to reduce barriers to entry and streamline the permitting and licensing process for commercial cannabis businesses, the Cannabis Advisory Committee, which is tasked with advising the Department of Cannabis Control on relevant standards and regulations for commercial cannabis businesses, approved a recommendation in 2021 requesting that the state consider uncoupling the project-specific CEQA analysis from annual licenses and instead, provide guidance to local jurisdictions to ensure that applicants meet CEQA compliance during the local permitting process. This recommendation was reaffirmed in a white paper prepared by the University of California, Berkeley's Cannabis Research Center in 2022, which outlines a series of recommendations aimed at reforming the CEQA process for cannabis businesses including a recommendation that local governments maintain lead agency status under CEQA and remove the role of the State from conducting a second layer of CEQA review.
>
> [This bill] would streamline this redundant review and approval process by removing the requirement that the DCC re-review the local jurisdiction's project specific CEQA analysis before issuing an annual license. Eliminating the duplicative review conducted by the DCC will expedite the approval of these applications, while ensuring a thorough CEQA analysis has been conducted.
>
> Shortening the timeline to obtain a local permit and state annual license will significantly improve prospects for existing licensees to stabilize economically and effectively compete with the illicit market.

The *Rural County Representatives of California (RCRC)*, the *California State Association of Counties (CSAC)*, and the *League of California Cities (Cal Cities)* write in support:

> The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) establishes a dual regulatory structure for cannabis businesses: A person who wishes to engage in commercial cannabis activity is subject to regulation at both the state and local levels. In practice, local jurisdictions are often required to perform site-specific CEQA review for all license types, even for cannabis businesses like retail that are located in fully developed areas and posing no meaningful risk of environmental impact. [This bill] would provide that the Department of Cannabis Control is not required to serve as a responsible agency under CEQA if the local jurisdiction acting as lead agency has filed a notice of determination for the commercial cannabis activity following the adoption of a mitigated negative declaration, environmental impact report or a notice of exemption for a retail commercial cannabis project.
>
> As the legal cannabis market struggles, we must ensure those coming into the legal market have a pathway to transition from provisional licenses to annual

> licenses with ease. Reducing duplicative efforts is an important tool for issuing licenses efficiently and effectively.

The *Origins Council* writes in support:

> Cannabis licensees throughout California currently face substantial barriers in achieving annual licensure due to structural mechanisms that require licensees and local jurisdictions to shoulder the full burden of CEQA compliance. These daunting circumstances contribute to high barriers to entry for small businesses seeking to transition into the legal market established under Proposition 64 and the MAUCRSA.
>
> [This bill] would address certain, limited aspects of this larger structural problem. Where site-specific CEQA review has been conducted by the local jurisdiction, it is not necessary to duplicate the process at the state level. By addressing this issue, [this bill] would aid in the efficient processing of state cannabis licenses without compromising effective environmental protections.
>
> While [this bill] would effectuate an improvement over the status quo, we also believe it is critical to recognize that roughly half of California provisional licensees are either still in the process of waiting for a local site-specific review, or are located in jurisdictions where a CEQA-complaint process is still under development for local permitting. While the state has attempted to address these issues by allocating generous funding through the Local Jurisdiction Assistance Grant Program in the 2021 budget, many of these funds have only recently been distributed to local jurisdictions, who will likely have substantial lead times to implement the goals of the grants, and there is simply insufficient time to accomplish the volume of project-specific reviews needed to effectuate annual licensure.

ARGUMENTS IN OPPOSITION:

A coalition that includes *California Coastal Protection Network*, *California Native Plant Society*, *California Trout*, *Defenders of Wildlife*, *Environmental Protection Information Center*, *Planning and Conservation League*, *Sierra Club California*, and *Trout Unlimited* writes in opposition:

> [This bill] would allow the Department of Cannabis Control (DCC) to issue a license without adequate environmental review even if:
>
> - A prospective licensee is not complying with local regulations including those intended to protect the environment and local neighborhoods;
> - A local jurisdiction conducted a CEQA review that was either inadequate or failed to sufficiently mitigate the adverse impacts of the operation;
> - A local jurisdiction issued the local permit through a ministerial permit review ordinance whereby neither the permit nor the underlying

permitting ordinance have been subjected to adequate environmental review.

Given the significant adverse impact cannabis cultivation can have on the environment,1 it is essential (and in line with both the language and the voter intent behind the passage of Proposition 64) that the state ensure compliance with CEQA and that a there has been a thorough and detailed review of the environmental impacts of cultivation activities. Our groups have significant concerns with changing the statute to exempt the state from ensuring that there has been adequate CEQA review of licenses. Under Proposition 64, the state plays a critical role in ensuring the CEQA findings made at the local level are adequate and comprehensive.

Proposition 64 required the Department of Cannabis Control to "...ensure compliance with state laws and regulations related to environmental impacts, natural resources protection, water quality, water supply, hazardous materials, and pesticides in accordance with regulations, including, but not limited to the California Environmental Quality Act..." State CEQA review is therefore not duplicative but instead is a core element of Proposition 64 requirements.

CEQA presumptively requires the Department, as a state agency that approves projects – here, in the form of licenses for cannabis cultivation operations – to protect the environment by ensuring the environmental impacts of such operations are sufficiently disclosed to the public, those impacts are avoided or mitigated, where feasible, and that project alternatives are considered. CEQA provides, in part, that "(e)ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Public Resources Code Section 21002.1(b)).

Under legislative amendments adopted in recent years, Department-issued "provisional licenses" that are exempt from CEQA may continue to be in effect until January 1, 2026. This date marks a delay of nearly 10 years for cannabis cultivation licenses to be required to come into CEQA compliance. For this reason, as a condition of a carefully negotiated compromise, the 2021 cannabis trailer bill includes the following express language:

> *Additional exemptions from the California Environmental Quality Act shall not be adopted with respect to licenses issued under this division.* (AB 141, 2021)

We respectfully urge you to uphold this carefully negotiated compromise.

Additionally, the Joint Legislative Audit Committee recently approved Asm. Jones-Sawyer's request to conduct an audit on local cannabis implementation and corruption of local officials. One of the items in the request includes "ensure that facilities are properly sited, proper licenses are obtained prior to operation of the business, and that the business operates within the appropriate environmental guidelines."2 Evidence of local corruption in cannabis permitting in multiple

jurisdictions demonstrates the importance of continued state oversight. Once this audit is complete, more informed decision-making can take place.

Furthermore, state review is critical to protecting the environment as many local jurisdictions do not have the expertise, capacity, or commitment to Proposition 64's environmental policies. Where local agencies provide adequate review of the environmental issues presented by a cannabis applicant, DCC must rely on the CEQA documents prepared by the local lead agency. In these cases, DCC review is straightforward and can often take about one-week once DCC receives the required information from the applicant.

The *Resources Legacy Fund* (RFL) writes in opposition:

Environmental protection is one of voter-approved Proposition 64's primary goals. And implementation of the California Environmental Quality Act (CEQA) is central to advancing that goal when the Department of Cannabis Control (DCC) reviews applications for commercial state annual licenses for cultivation, sale, distribution, and testing of cannabis. Contrary to Proposition 64's intent, SB 508 removes the CEQA requirement that DCC act to protect the environment when it reviews license applications if a city or county has approved an environmental impact report or mitigated negative declaration.

CEQA helps save tax dollars by helping prevent or reduce environmental damage before it occurs or by requiring licensees to pay for remediation as part of their state license requirements. Unfortunately, local review of prospective cannabis licenses is very inconsistent across the state as local agencies often fail to adequately evaluate and disclose to the public the environmental and public health risks presented by cannabis operations or take action to avoid or reduce those impacts as required under CEQA. In these instances, DCC review and action is critically important to prevent costly environmental damage from occurring that can impose expensive remediation costs to state and local agencies.

During the negotiations on the 2021 cannabis budget trailer bill, RLF and other environmental groups accepted an extension of the CEQA-exempt cannabis "provisional licenses" to January 1, 2026, in part, in return for a statutory provision that there would not be any additional CEQA exemptions related to cannabis [Subdivision (q) of Business and Professions Code Section 26050.2 specifically provides that "…no further exemptions from annual licenses be adopted…]. [This bill] is inconsistent with both the letter and the spirit of this compromise.

IMPLEMENTATION ISSUE:

Filing of Notice of Exemption. This bill specifies that one of the conditions under which the DCC is not required to be a responsible agency for purposes of CEQA is when a lead local agency has filed an NOE with the Office of Planning and Research (OPR). However, under OPR regulations, NOEs are only filed with OPR when a state agency is the lead agency. If a local lead agency files the NOE, it is filed with the applicable county clerk. If this bill passes this Committee, the author may wish to resolve this discrepancy.

REGISTERED SUPPORT:

California Cannabis Industry Association
California State Association of Counties
League of California Cities
Origins Council
Rural County Representatives of California
Stiiizy
The Parent Company

REGISTERED OPPOSITION:

Coalition:
- California Coastal Protection Network
- California Native Plant Society
- California Trout
- Defenders of Wildlife
- Environmental Protection Information Center
- Planning and Conservation League
- Sierra Club California
- Trout Unlimited

Resources Legacy Fund

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 601 (McGuire) – As Amended May 18, 2023

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

SENATE VOTE: 40-0

SUBJECT: Professions and vocations: contractors: home improvement contracts: prohibited business practices: limitation of actions

SUMMARY: Increases fines for contractors who violate home improvement contract requirements in declared disaster areas and extends the statute of limitations to prosecute misdemeanors related to the unlawful use or representation of a professional license.

EXISTING LAW:

1) 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)

2) Specifies that a person who engages in the business or acts in the capacity of a contractor without a license for damage or destruction caused by a natural disaster for which a state of emergency is proclaimed by the Governor, or for which an emergency or major disaster is declared by the President of the United States, is punishable by A) a fine of up to $10,000, or by imprisonment for 16 months, or for two or three years, or by both that fine and imprisonment; or B) by a fine of up to 1,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (BPC § 7028.16)

3) Defines "home improvement contract" to mean an agreement, whether oral or written, between a contractor and an owner or between a contractor and a tenant for the performance of a home improvement, and includes all labor, services, and materials to be furnished and performed thereunder. "Home improvement contract" also means an agreement, whether oral or written, between a salesperson, whether or not they are a home improvement salesperson, and an owner or a tenant, which provides for the sale, installation, or furnishing of home improvement goods or services. (BPC § 7151.2)

4) Defines "home improvement" to mean the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property, as well as the reconstruction, restoration, or rebuilding of a residential property that is damaged or destroyed by a natural disaster for which a state of emergency is proclaimed by the Governor, or for which an emergency or major disaster is declared by the President of the United States. (BPC § 7151(a))

5) Defines "home improvement goods or services" to mean goods and services, as specified, which are bought in connection with the improvement of real property, including but not

limited to, carpeting, texture coating, fencing, air conditioning or heating equipment, and termite extermination. Home improvement goods include goods which are to be so affixed to real property as to become a part of real property whether or not they can be removed. (BPC § 7151(b))

6) Provides that failure of a licensed contractor or a person subject to licensure, or their agent or salesperson, to comply with specified home improvement contract requirements, including the following, is cause for discipline.

   a) The contract must be in writing and include the agreed contract amount in dollars and cents. The contract amount must include the entire cost of the contract, including profit, labor, and materials, but not finance charges.

   b) If a downpayment will be charged, the downpayment cannot exceed $1,000 or 10 percent of the contract amount, whichever amount is less.

   c) Except for a downpayment, a contractor cannot request nor accept payment that exceeds the value of the work performed or material delivered. This prohibition includes advance payment in whole or in part from any lender or financier for the performance or sale of home improvement goods or services.

   (BPC § 7159.5(a))

7) Specifies that a violation of the above requirements is a misdemeanor punishable by a fine of $100 to $5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (BPC § 7159.5(b))

8) Specifies that any person who does any of the following is guilty of a misdemeanor:

   a) Displays or causes or permits to be displayed or has in the person's possession either of the following:

      i) A canceled, revoked, suspended, or fraudulently altered license.

      ii) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

   b) Lends the person's license to any other person or knowingly permits the use thereof by another.

   c) Displays or represents any license not issued to the person as being the person's license.

   d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

   e) Knowingly permits any unlawful use of a license issued to the person.

f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in the person's possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

(BPC § 119)

9) Requires, with exception, prosecution for an offense not punishable by death or imprisonment in a state prison to be commenced within one year of the offense. (Penal Code (PEN) § 802(a))

10) Requires prosecution for specified misdemeanor violations to be commenced within three years after discovery of the commission of the offense, or within three years after completion of the offense, whichever is later. (PEN § 802(e))

THIS BILL:

1) Specifies that a licensee or person subject to licensure who violates certain requirements governing home improvement contracts in a location damaged by a natural disaster for which a state of emergency is proclaimed by the Governor or for which an emergency or major disaster is declared by the President of the United States is subject to a misdemeanor punishable by a fine of $5,000 to $15,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. Those requirements include:

   a) The contract must be in writing and include the agreed contract amount in dollars and cents. The contract amount must include the entire cost of the contract, including profit, labor, and materials, but not finance charges.

   b) If a downpayment will be charged, the downpayment cannot exceed $1,000 or 10 percent of the contract amount, whichever amount is less.

   c) Except for a downpayment, a contractor cannot request nor accept payment that exceeds the value of the work performed or material delivered. This prohibition includes advance payment in whole or in part from any lender or financier for the performance or sale of home improvement goods or services.

2) Extends the statute of limitations to prosecute specified misdemeanors from one year from of the commission of the offense to three years from discovery or completion of the offense, whichever is later. Those misdemeanors include:

   a) Displaying or causing or permitting to be displayed or has in the person's possession either of the following:

      i) A canceled, revoked, suspended, or fraudulently altered license.

   ii) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

b) Lending the person's license to any other person or knowingly permitting the use thereof by another.

c) Displaying or representing any license not issued to the person as being the person's license.

d) Failing or refusing to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

e) Knowingly permitting any unlawful use of a license issued to the person.

f) Photographing, photostating, duplicating, manufacturing, or in any way reproducing any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displaying or having in the person's possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

g) Buying or receiving a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. "Fraudulent" means containing any misrepresentation of fact.

3) Makes a technical, non-substantive change.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- The CSLB reports a minor and absorbable fiscal impact (Contractors License Fund). Since the increased fines would be assessed by local jurisdictions, the CSLB does not anticipate additional enforcement workload.

- Unknown court workload cost pressures to adjudicate additional causes of action brought under the provisions of this bill that would otherwise be barred under the statute of limitations in existing law (Trial Court Trust Fund, General Fund). It is unknown how many causes of action would be brought under the extended statute of limitations proposed by this bill, but it generally costs about $1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased staff time and resources may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. Numerous trial court operations are funded through the imposition and collection of criminal fines and fees. However, the Legislature has reduced and eliminated criminal fines and fees over the past decade. As a result, the 2023-24 proposed budget anticipates an ongoing annual allocation of $109.3 million from the GF to backfill declining revenue to the Trial Court Trust Fund.

COMMENTS:

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

> Let me be clear, the golden state continues to face unprecedented disasters such as mega fires, earthquakes and floods. Thousands of Californians have lost their homes in these devastating disasters. After losing everything, survivors then begin the challenging task of rebuilding their homes and lives. With so much loss, some homeowners turn to contractors offering great deals, but that unfortunately have little to no experience building homes. Losing a home is tough enough – but ending up with an inexperienced contractor – or worse, a contractor who intentionally takes a job knowing they cannot finish it – has made the rebuilding process, and the healing process, incredibly traumatic. To address these issues [this bill], will increase the statute of limitations for the unlawful use of a license to three years. [This bill] ensures that contractors who work in disaster declared areas are held accountable for their actions and that disaster survivors have the confidence that their homes will be properly rebuilt.

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 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.

---

[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/
[6] Ibid.

Home Improvement Contracts. A home improvement contract is an agreement between a contractor or salesperson and a property/home owner or tenant. The contract identifies who will perform the work, what materials will be used, when and where the work will be performed, and how much it will cost. Existing law requires contractors to adhere to specific conditions to protect consumers. For example, home improvement contracts must be in writing and include the entire cost of the contract.[7] Moreover, contractors can only collect as a downpayment $1,000 or 10 percent on the contract amount, whichever is less, and are prohibited from requesting or accepting payment that exceeds the value of the work performed or materials delivered.[8] In 2020, SB 1189 (McGuire), Chapter 364, Statutes of 2020, expanded the definition of "home improvement" to include the reconstruction, restoration, or rebuilding of a residential property that is damaged or destroyed by a natural disaster for which a state of emergency is proclaimed by the Governor. As such, contracts for work in declared disaster areas are subject to the same requirements and prohibitions as all other home improvement contracts.

A violation of the aforementioned requirements and prohibitions is a misdemeanor punishable by a fine of $100 to $5,000, or by imprisonment in a county jail for up to one year, or by both.[9] This bill would stiffen the penalties for contractors who commit violations in areas affected by natural disasters and other emergencies, as declared by the Governor or President of the United States. Specifically, this bill would increase the minimum and maximum fines that may be assessed to $5,000 to $15,000 as a means to deter contractors from taking advantage of vulnerable consumers in areas affected by wildfires, flooding, earthquakes, and other disasters.

Fraudulent Use or Representation of Professional License. Unlawful use or fraudulent representation of a professional license issued by a board or bureau under DCA (e.g. CSLB) is a misdemeanor with a one year statute of limitations. Examples include but are not limited to displaying a revoked or fictitious license, or someone else's license; lending a license to another person; permitting the unlawful use of a license; failing to surrender a suspended license; forging a license; and buying a fake license. To ensure that unscrupulous contractors are held accountable for deceiving consumers, this bill would increase the statute of limitations to allow an action to be brought within three years of discovery of the offense, or within three years of completion of the offense, whichever is later. According to CSLB, one year is not adequate for consumers to become aware of a problem and file a complaint and then for CSLB to investigate that complaint and refer it to the appropriate district attorney for prosecution. This bill would increase the statute of limitations thereby increasing the window of opportunity to take action against deceitful contractors. This change would apply to all professions under DCA, not just contractors.

Disaster-related complaints. CSLB reports that from 2019 to 2022, the board received an average of 180 disaster-related complaints, up from an average of 24 in years prior. CLSB additionally reports that the average value of financial losses incurred by consumer complaints has increased over the past 5 years. Whereas in 2019 the average contract price was about $95,000, the average contract price in 2022 was roughly $170,000. Moreover, since 2019, CSLB reports that it has confirmed more than 2,500 violations of home improvement contract

---

[7] BPC § 7159.5(a)
[8] Ibid.
[9] BPC § 7159.5(b)(1)(B)

violations statewide that, under this bill, would be subject to increased fines if committed in declared disaster areas.

The 2018 Camp Fire in Butte County which destroyed 18,804 structures and the 2017 Tubbs Fire in Sonoma County which destroyed 5,636 structures were the first and second most destructive wildfires in recorded history in California, respectively.[10] Multiple news reports detail how wildfire victims, in urgent need to repair/rebuild their homes, have been taken advantage of by predatory contractors.[11]

Several contractors and people subject to licensure have faced criminal charges and disciplinary action by CSLB. In 2022, one contractor was convicted of defrauding victims of the 2017 Tubbs Fire, after swindling approximately 40 wildfire survivors out of $2 million for work that was completed poorly or unfinished.[12] CSLB revoked another contractor's license after an investigation found that the contractor took advantage of a Tubbs Fire victim by diverting funds that were earmarked for a specific purpose and accepting payment that exceeded the value of the work performed.[13] Additionally, the Butte County District Attorney's Office charged a different contractor with defrauding multiple Camp Fire victims after allegedly accepting hundreds of thousands of dollars from consumers to rebuild their homes and never finishing them.[14] This bill is intended to deter and hold accountable bad actors in the construction industry who seek to take advantage of vulnerable Californians during times of crisis.

Prior Related Legislation.

SB 1189 (McGuire), Chapter 364, Statutes of 2020, as it relates to this bill, revised the definition of "home improvement" to include the reconstruction, restoration, or rebuilding of a residential property that is damaged or destroyed by a natural disaster for which a state of emergency is proclaimed by the Governor; added additional contracting practices to a structure or property which was damaged or destroyed during a declared state of emergency that an unlicensed contractor may be prosecuted for; and added additional contracting practices to a structure or property which was damaged or destroyed during a declared state of emergency that may result in enhanced criminal penalties.

AB 835 (Dababneh) of 2017 would have made it a misdemeanor to sell any fraudulent, forged, fictitious, or counterfeited license. This bill was referred to the Assembly Business and Professions Committee but never heard.

SB 561 (Monning), Chapter 281, Statutes of 2015, eliminated a requirement that a home improvement salesperson (HIS) register separately with CSLB for each home improvement contractor they work for, and instead allows an HIS to utilize a single registration with one or more licensed contractors.

---

[10] CalFIRE. (2022, October 24). Top 20 Most Destructive California Wildfires.
[11] Murphy, A. (2022, October 11). *Dishonest builders, ineffective watchdog compounded misery for many 2017 fire survivors*. Santa Rosa Press Democrat. https://www.pressdemocrat.com/article/news/dishonest-builders-ineffective-california-watchdog-compounded-misery-for-m/
[12] Contractors State License Board. (2023). 2022 Accomplishments & Activities.
[13] Ibid.
[14] Ibid.

AB 1950 (Davis), Chapter 569, Statutes of 2012, in part, deleted the sunset date on two provisions that prohibited collecting up-front fees in connection with offers to help borrowers obtain mortgage loan modifications or other forms of mortgage loan forbearance and extended the statute of limitations from one year to three years on specified real estate-related misdemeanors.

AB 2216 (Nakanishi), Chapter 586, Statutes of 2004, required that prosecution of misdemeanor violations of specified law relating to the regulation and licensure of contractors must be commenced within either one, two, three, or four years after the commission of the offense, depending on the offense.

ARGUMENTS IN SUPPORT:

The *Contractors State License Board* writes in support:

> As California continues to experience severe weather events that result in damage to residential property, CSLB conducts outreach with the California Office of Emergency Services to educate homeowners about contractor licensing requirements. However, a consumer cannot protect themselves by checking a license if the unlicensed contractor unlawfully uses the valid license of another, often with the licensee's permission.
>
> Consumers who are recovering after a disaster don't often file a complaint immediately because they do not have a concern with their contractor until construction is underway. Investigating complex fraud issues or contractual arrangements can take more than six months. Consequently, the current statute of limitations prevents CSLB from pursuing criminal action in these cases, making the only option administrative disciplinary action, which is not as effective a deterrent.
>
> […]
>
> CSLB supports the concept of increasing fines for these egregious violations and holding contractors who violate the Contractors State License Law to take advantage of disaster victims responsible.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Surety Federation
Contractors State License Board

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 630 (Dodd) – As Introduced February 16, 2023

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

SENATE VOTE: 39-0

SUBJECT: Contractors State License Board: regulation of contractors

SUMMARY: Authorizes the Contractors State License Board (CSLB) to require applicants, registrants, and licensees to provide a valid email address and to automatically revoke a license for failure to fully comply with the terms and conditions of probation.

EXISTING LAW:

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

2) Requires each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within Department of Consumer Affairs (DCA) to notify the issuing board of any change in the person's mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period. (BPC § 136)

3) Establishes the CSLB within the DCA to license and regulate contractors and home improvement salespersons. (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 an applicant to submit to the registrar an application with specified information on a form prescribed by CSLB. (BPC § 7066)

6) Requires licensees to notify the registrar, on a form prescribed by the registrar, in writing within 90 days of any change to information including, but not be limited to, business address, personnel, and business name. (BPC § 7083)

7) Requires a licensee whose license is expired or suspended, and is renewable, or whose license is canceled, to notify the registrar in writing of a change of address of record within 90 days, and shall maintain a current address of record during the five-year period immediately following the expiration or cancellation of the license. (BPC § 7083.1)

8) States that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government (GOV) Code § 7921.000)

9) Specifies that an agency must justify withholding any record by demonstrating that the record in question is exempt or that the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (GOV Code § 7922.000)

10) Prohibits a board, bureau, commission, committee, department, division, or agency under DCA from renewing or reinstating the license of any licensee who has failed to pay all of the investigation and prosecution costs of their case as ordered by an administrative law judge. However a board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs. (BPC § 125.3)

11) Provides that a hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned must be initiated by filing an accusation or District Statement of Reduction in Force. (GOV § 11500)

12) Authorizes a stay of execution to be included in the decision or at any time before the decision becomes effective. The stay of execution may be accompanied by an express condition that the respondent comply with specified terms of probation, which must be just and reasonable, and may include an order to pay restitution. (BPC § 11519(b) and (d))

13) Requires the registrar to issue a citation to a person who, upon inspection or investigation there is probable cause to believe that they are acting in the capacity of or engaging in the business of a contractor and is not licensed nor subject to an exemption from licensure. (BPC § 7028.7(a))

14) Authorizes the registrar upon their own motion, and requires upon the verified complaint in writing of any person, to investigate the action of any applicant, contractor, or home improvement salesperson and deny licensure or the renewal of a license, or cite, temporarily suspend, or permanently revoke a license or registration if the applicant, licensee, or registrant is guilty of or commits any one or more of the acts or omissions that is cause for disciplinary action. (BPC § 7090)

15) Specifies that the failure to pay a civil penalty, or to comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction once the order has become final, shall result in the automatic suspension of a license by operation of law 30 days after noncompliance with the terms of the order, although the registrar may delay revocation for up to one year, as specified (BPC § 7091(a))

16) Specifies that the decision of the registrar may:

a) Provide for the immediate complete suspension by the licensee of all operations as a contractor during the period fixed by the decision.

b) Permit the licensee to complete any or all contracts shown by competent evidence taken at the hearing to be then uncompleted.

c) Impose upon the licensee compliance with such specific conditions as may be just in connection with his operations as a contractor disclosed at the hearing and may further provide that until such conditions are complied with no application for restoration of the suspended or revoked license shall be accepted by the registrar.

(BPC § 7095)

EXISTING REGULATIONS:

1) Requires the CSLB, in reaching a decision on a disciplinary action under the Administrative Procedure Act, to consider disciplinary guidelines that are incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation. (California Code of Regulations, Title 16, § 871)

EXISTING CSLB DISCIPLINARY GUIDELINES:

1) Specifies that if a respondent (i.e. licensee subject to disciplinary action) violates probation in any respect, the registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order to revoke a license that was stayed. (California Contractors License Law & reference Book, Chapter 13, 2023 Edition)

2) Authorizes the registrar to impose the disciplinary order to revoke a license that was previously stayed without giving the respondent (i.e. licensee subject to disciplinary action) an opportunity to be heard if the respondent fails to comply with a restitution order. (California Contractors License Law & reference Book, Chapter 13, 2023 Edition)

THIS BILL:

1) Requires an applicant for licensure or registration that has a valid email address to report to the CSLB that email address at the time of application.

2) Requires a registrant or licensee that has a valid email address to report that email address to the CSLB at the time of renewal.

3) Specifies that to protect the privacy of applicants, registrants, and licensees, the email address provided to the CSLB will not be considered a public record that is subject to disclosure, unless required by an order of a court of competent jurisdiction.

4) Provides that information sent from an email account of the CSLB to a valid email address provided by an applicant, registrant, or licensee is presumed to have been delivered to the email address provided.

5) Defines "valid email address" to mean an email address at which the applicant, registrant, or licensee is currently receiving email at the time the application, registration, or license renewal is submitted to the CSLB.

6) Authorizes the CSLB to stay the execution of a decision to revoke the license of a licensee pending completion of specified terms and conditions of probation.

7) Provides that failure to fully comply with the terms and conditions of probation may result in automatic termination of the stay of execution without further notice.

8) Specifies that the specific probation terms and conditions imposed may include, but are not limited to, any of the following:

   a) Payment of restitution to persons injured as a result of the violation.

   b) Payment of the costs of investigation and enforcement, as specified.

   c) Enrollment in, and completion of, specified administrative or trade-specific coursework.

   d) Successful completion of the CSLB's law and business examination or trade examination, as appropriate.

   e) Any further terms and conditions as are set forth for specified violations in the CSLB's disciplinary guidelines, as specified.

9) Makes minor, conforming changes.

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

COMMENTS:

Purpose. This bill is sponsored by *Contractors State License Board (CSLB)*. According to the author:

> Ensuring contractors work in a safe, competent and professional manner is at the heart of our commitment to California consumers. We achieve that through better communication and education, as well as clear pathways for improvement when things go wrong. My proposal advances these principles among the licensed trades to strengthen an industry that is essential as we continue to build out our state.

Background.

Contractors and CSLB. The CSLB 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 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.

Email. Over the last decade, numerous boards and bureaus have sought legislative authorization to require their applicants, registrants, licensees, and the like to provide a valid email address to receive correspondence from the relative board or bureau. Email provides an expedient, cost-effective, and environmentally-friendly means of communicating with each board's applicant and licensee population. To date, the following boards, bureaus, and councils have been authorized to require their respective applicants, registrants, and licensees to provide an email addresses at the time of application or renewal:

- Board for Professional Engineers, Land Surveyors, and Geologists
- Board of Accountancy
- Board of Behavioral Sciences
- Board of Pharmacy
- Board of Vocational Nursing and Psychiatric Technicians

---

[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/
[6] Ibid.

- Bureau of Automotive Repair
- California Massage Therapy Council
- Dental Board of California
- Dental Hygiene Board of California
- Department of Real Estate
- Medical Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

This bill would similarly authorize CSLB to require its applicants, licensees, and registrants to provide a valid email address if they have one. CSLB sends a variety of notices and updates to licensees via email. Consequently, only those licensees that have opted in to the board's listserv receive email alerts, meaning some licensees may not be aware of important changes to licensure requirements or construction-related laws and regulations. This change will ensure that more licensees receive timely communication from the board.

The California Public Records Act requires government records to be disclosed to the public, upon request, unless there are privacy and/or public safety concerns that warrant an exemption.[7] To protect the privacy of applicants, licensees, and registrants, this bill specifies that email addresses can only be disclosed as required by a court order.

CSLB Enforcement. CSLB is responsible for protecting consumers by regulating the construction industry. In doing so, CSLB enforces construction-related laws and regulations and provides resolution for disputes. CSLB enforcement staff investigate complaints against licensees and registered home improvement salespersons as well as unlicensed people acting as contractors and unregistered people acting as home improvement salespeople.[8] The majority of complaints that CSLB receives are from residential property owners who contracted for home improvement projects, although CSLB also receives complaints from licensees, industry groups, and governmental agencies. Complaints are investigated and when warranted, disciplinary action is taken.

CSLB has a variety of enforcement tools to use depending on the severity of the violation(s). Advisory notices, which are not publicly disclosed, notify licensees of the violation, explain how to comply with the law in the future, and warn licensees that future violations may result in more stringent disciplinary action.[9]

Letters of admonishment, which are reserved for minor violations, are an intermediate form of corrective action.[10] Contractors must comply with the terms outlined in the letter of admonishment or contest it in writing. Appeals are handled internally by CSLB without a formal hearing process. Although a letter of admonishment is not considered formal disciplinary action, it may be used to support formal disciplinary action in the future. Moreover, a letter of admonishment must be publically disclosed for one or two years.

---

[7] GOV Code § 7921.000 *et seq.*

[8] Contractors State License Board. (2018, December). Contractors State License Board Sunset Review December 2018.

[9] Ibid.

[10] Ibid.

For more egregious violations, CSLB may issue an administrative citation, which may include a corrective order and require the licensee to pay a civil penalty and/or restitution to an injured party.[11] Citations must be publically disclosed from the date of issuance and for five years after compliance. If a licensee does not comply, their license will be automatically suspended for 90 days, and if still out of compliance after 90 days, their license will be automatically revoked.

For the most serious violations, CSLB may recommend an accusation, which can result in suspension or revocation of a contractor's license and are required to be publically disclosed.[12] Accusation recommendations are sent to the Office of the Attorney General (AG), who determines whether there is enough evidence to proceed with a case. Appeals are heard before an administrative law judge who makes a "proposed decision" to the CSLB registrar, who can adopt, not adopt, or modify the decision. If an accusation is filed and upheld, the license may be suspended or revoked, though often the AG's office negotiates an agreement with the licensee, whereby the decision is made to revoke the license, but that decision is stayed and the licensee is placed on probation. Licensees are required to comply with the terms and conditions of probation, and, if they fail to do so, CSLB proceeds with revoking their license.

Existing law currently prohibits the CSLB from renewing or reinstating the license of any licensee who has failed to reimburse the board for investigation and enforcement costs, but does not expressly authorize CSLB to automatically revoke the license of a licensee if they do not.[13] Moreover, CSLB's existing disciplinary guidelines authorize the board to automatically revoke a contractor's license if they fail to pay restitution.[14] However, if a contractor violates their probation in any other way, CSLB cannot automatically revoke their license. A second disciplinary hearing is required to revoke the stayed revocation. CSLB argues that this administrative step is costly, time consuming, and jeopardizes consumer protection.

This bill allows the board to automatically revoke the license of a licensee who does not fully comply with the following probation terms, including completion of required courses and examinations, orders to pay restitution or reimburse the board for investigation and enforcement costs, and any other terms and conditions specified in the board's disciplinary guidelines.

Prior Related Legislation.

AB 1521 (Low), Chapter 359, Statutes of 2019, as it relates to this bill, required specified applicants and permitholders who have a valid email address to report to the California Board of Accountancy (CBA) that email address, as specified.

AB 298 (Irwin), Chapter 300, Statutes of 2021, as it relates to this bill, specified that in the interest of protecting the privacy of applicants and licensees, an email address provided by

---

[11] Ibid.
[12] Ibid.
[13] BPC § 125.3
[14] Tit. 16, CCR § 871

applicants or licensees to the CBA is not to be considered a public record that is subject to disclosure, unless required pursuant to a court order by a court of competent jurisdiction.

SB 1120 (Jones), Chapter 302, Statutes of 2022, as it relates to this bill, required applicants, licensees, and certificate holders to provide the Board for Professional Engineers, Land Surveyors, and Geologists with a valid email address, if available, and notify the Board of any email address changes.

AB 2686 (Assembly Committee on Business and Professions), Chapter 415, Statutes of 2022, as it relates to this bill, required applicants, registrants, and licensees who have an email address to provide the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board (SLPAHAD Board) with that email address no later than July 1, 2023, and to provide to the SLPAHAD Board any and all changes to their email address no later than 30 calendar days after the changes have occurred.

ARGUMENTS IN SUPPORT:

The *CSLB*, as the sponsor of this bill, writes in support:

> [This bill] will enable CSLB to communicate with its licensee population of more than 280,000 in a manner that is low-cost, timely, and environmentally responsible. In addition, authorizing CSLB to reimpose revocation for failing to meet terms of probation would strengthen consumer protection by incentivizing compliance with probationary conditions while simultaneously reducing costs associated with a second disciplinary proceeding.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Contractors State License Board *(Sponsor)*
American Subcontractors Association-California
California Builders Alliance
Sacramento Regional Builders Exchange

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 669 (Cortese) – As Amended June 12, 2023

SENATE VOTE: 38-0

SUBJECT: Veterinarians: veterinarian-client-patient relationship

SUMMARY: Authorizes a licensed veterinarian to permit a registered veterinary technician (RVT) to act as their agent for purposes of establishing the veterinarian-client-patient relationship (VCPR) and administrating preventative or prophylactic vaccines or medications.

EXISTING LAW:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(BPC § 4826)

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

10) Prohibits an RVT from performing the following functions or activities that represent the practice of veterinary medicine, requires the knowledge, skill, and training of a licensed veterinarian: (1) surgery, (2) diagnosis and prognosis of animal diseases, and (3) prescribing drugs, medications, or appliances. (California Code of Regulations (CCR), tit. 16 § 2036(a))

11) Allows an RVT to perform the following procedures under the direct supervision of a licensed veterinarian: (1) induce anesthesia, (2) perform dental extractions, (3) suture cutaneous and subcutaneous tissues, gingiva, and oral mucous membranes, (4) create a relief hole in the skin to facilitate placement of an intravascular catheter, and (5) drug compounding from bulk substances. (CCR, tit. 16 § 2036(b))

12) Authorizes an RVT to perform the following procedures under indirect supervision of a licensed veterinarian: (1) administer controlled substances, (2) apply casts and splints, (3) provide drug compounding from non-bulk substances. (CCR, tit. 16 § 2036(b))

13) Requires an RVT, veterinary assistant, and veterinary assistant controlled substances permitholder to wear a nametag identification in at least 18-point type in any area of the veterinary premises that is accessible to members of the public, and requires the nametag to include the RVT, veterinary assistant, and veterinary assistant controlled substances permit holder’s name, and, if applicable, the license, registration, or permit type and number issued by the VMB. (BPC § 4826.3)

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

15) Declares that it is unprofessional conduct for a veterinarian to administer, prescribe, dispense or furnish a drug, medicine, appliance, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture or bodily injury or disease of an animal without having first established a VCPR with the animal patient or patients and the client, except where the patient is a wild animal or the owner is unknown. (CCR, tit. 16 § 2032.1)

16) Requires the VCPR be established through the following actions:

    a. The client has authorized the veterinarian to assume responsibility for making medical judgments regarding the health of the animal, including the need for medical treatment.

    b. The veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal.

    c. The veterinarian has assumed responsibility for making medical judgments regarding the health of the animal and has communicated with the client a course of treatment appropriate to the animal's circumstance.

    (CCR, tit. 16, § 2032.1)

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

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

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

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

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

THIS BILL:

1) Makes findings and declarations relating to veterinary medical care, the dire impact from the national shortage of veterinarians and veterinary staff, barriers and economic hardships the veterinary shortage has created for an animal's access to care, the critical role of vaccines in

the maintenance of public health, and the public health risks associated with unvaccinated animals.

2) Declares that all references to "veterinarian" refer to a California-licensed veterinarian.

3) Allows a veterinarian to authorize an RVT to act as an agent on behalf of the veterinarian for purposes of establishing a VCPR, which, after forming, would authorize the RVT to administer preventative or prophylactic vaccines or medications, as long as the following criteria are fulfilled:

   a) The RVT administers preventative or prophylactic vaccines or medications for the control or eradication of apparent or anticipated internal or external parasites in an animal hospital setting under the direct supervision of the licensed veterinarian or supervisor.

   b) If working at a location other than registered veterinary location, the veterinarian may authorize an RVT to administer preventive or prophylactic vaccines or medications for the control or eradication of apparent or anticipated internal or external parasites when the veterinarian is in the general vicinity or available by telephone and is quickly and easily available.

   c) At this nonregistered veterinary location, it is additionally required that the RTV have equipment and drugs necessary to provide immediate emergency care at a level commensurate with the provision of preventive or prophylactic vaccines or medications for the control or eradication of apparent or anticipated internal or external parasites.

   d) The RVT examines the animal patient and administers preventive or prophylactic vaccines or medications for the control or eradication of apparent or anticipated internal or external parasites following written protocols and procedures established by the supervisor, which must meet a series of minimum requirements.

   e) The supervisor and RVT sign and date a statement containing a statement of authorization for the RVT to act as the agent of the veterinarian and that the veterinarian is assuming risk for all acts of the RVT, only until the date the supervisor terminates supervision or authorization for the RVT to act as the agent of the veterinarian or supervisor.

4) Requires documentation relating to the above requirements to be retained by the veterinarian for the duration of the registered veterinary technician's work as an agent of that veterinarian and until three years from the date of the termination of the veterinarian's relationship with the registered veterinary technician.

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

COMMENTS:

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

"When California began rolling out COVID-19 vaccinations, parking lots in suburban malls became drive-through vaccination clinics and, in many cases, it was EMTs from local fire departments and the California National Guard who administered them. A similar crisis is threatening our public health and safety: unvaccinated pets in California. These pets are at risk of catching and transmitting rabies and the parvovirus. Registered Veterinary Technicians are trained and licensed professionals who have completed two-year programs and faced national and state examination boards. In contrast, California's EMTs are only required to complete a 12-week program before being eligible for certification. Expanding the duties of R.V.T.s isn't unprecedented either. They can already do the following: administer controlled substances, apply casts and splints, compound drugs and administer vaccines."

Background.

Veterinarians. In order to practice veterinary medicine and provide healthcare to a variety of animals, veterinarians must secure a license through the VMB. A licensed California veterinarian is authorized to engage in the practice of veterinary medicine, surgery, veterinary dentistry, and related health procedures for the benefit of an animal's general health and wellbeing. Veterinarians are trained and licensed to diagnose, prescribe medication and provide treatment for the animal's health and improvement to the animal's quality of life. Veterinarians are extensively trained, satisfied academic requirements, and provide health care for various animals. Veterinarians receive specific healthcare training as it applies to animals and understanding the nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals. In order to practice veterinary medicine in California, an applicant must graduate from a degree program offered by an accredited postsecondary institution or institutions approved by the VMB, pass a national veterinarian examination, and pass an examination provided by the VMB to test the knowledge of the laws and regulations related to the practice of veterinary medicine in California.

Registered Veterinary Technicians. RVTs serves a crucial role in the veterinary workforce by providing vital supportive health-related tasks. These health tasks involve drawing blood and conducting laboratory tests, operating radiographic equipment, administering medication, as well as countless other health related procedures. The VMB's regulations strictly outline that an RVT may perform the certain procedures only under the direct supervision of a licensed veterinarian. These procedures induce anesthesia, apply casts and splints, perform dental extractions, suture cutaneous and subcutaneous tissues, gingiva and oral mucous membranes, create a relief hole in the skin to facilitate placement of an intravascular catheter. The VMB's regulations have also stipulated that an RVT may perform a variety of procedures under indirect supervision of a licensed veterinarian. These procedures include the act of administering controlled substances and performing animal health care tasks.

Veterinarian-Client-Patient-Relationship (VCPR). The Veterinary Medicine Practice Act requires a veterinarian to establish and maintain a veterinarian-client-patient-relationship (VCPR) before providing care to an animal patient. Among other requirements, this relationship is established when the client has authorized the veterinarian to make medical judgements, and when the veterinarian has gained sufficient knowledge of the animal to make a diagnosis, generally through an in-person examination. According to the VMB's regulations relating to

establishing a VCPR, it is unprofessional conduct for a veterinarian to administer, prescribe, dispense or furnish a drug, medicine, appliance, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture or bodily injury or disease of an animal without having first established a VCPR with the animal patient or patients and the client, with an exception if the patient is a wild animal or the animal's owner is unknown.

Veterinary Healthcare Workforce: National Shortages, Affordability, and Timely Access to Care. According to a recent National Institute of Health (NIH) publication, *Putting Access to Veterinary Care on the Map: A Veterinary Care Accessibility Index Access, "*access to veterinary care is a problem that sits at the intersection of a number of societal factors including income inequality, access to transportation, language and cultural differences as well as the spatial distribution of veterinary care providers." According to the University of California's report on the Animal Shelter Assistance Program at UC Davis, the most urgent issue challenging the veterinary healthcare profession both nationally and in California is the veterinary medical staff shortage. This current workforce shortage directly affects the profession's ability to recruit and retain veterinarians and licensed support staff, which typically are RVTs. This shortage has produced unnecessary painful experiences for animals and families throughout the state.

The report also illustrates the increasing rates pet owners are struggling when trying to find affordable and accessible care. At the same time, the cost of veterinary care has increased by nearly 50% over the last ten years. Adding to families and pet caregiver's financial strain and lack of veterinary providers, the report and even those able to afford care may need to drive long distances and endure prolonged waiting periods.

This bill seeks to address access gaps to preventive or prophylactic vaccines or medications resulting from an insufficient workforce of licensed veterinarians by allowing RVTs to establish the VCPR and administer those vaccines or medications under certain conditions. Under the bill, the veterinarian and the RVT would be required to sign a statement authorizing the RVT to act as the veterinarian's agent and establishing that the veterinarian will assume risk for the RVT's activities. Additional documentation would be created and retained for all administrations. The author and supporters believe that the bill balances the need for greater access to these vaccines and medications with the VMB's mission to protect the public.

Current Related Legislation.

AB 1399 (Friedman) would expand the authority of a licensed veterinarian to establish a veterinarian-client-patient relationship and practice veterinary medicine through the use of telehealth. *This bill is currently pending before the Senate Business, Professions, & Economic Development Committee.*

AB 1237 (Petrie-Norris) would have established the California Public Interest Veterinary Debt Relief Program under the administration of the California Student Aid Commission (CSAC) to award funds to California-licensed veterinarians, in relief of their educational loan debt, as defined, who enter into a contract with CSAC to provide veterinary services in eligible premises settings. *This bill was held under submission in the Assembly Appropriations Committee.*

AB 1215 (W. Carrillo) would require the Department of Housing and Community Development to establish a grant program to provide funding to homeless shelters and domestic violence

shelters to provide shelter, food, and basic veterinary services for pets owned by individuals experiencing homelessness or escaping domestic violence, as specified. *This bill is currently pending before the Senate Housing Committee.*

Prior Related Legislation.

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

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

ARGUMENTS IN SUPPORT:

American Society for the Prevention of Cruelty to Animals (ASPCA) writes the following in support: "Current nationwide shortage of veterinarians is increasing challenges for pet owners trying to access care, with one study noting that 75 million pets in the U.S. could be without veterinary care by 2030. As such, a bill like SB 669 that will allow veterinarians to better utilize their entrusted, highly trained RVTs to establish the VCPR, can help ensure that more pets receive this most essential, basic care. Utilizing RVTs in this fashion affords the veterinarian more time to focus on providing diagnostics and treatments to other animal patients, while also improving job satisfaction for RVTs by expanding their duties. There are communities throughout California that are experiencing severe shortages in veterinary services and populations that are struggling to obtain even basic vaccines for their pets. It is not uncommon in such communities to have widespread outbreaks of preventable diseases among animals that result in great suffering and even death. Providing this avenue for veterinary services to reach more animals could make a very meaningful difference for pets and the people who love them."

California Animal Welfare Association (CalAnimals) states the following in support: "This bill would authorize a veterinarian to allow a registered veterinary technician to act as an agent of the veterinarian for the purpose of establishing the veterinarian-client-patient relationship (VCPR) to administer preventive or prophylactic vaccines or medications for the control or eradication of apparent or anticipated internal or external parasites by satisfying specified criteria. With the exception of the rabies vaccination, the treatments included in SB 669 are over-the-counter vaccines and topical treatments California animal owners can administer on their own pets. Most California citizens prefer working with a professional and California Registered Veterinary Technicians are highly trained in the administration of these substances and are trained to manage adverse reactions."

The California Veterinary Medical Association (CVMA) supports the bill and writes: "As part of their core, standardized licensing education, RVTs possess knowledge about vaccine handling and administration, the animal diseases that vaccines are used to prevent, as well as

parasite identification, treatment, and control. This bill permits veterinarians to better utilize RVTs to their fullest capacity in practice by permitting them to work as an agent of the veterinarian to establish the VCPR for these specific purposes. This is done under direct veterinarian supervision, as defined, to include detailed written protocols, agreements, and disclosures. In addition to the positive impacts discussed above, the bill will also have the incidental benefit of calling greater attention to the range of skills possessed by RVTs, in turn promoting their appropriate use within the confines of a veterinary practice. In that regard, even many veterinarians themselves do not have a full appreciation for the scope of RVT practice that is currently afforded under the law. This measure will thus work in furtherance of educating the profession at large as to the crucial importance of RVTs in the delivery of sound veterinary care."

San Francisco SPCA states the following in support of the bill: "The ability to hold these basic community vaccine clinics is restricted under current law, which requires a veterinarian to be onsite at vaccine clinics. SB 669 offers an avenue to make the most efficient use of the limited veterinarians available by allowing trained, educated and experienced RVTs to administer the vaccines under the indirect (offsite) supervision of a licensed veterinarian, freeing up the veterinarian's time. The legislation includes valuable safeguards to ensure the safety of the animal patients and coordination with the veterinarian. At a time when California is experiencing a significant and worsening shortage of veterinary professionals, this legislation provides an avenue to improve public health and safety, and potentially life-saving animal healthcare, in a professional manner, ensuring the best care and the most efficient use of resources."

The Humane Society of the United States (HSUS) and the Humane Society Veterinary Medical Association (HSVMA) supports this measure and write the following in support: "Disparities in access to veterinary care have created barriers to important services and further isolated historically underserved communities. We need to find safe and sustainable ways to reduce these barriers to veterinary care. This bill does just that."

ARGUMENTS IN OPPOSITION:

The **Veterinary Medical Board** (VBM) is opposed unless amended to the bill and writes the following: "The proposed amendments to BPC section 4826.7, subdivision (b)(2), would authorize the RVT to administer vaccines and medications without any veterinarian review of the animal patient and fails to account for the veterinarian prescription requirement. Accordingly, the Board agrees with the CVMA and recommends including subdivision (d), as shown in the attached amendments, in BPC section 4826.7, to properly provide for veterinarian prescription before RVT administration of the vaccines or medications."

POLICY ISSUES:

The VMB has expressed concerns that this bill would expand the scope of the RVT, which includes permitting the RVT to administer preventative or prophylactic vaccines or medications when the RVT is working at a location other than a registered veterinary premises and the supervising veterinarian is available by telephone. The VMB also expressed concern with the lack of client disclosure an RVT would be required to provide when acting as an agent for the veterinarian.

Another issue the VMB has expressed with this bill is the VMB is concerned the bill, in its current form, would not ensuring compliance with existing federal and state laws on controlled substance and dangerous drug prescriptions requirements. Current law clearly states only veterinarians are authorized to prescribe treatment to animal patients, which sometimes includes prescribing controlled substances and dangerous drugs. According to the VMB, under this bill, RVTs would be allowed to administer these types of medication. The VMB states that the bill, as currently written, would authorize an RVT to treat animals without examination by the veterinarian and authorize RVTs to prescribe medications to animals without the required prescription by a veterinarian.

AMENDMENTS:

To require that a client is informed that an RVT is acting as a veterinarian's agent prior to an animal patient receiving treatment, amend the bill to add the following subdivision:

> *(c) Prior to examination of, or administration of any preventive or prophylactic vaccines or medications for the control or eradication of apparent or anticipated internal or external parasites to the animal patient, the client is informed orally or in writing that the RVT is acting as an agent of the veterinarian for purposes of administering to the animal patient preventive or prophylactic vaccines or medications, as applicable, and provides the veterinarian's name and license number to the client. After such disclosure is provided, the oral or written authorization of the client to proceed with the RVT's examination of the animal patient and administration of the specified vaccine or medication shall be recorded in the animal patient's medical record.*

REGISTERED SUPPORT:

Sacramento SPCA *(Sponsor)*
California Veterinary Medical Association
Humane Society of the United States
Humane Society Veterinary Medical Association
San Francisco SPCA
California Animal Welfare Association

REGISTERED OPPOSITION:

Veterinary Medical Board *(Unless Amended)*

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

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 683 (Glazer) – As Amended April 13, 2023

SENATE VOTE: 40-0

SUBJECT: Hotels and short-term rentals: advertised rates: mandatory fees

SUMMARY: Requires a person who advertises a hotel room rate or short-term rental rate to include in the advertised hotel room rate or short-term rental rate all mandatory fees that will be charged in order for the consumer to stay in the hotel room or short-term rental and to clearly and conspicuously disclose in the advertised hotel room rate or short-term rental rate and in the total price displayed at the time of booking the amount of the credit card surcharge that will be applied, if any.

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 the rates at which rooms or other accommodations are rented to occupants. (BPC § 17561)

THIS BILL:

1) Requires a person who advertises a hotel room rate or short-term rental rate before the public in this state, or from this state before the public in any state, to do both of the following:

   a) Include in the advertised hotel room rate or short-term rental rate all mandatory fees that will be charged in order for the consumer to stay in the hotel room or short-term rental.

   b) Clearly and conspicuously disclose in the advertised hotel room rate or short-term rental rate and the total price displayed at the time of booking the amount of the credit card surcharge that will be applied, if any.

2) Requires a hotel or short-term rental to clearly and conspicuously disclose on its internet website a list of all mandatory fees and credit card surcharges imposed on consumers.

3) Specifies that an action for a violation of this section may be brought only by the Attorney General, a district attorney, a city attorney or county counsel of a city or county whose population is greater than 750,000 residents, or, with the consent of the district attorney, a city prosecutor in a city that has a full-time city prosecutor

4) Requires the court to impose a civil penalty of not more than $10,000 for each violation.

5) Requires the court, in determining the amount of the civil penalty, to consider all of the relevant circumstances presented by any of the parties to the case, including, but not limited to, all of the following:

   a) The nature and seriousness of the misconduct.

   b) The number of violations.

   c) The persistence of the misconduct.

   d) The length of time over which the misconduct occurred.

   e) The willfulness of the misconduct.

   f) The assets, liabilities, and net worth of the defendant.

6) Provides that each day that a defendant remains in violation of this section shall constitute a single violation.

7) Specifies that the penalties provided by this subdivision are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other penalties or sanctions.

8) States that the duties and obligations imposed by this section are cumulative with any other duties or obligations imposed under other law and shall not be construed to relieve any party from any duties or obligations imposed under other law.

9) Provides that a violation of this section constitutes a false or misleading statement and may be enforced pursuant to existing law.

10) Defines "hotel" to mean a hotel, motel, bed and breakfast inn, or other similar transient lodging establishment. Provides that hotel does not include a residential hotel, as defined in existing law.

11) Defines “mandatory fees” to mean any fees, taxes, costs, or other charges that a consumer is required to pay in order to stay in a hotel or short-term rental. Specifies that mandatory fees do not include a charge for any optional service or amenity that a consumer elects to pay.

12) Defines “short-term rental” to mean a residential dwelling, or any portion of a residential dwelling, that is rented to a person for 30 or fewer consecutive days.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill would result in unknown court workload cost pressures in order to adjudicate civil violations of this bill’s provisions and likely minor and absorbable costs to the Department of Justice in order to bring enforcement actions under the False Advertising Law.

COMMENTS:

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

> Many industries engage in drip pricing practices that mislead consumers about the total cost of a product or service. Unfortunately, lodging has become an all-too-common industry where consumers believe they are receiving a good deal based on the “nightly” rate, and then realize at the end of the transaction, or even at check-in, that the total cost is much more expensive. Current California law already prohibits false advertising and misleading advertising practices, yet this problem persists in many industries. There is a host of studies and evidence showing that current practices of advertising a cheaper rate, only to reveal a more expensive total rate, mislead consumers. In fact, one study from the Federal Trade Commission (FTC) found resort fees that are undisclosed in the posted room rate “artificially increase the search costs and the cognitive costs” for consumers. Other studies show that misleading pricing practices cause consumers to select more expensive products and services in general. This bill would require all lodging services, including hotels, short-term rentals, and third party booking services, to display the total cost of the stay inclusive of all extra fees, such as taxes, credit card fees, and resort fees in the advertised rate. This bill would improve consumer protections and prevent confusion by prohibiting intentionally misleading prices.

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;

---

[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/

- 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]

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

---

[2] Ibid.
[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

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 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

---

[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.
[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

Columbia Attorney General indicated that the effort "follows an investigation into the hotel industry's pricing practices by the Attorneys General in all 50 states."[19]

Proposed Regulations. The Federal Trade Commission (FTC) is in the early stages of developing regulations concerning unfair or deceptive fees. On November 8, 2022, the FTC issued an advance notice of proposed rulemaking and solicited written comment, data, and arguments concerning the need for such a rulemaking to protect consumers.[20] The public comment period ended on January 9, 2023, but was extended to February 8, 2023.

In the meantime, this bill would require a person that advertises a hotel room rate or short-term rental rate to the public in this state or from this state to the public in any other state to include in the advertised hotel room rate or short-term rental rate all mandatory fees that will be charged in order for the consumer to stay in the hotel room or short-term rental. Additionally, this bill would require the person to clearly and conspicuously disclose in the advertised hotel room rate or short-term rental rate, and in the total price displayed at the time of booking, the amount of any applicable credit card surcharge. Credit card surcharges are an added fee that a business adds to the purchase price when the consumer pays with a credit card instead of a debit card or cash.[21] Credit card surcharges usually range from one percent to four percent and must be disclosed prior to payment.[22] In the event a consumer makes a hotel or short-term rental booking online and plans to pay at the hotel or short-term rental, this requirement would help ensure that consumers are aware of credit card surcharges prior to their arrival. The author and sponsor contend that these requirements will benefit low and moderate-income consumers, as well as seniors, by promoting a more transparent marketplace and allowing them to make better informed decisions.

Further discussion of issues relating to civil penalty provisions in this bill is anticipated to occur when this bill is heard in the Assembly Committee on Judiciary.

Advertise Airline Rates. The Department of Transportation prohibits drip pricing for airfare by requiring airlines and travel agencies to advertise the entire price of a flight to be paid by the customer, including taxes and fees, as either the exact amount or rounded up to the next whole dollar.[23] Optional services (e.g. Wi-Fi, travel insurance, baggage fees, priority seating), are not required to be included in the advertised rates, and cannot be automatically included in the ticket price, which would require consumers to actively unselect those optional services.[24]

This bill would similarly require the advertised rate for hotels and short-term rentals to include all mandatory fees, which explicitly do not include charges for any optional services or amenities that a consumer elects to pay.

---

[19] Ibid.
[20] Federal Trade Commission. (2023, January 24). Unfair or Deceptive Fees Trade Regulation Rule. Regulations.gov. https://www.regulations.gov/document/FTC-2022-0069-5957
[21] Taylor, M. (2022, November 29). What are credit card surcharges and where are they legal?. Fortune Recommends. https://fortune.com/recommends/credit-cards/what-are-credit-card-surcharges/
[22] Ibid.
[23] U.S. Department of Transportation. (2020, March 4). *Buying a Ticket*. U.S. Department of Transportation. https://www.transportation.gov/individuals/aviation-consumer-protection/buying-ticket
[24] Ibid.

Current Related Legislation.

AB 537 (Berman) would prohibit 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 stay at the short-term lodging. *AB 537 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 Assembly Privacy and Consumer Protection 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 Senate Business, Professions, and Economic Development 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 *California Public Interest Research Group* writes in support:

> Consumers deserve to know what they are paying for, and how much, up front. It's that simple.
> Unfortunately, many companies, including hotels, are blindsiding us with hidden fees.
>
> […]
>
> In 2017, the Federal Trade Commission did an analysis of "resort fees" and concluded that "separating resort fees from the room rate without first disclosing the total price is unlikely to result in benefits that offset the likely harm to consumers," which include additional time searching for a hotel's mandatory fees or making an uninformed choice resulting in a costly hotel stay.
>
> California consumers deserve complete pricing information to help inform our purchases.

ARGUMENTS IN OPPOSITION:

The *California Chamber of Commerce* and *California Travel Association* write in opposition to this bill:

We do not believe that eliminating the distinction between the advertised price (the actual price set by the business), and the price including state/locally/district-mandated additional amounts actually improves customer knowledge. To the contrary, it masks the additional amounts added by taxes and fees from the consumer.

[…]

Moreover, including all taxes/assessments/district-related costs in initial advertised prices will make California's tourism market appear less competitive than other states…

These potential visitors – 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. Out-of-state consumers, however, will have no way to predict this distinction, 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 inflated pricing will potentially dissuade more tourists from looking at booking visits to California – and thereby further slow the recovery of our embattled tourism industry.

Notably, there is also federal legislation considering this issue, which, if passed, would standardize the practices across all states and avoid any such anti-competitive concerns.

In both California and elsewhere, taxes and non-owner-imposed fees are treated differently than owner-imposed fees. For example, in Pennsylvania, the Attorney General recently signed a settlement with a large hotel chain regarding clear pricing. In that settlement, the AG required Marriott to inform consumers of so-called "hidden fees" – but *excluded taxes* from its provisions. In other words: the settlement compelled owner-imposed fees (such as "resort" or "destination" fees) to be disclosed up front, but did *not* treat taxes like those fees. Closer to home, Senator Dodd's SB 478 similarly excludes "taxes or fees imposed by a government on the transaction.

REGISTERED SUPPORT:

California Public Interest Research Group
Consumer Attorneys of California
Valley Industry and Commerce Association

REGISTERED OPPOSITION:

Airbnb, INC *(unless amended)*
California Hotel & Lodging Association *(unless amended)*
California Chamber of Commerce
California Travel Association
Expedia Group
Travel Technology Association

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