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California State Assembly

BUSINESS AND PROFESSIONS



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AGENDA

Tuesday, March 23, 2021
9 a.m. -- Assembly Chamber

BILLS HEARD IN FILE ORDER

- | | | | |
|----|---------|--------------|---|
| 1. | AB 1010 | Berman | Architects: continuing education. |
| 2. | AB 496 | Chen | Cremation of veterans with the United States flag. |
| 3. | AB 569 | Grayson | Contractors: civil penalties: letters of admonishment. |
| 4. | AB 246 | Quirk | Contractors: disciplinary actions. |
| 5. | AB 1138 | Blanca Rubio | Unlawful cannabis activity: enforcement. |
| 6. | AB 107 | Salas | Licensure: veterans and military spouses. |
| | | | |
| 7. | AB 646 | Low | Department of Consumer Affairs: boards: expunged convictions. |
| 8. | AB 723 | Low | Marriage and family therapy: scope of practice. |
| 9. | AB 1102 | Low | Telephone medical advice services. |

10.

COVID FOOTER

SUBJECT:

We encourage the public to provide written testimony before the hearing by visiting the committee website at abp.assembly.ca.gov Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted.

Due to ongoing COVID-19 safety considerations, including guidance on physical distancing, seating for this hearing will be very limited for press and for the public. All are encouraged to watch the hearing from its live stream on the Assembly's website at <https://www.assembly.ca.gov/todaysevents>.

The Capitol will be open for attendance of this hearing, but the public is strongly encouraged to participate via the web portal or phone. Any member of the public attending a hearing in the Capitol will need to wear a mask at all times while in the building. We encourage the public to monitor the committee's website for updates.

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1010 (Berman) – As Introduced February 18, 2021

SUBJECT: Architects: continuing education.

SUMMARY: Require architects to complete five hours of continuing education training on zero net carbon design for every two-year licensing period

EXISTING LAW:

- 1) Establishes the California Architects Board (CAB) within the Department of Consumer Affairs (DCA), which licenses and regulates professional architects under the Architects Practice Act. (Business and Professions Code (BPC) § 5500 *et seq.*)
- 2) Defines “architect” as a person who is licensed to practice architecture in this state under the authority of this chapter. (BPC § 5500)

THIS BILL:

- 1) Requires architects to complete five hours of continuing education training on zero net carbon design for every two-year licensing period.
- 2) Anticipated that the training would include instruction in best practices related to:
 - a) highly insulated building envelope design
 - b) deep energy retrofits of existing structures
 - c) natural ventilation and daylighting
 - d) passive solar design
 - e) advanced energy efficiency strategies
 - f) renewable energy strategies
- 3) Requires the board to adopt regulations to establish qualifications for courses and course providers by January 1, 2023.

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

COMMENTS:

Purpose. This bill is sponsored by the *American Institute of Architects, California*. According to the Author, “Recognizing the need for a holistic approach to addressing climate change, AB 1010 would require that architects licensed by the State of California complete continuing education coursework on zero net carbon design. Doing so would better enable architects practicing in California to address our rapidly evolving climate. Moreover, establishing this additional continuing education for architects will set a new standard for other states to follow, much as California has led on high performance buildings with our 2020 Net Zero Energy requirement for residential buildings, 2030 Net Zero Energy requirement for commercial buildings, and adoption of local electrification requirements in around 40+ local jurisdictions to date.”

Background.

Zero Net Carbon. The World Green Building Council (WorldGBC) defines a net zero carbon building as being 'highly efficient with all remaining energy from on-site and/or off-site renewable sources. It can be achieved using offsets or the export of on-site renewable energy, For example, exporting surplus unused energy back to the grid.

In other words, to achieve zero net carbon a balance between the greenhouse gases put into the atmosphere and those taken out occurs. This state is also referred to as carbon neutral; although zero emissions and zero carbon are slightly different, they usually mean that no emissions were produced in the first place.

Technological Advancement and Cost Reduction. Information provided by *arcCA Digest: The Journal of AIA California*, "When regulatory landscapes shift, businesses adapt". The development of new and cheaper zero carbon technologies and materials are inevitable and necessary. Existing technologies will become more efficient and economical; as-yet unimagined building systems will be developed to meet rapidly expanding market demand. One example of this effect is the solar electric industry. Despite inconsistent political support over the years, a recent MIT study reported that the cost of photovoltaic modules plummeted by 99% between 1980 and 2018, while commercially available module efficiency grew from 8% to 22% during the same period.

In addition, researchers have successfully achieved a photovoltaic cell efficiency of 46% in the lab, forecasting radical advancements in the coming years. According to Forbes Magazine and other sources, the cost of solar electric energy is already less than the cost of fossil fuel and nuclear energy production. Requiring all buildings to be net zero carbon will accelerate renewable energy research and development, transforming these once exotic technologies into standard equipment for everyday life.

Education. Although some recent graduates of architecture programs receive education in zero net carbon design, it is uneven in academia and often treated as an optional course of study. A handful of universities, including UC Berkeley and Cal Poly San Luis Obispo in California, have strong programs to prepare architects for climate crisis. While some zero net carbon design classes are currently available through the American Institute of Architects at state and national levels, they are purely voluntary.

The net result is that architects may not be fully prepared to address rapidly evolving climate realities, as well as changing statewide regulatory landscape. Climate scientists agree that our society must prepare for a zero carbon future now. Therefore we cannot hope that all architects will avail themselves of optional training.

This deficiency can be remedied through mandatory continuing education as a prerequisite for ongoing licensure. Forty five states have a mandatory continuing education requirement for architects to renew a license. Of the states that do require continuing education, only Texas has a "green" training requirement – requiring one hour per year of training in sustainable design/energy efficiency.

Adding training on zero net carbon design will educate and potentially prepare California architects to protect the health, safety, and welfare of the public by emphasizing simple,

economical design strategies to reduce carbon dioxide emissions from all new and renovated buildings in the state.

Currently, California requires five hours per two-year renewal cycle of continuing education. This training is currently focused on coursework related to accessibility, specifically the federal Americans with Disability Act (ADA) and state laws governing access.

ARGUMENTS IN SUPPORT:

According to the *American Institute of Architects*, “California has, in recent years, taken several steps to reduce our greenhouse gas emissions, and is in the process of considering additional steps, including improved codes and standards for buildings. AIA California agrees that buildings codes and standards must continue to improve to reduce the impact buildings have on our environment.

Improving the performance of buildings requires that architects – the designers of buildings – have the knowledge to design buildings according to changes to the building codes and standards and, importantly, how to design high-performing Zero Net Carbon buildings.”

AMENDMENTS:

Committee suggests making a one word amendment needed (changing “experience” to “expertise”) in two places in the bill in order to be consistent with the regulations package that the Architects Board has begun on continuing education.

5600.05. (a) (1) As a condition of license renewal, a licensee shall complete continuing education coursework pursuant to paragraph (2).

(2) (A) Five hours of coursework regarding disability access requirements. The coursework shall include information and practical guidance concerning requirements imposed by the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Coursework provided pursuant to this paragraph shall be presented by trainers or educators with knowledge and ~~experience~~ **expertise** in these requirements. The board shall promulgate regulations to establish qualifications for courses and course providers by January 1, 2023.

(B) Five hours of coursework regarding zero net carbon design. The coursework shall be presented by trainers or educators with knowledge and ~~experience~~ **expertise** in these design requirements. The board shall adopt regulations to establish qualifications for courses and course providers by January 1, 2023.

REGISTERED SUPPORT:

American Institute of Architects

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Danielle Sires / B. & P. / (916) 319-3301

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 496 (Chen) – As Introduced February 9, 2021

SUBJECT: Cremation of veterans with the United States flag.

SUMMARY: Authorizes a crematory to cremate a single American flag along with the remains of a person who was a member of a branch of the United States military.

EXISTING LAW:

- 1) Establishes the Cemetery and Funeral Bureau (Bureau) under the Department of Consumer Affairs to license and regulate crematories, cremated remains disposers, cemeteries, cemetery managers, cemetery salespersons, cemetery brokers, funeral establishments, funeral directors and embalmers (Business and Professions Code (BPC) Section 7600 et seq).
- 2) Requires a crematory regulated by the Bureau to only cremate human remains in cremation chambers, along with the cremation container, personal effects of the deceased, and no more than a negligible amount of chlorinated plastic pouches used for disease control when necessary (Health and Safety Code (HSC) Section 8344.5(a)).
- 3) Specifies an exception to HSC Section 8344.5(a) and allows a crematory to incinerate one or more American flags under the following conditions:
 - a. Incineration of the flag or flags is performed separately from the cremation of human remains;
 - b. Incineration of the flag or flags is in accordance with Section 8(k) of Title 4 of the United States Code, which provides that a flag be destroyed in a dignified way when it is in such condition that it is no longer a fitting emblem for display;
 - c. Incineration of the flag or flags occurs within one week before or after President's Day, Memorial Day, Flag Day, Independence Day or Veterans' Day (HSC Section 8344.5(b)).
- 4) Requires a crematory to maintain on its premises accurate records of all the American flags incinerated. The information to be maintained includes (HSC Section 8344.6):
 - a. Name of the organization or person requesting incineration;
 - b. Date of incineration;
 - c. Name of the cremation chamber operator.
 - d. Time and date that the flag or flags were inserted and removed from the cremation chamber;
 - e. Weight of the ashes after incineration;

- f. Disposition of the ashes of the incinerated flag or flags
- 5) Requires a crematory to maintain records on incinerated American flags for at least 10 years after incineration, with these records subject to inspection by the Bureau (HSC Section 8344.6 (b)).

EXISTING FEDERAL LAW:

- 1) Describes the role and proper use of the American flag, including handling, displaying, and appropriate conduct during ceremonies involving a flag (4 United States Code (U.S.C.) Section 8 et seq).
- 2) Recommends that an American flag, when in such condition that it is no longer a fitting emblem for display, should be retired in a dignified way, preferably by burning (4 U.S.C. Section 8(k)).

THIS BILL:

- 1) Authorizes a crematory, upon request, to cremate the remains of a person who was a member of a branch of the United States military with a single American flag.
- 2) Exempts flags that are incinerated with a member of a branch of the United States military from the record-keeping requirements established in HSC Section 8344.6.

FISCAL EFFECT: Unknown. This bill is not keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is author sponsored. According to the author: “As the first Purple Heart state in the country, California is home to the largest population of veterans with 1.7 million veterans residing in the state. Home to a total of 32 military bases, California has been proud of the commitment made to veterans both during life, and after death. In gratitude of their incredible valor, and in a deserving moment of final respect, service members should be allowed to be cremated with an American flag draped over their body.

Currently, there is no statute that formalizes and protects this request but AB 496 would help avoid any confusion about the request of having the veteran cremated with an American flag draped over their body while simultaneously alleviating the family’s heartache during a difficult time of grieving.”

Background.

History of the United States Flag Code. Early records of the U.S flag code can be traced back to 1923, when a coalition of over 60 organizations that included the American Legion, the Boy Scouts of America, the American Library Association, and other civic and veteran groups, published the first etiquette guidelines for the American flag. The document aimed to bring together the many traditions and customs involving the flag, and is often credited as the foundation for what would eventually become the United States Flag Code, adopted by Congress in 1942.

The Flag Code, which was amended multiple times over the decades, covers a wide range of topics related to the appropriate use and display of the American flag. These include how individuals

should salute the flag during the recitation of the Pledge of Allegiance; the proper time, occasion, and manner of displaying a flag; and general guidelines on respecting the flag as an important patriotic symbol.

In some states, disrespecting and desecrating an American flag was considered a crime, but the Supreme Court ruled in the case of *Texas v. Johnson* in 1989 that anti-desecration laws violated the First Amendment right to free speech. Today, the United States Flag Code is generally considered an advisory set of rules.

Flag Retirement and Disposal. The United States Code sets forth that an American flag, “when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.” Today, many organizations offer flag collection and retirement services, allowing individuals to dispose of old, worn, torn, or faded flags in a respectful manner.

To that end, these organizations have developed special flag retirement ceremonies. For example, the American Legion holds its Unserviceable Flags Ceremonies, usually on Flag Day, June 14, in which flags are burned at night and outdoors in a pyre, following a formal and dignified process. Similarly, the Girl Scouts of America’s retirement ceremonies are typically held at sunset, where the flags escorted by a color guard and given a final tribute before being burned and retired. Generally, these retirement ceremonies all involve burning large outdoor fires, in order to ensure complete and proper incineration of the flags.

Use of Crematories for Flag Disposal. Over the years, the manufacturing process for flags has evolved, moving from cotton as a base material to more resistant petroleum-based fabrics, such as nylon. As a result, some concerns have emerged about burning synthetic materials during flag retirement ceremonies, which may create toxic and hazardous byproduct fumes.

SB 119 (Calderon, Chapter 205, Statutes of 2013) was enacted into law to address these concerns. The law permits the incineration of American flags in crematories licensed by the Bureau for the purpose of retirement. Cremation of flags could occur only one week before or after Memorial Day, Flag Day, and Independence Day. AB 2134 (Chen, Chapter 72, Statutes of 2020) expanded flag cremation dates to also include one week before or after Veterans’ Day and Presidents’ Day. These legislative changes provided an additional option for individuals to retire flags in the controlled and safe environment of a cremation chamber. Today, many California crematories offer flag retirement programs, in which worn-out flags are collected or donated, stored, and ceremonially cremated.

Cremation Process and California Requirements. Cremation refers to the process in which the body of a deceased person is incinerated using intense heat. Generally, the body is placed in an industrial grade furnace –known as a cremation chamber –which uses temperatures ranging between 760 and 870 degrees Celsius, or approximately 1400 and 1800 Fahrenheit. The resulting heat and additional mechanical processes reduce the body to pulverized bone fragments and minerals, often referred to as cremated ashes. In some instances, foreign materials such as prosthetics or dental implants remain, which are swept and removed. The cremated ashes are then placed into an urn.

Crematories regulated by the Bureau must adhere to strict procedural rules and standards. With the exception of flags, a crematory can only cremate human remains, along with the cremation

container and the personal effects of the deceased person. A crematory may use a negligible amount of chlorinated plastic pouches for the purpose of disease control when necessary.

Licensed crematories must also keep an accurate record of all cremations performed, including the name of referring funeral director, the name of deceased, the date of cremation, the name of cremation chamber operator, the time and date that body was inserted in and removed from the cremation chamber, the time and date that final processing of cremated remains was completed, the disposition of cremated remains, the name and address of authorizing agent, the identification number assigned to the deceased pursuant to HSC Section 8344, and a photocopy of the disposition permit filed in connection with the disposition.

These record-keeping requirements also extend to any American flags incinerated by the crematory. HSC Section 8344.6 specifies that a crematory must keep an accurate record of the name of the organization or person requesting incineration of the flag or flags, the date of incineration of the flag or flags, the name of the cremation chamber operator, the time and date that the flag or flags were inserted in and removed from the cremation chamber, the weight of the ashes of the flag or flags after being removed from the cremation chamber, and the disposition of the ashes of the incinerated flag or flags.

Proposed Legislative Changes. This bill clarifies that upon request, a crematory may cremate the remains of a person who was a member of a branch of the United States military with a single American flag. According to the author, this bill will clarify any confusion about a request to have a veteran cremated with an American flag draped over their body. In addition, the bill would exempt such flags from the record-keeping requirements established in HSC Section 8344.6.

Current Related Legislation. None.

Prior Related Legislation.

SB 199 (Calderon, Chapter 205, Statutes of 2013) – Authorized the incineration of one or more American flags, performed separately from the cremation of human remains and in accordance with specified federal law, during the periods within one week before or after specified holidays.

AB 2134 (Chen, Chapter 72, Statutes of 2020) – Expanded flag cremation dates to also include one week before or after Veterans’ Day and Presidents’ Day.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Patrick Le / B. & P. / (916) 319-3301

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 569 (Grayson) – As Introduced February 11, 2021

SUBJECT: Contractors: civil penalties: letters of admonishment.

SUMMARY: Increases the maximum civil penalty amounts that can be assessed against licensed contractors for violations of the Contractors State License Law consistent with changes in the Consumer Price Index. Authorizes the Contractors State License Board to issue a Letter of Admonishment in lieu of a citation for multiple violations at a time.

EXISTING LAW:

- 1) Provides for the licensure and regulation of contractors by the Contractors State License Board (Board of CSLB), pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code (BPC). Provides for the appointment of a registrar of contractors to carry out the administrative duties of the Board.
- 2) Provides that if, upon investigation, the registrar has probable cause to believe that a licensee, or an applicant for a license, has committed any acts or omissions which are grounds for denial, revocation, or suspension of a license, a citation may be issued. Among other requirements, provides that the citation may contain a civil penalty assessment.
- 3) Requires the Board promulgate regulations for the assessment of civil penalties according to the appropriateness of the penalty that considers the gravity of the violation, the good faith of the licensee or applicant offender, and the history of previous violations.
- 4) Provides that the Board shall issue no civil penalty in an amount greater than \$5,000, except for a violation of BPC § 7114 (aiding, abetting, or conspiring with an unlicensed person to evade the law) or § 7118 (entering a contract with unlicensed contractor), in which cases a civil penalty not to exceed \$15,000 may be assessed.
- 5) Provides that the registrar may, in lieu of a citation, issue a letter of admonishment that informs of an alleged violation, and allows the recipient to submit a written corrective action plan to the registrar documenting compliance. The letter of admonishment is appealable and is not construed as a disciplinary action.
- 6) Provides several circumstances in which the registrar shall not issue a letter of admonishment in a case, for example if the contractor is unlicensed, or has a history of violations, there is financial harm, elder abuse, a natural disaster has occurred, or multiple violations were established.

THIS BILL:

- 1) Changes the maximum amount for which the Board may issue a civil penalty from \$5,000 to \$8,000 for most violations, and from \$15,000 to \$30,000 for a violation of BPC § 7114 (aiding, abetting, or conspiring with an unlicensed person to evade the law) or § 7118 (entering a contract with unlicensed contractor).

- 2) Includes a violation of BPC 7125.4 (Filing of a false exemption from workers' compensation insurance or employment of any person without proof of workers' compensation coverage or providing for such coverage) among the violations for which a \$30,000 citation may issue.
- 3) Deletes the provision in existing law that precludes the Board from issuing a Letter of Admonishment in cases where multiple violations have been established.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by legislative counsel.

COMMENTS:

Purpose.

This bill is sponsored by the *Contractors State License Board*. According to the Author, "The civil penalty assessment caps in BPC §7099.2(b) should be increased to reflect current economic conditions... Additionally, BPC § 7125.4 should be included with the violation-specific penalty assessments listed in BPC § 7099.2(b) to reflect the severity of this violation and better command licensee compliance with [workers' compensation] laws." (Contractors State License Board, board meeting packet; December 12, 2019, Sacramento, California, page 28)

Regarding striking the limitation of the Letter of Admonishment to a single violation, the Board states, "the inability to use [a Letter of Admonishment] for multiple violations often results in a citation for non-egregious violations, which is a costly program for CSLB to administer and delays resolution for the consumer and compliance by the contractor." (Id., page 31)

Background.

Enforcement and Citation Background: According to the Board, about 3% of its licensed contractors are subject to enforcement complaints every year. When a CSLB complaint investigation establishes that a serious violation has occurred, the registrar may issue an administrative citation against a contractor license. The citation can include an order to make restitution to an injured party, and/or to pay a civil penalty of up to \$5,000 for a violation by a licensee. Egregious violations may be assessed to pay a civil penalty of up to \$15,000. In 2019, CSLB's Citation Enforcement Section issued 1,631 citations: 925 to licensees and 706 to non-licensed contractors. Licensed and unlicensed contractors can appeal a citation. Appeals are heard before an administrative law judge, where CSLB is represented by the Office of the Attorney General (AG).

Increasing Civil Penalty Caps: According to the Board, a contractor's appeal of a citation civil penalty costs the CSLB around \$10,000 to defend in court with the Attorney General's Office with additional expenses from the Office of Administrative Hearings around \$5,000 per case, or up to \$10,000 or more if the case is appealed.

According to the Board, the \$5,000 maximum general cap on civil penalty assessments was last increased in 2003, for only the second time since being instituted 40 years ago. The \$15,000 violation-specific cap has never been increased since it was instituted in 1992, 27 years ago.

The Consumer Price Index (CPI) As described by the Department of Industrial Relations, the CPI is used as a measure of the average change over time in the prices paid by urban consumers for a fixed market basket of goods and services. The CPI provides a way to compare what this market basket of

goods and services costs on a given month with what the same market basket cost at another past point in time.

The CPI has increased around 94% (Urban Consumers and Urban Wage Earners and Clerical Workers between December 1992 and October 2020) since the \$15,000 civil penalty cap for egregious violations was instituted in 1992. A 94% increase from \$15,000 is approximately \$29,100. This bill sets the new cap for egregious violations at \$30,000, a round figure that allows for future increases in the CPI.

The CPI has increased around 51% (Urban Consumers and Urban Wage Earners and Clerical Workers between December 2003 and October 2020) since the \$5,000 civil penalty cap for most CSLB violations was instituted in 2003. A 51% increase from \$5,000 is approximately \$7,550. This bill sets the new cap for most CSLB violations at \$8,000, a round figure that allows for future increases in the CPI.

The Addition of Workers' Compensation Insurance Violations to the Higher Penalty Range: Current law provides that the \$15,000 maximum civil penalty (as proposed to be increased to \$30,000 under this bill) be reserved for violations of BPC § 7114 and 7118 (aiding, abetting, or conspiring with an unlicensed person to evade the law, and entering a contract with unlicensed contractor), apparently making a legislative declaration as to the seriousness of those violations.

This bill would include a violation of BPC § 7125.4 (filing of a false workers' compensation certificate with the Board or employing anyone without workers' compensation coverage in violation of California workers' compensation laws) among the violations for which the Board may assess a higher civil penalty (as proposed to be increased to \$30,000 under this bill).

According to the Board, the current \$5,000 (or \$8,000 as proposed under this bill) maximum civil penalty assessment for a contractor's violation of workers' compensation insurance requirements does not accurately reflect current economic conditions in the state's construction industry or reflect the seriousness of the violation. For example, the possibility of a \$5,000 civil penalty for not carrying workers' compensation insurance is a small price to pay in exchange for saving thousands of dollars each year in insurance premiums for any contractor who employs workers' without providing workers' compensation insurance for them.

The Board reports that a licensee's failure to obtain a workers' compensation insurance policy and/or having a false exemption on file is a widespread issue among contractors. CSLB has worked to address the problem for many years, including creating a workers' compensation advisory committee of the Board in 2017, raising the problem as a new issue in its December 2018 Sunset Review Report to the Legislature, and sponsoring a legislative bill in 2021 to extend to more contractors the requirement that proof of workers' compensation insurance be on file with the Board (SB 216, Dodd).

Letter of Admonishment: CSLB began to use letters of admonishment (LOA) after July 1, 2018. Authorized by SB 486 (Monning), LOAs an intermediate level of corrective action, between an advisory notice and a citation, used with licensed contractors who have engaged in less egregious violations. Recipients may appeal a letter of admonishment, which are handled internally by CSLB without a formal hearing. Letters of admonishment are not considered discipline, and are intended to enhance public protection by both requiring prompt corrective action by the recipient and disclosing the violation to the public for one year (compared to a five-year disclosure for a citation).

Currently, the LOA may only be issued for a single violation. According to the Board, many of CSLB's consumer complaint investigations establish multiple minor, non-hazardous, or non-egregious violations. Such investigations for closure with a LOA, particularly one that includes a corrective action plan (e.g. take the online building code compliance training and provide evidence of an appropriate home improvement contract); but statutory restrictions preclude that option. The Board reports an unintended consequence of this restriction has been that field investigators who establish multiple minor violations and elect to use an LOA will select only one of those violations. Any other minor violations established in their investigation will be disregarded and not captured in CSLB's database making them unavailable for reference, disclosable to the public, or for use in subsequent investigations of the same violator.

Prior Related Legislation.

AB 3240 (Eastin). Chapter 606, Statutes of 1992. Authorized a civil penalty of fifteen thousand dollars (\$15,000) to be assessed for a violation of Section 7114 or 7118. Previously, all violations regardless of type were capped at \$2,000.

AB 1382 (Correa). Chaptered by Secretary of State - Chapter 363, Statutes of 2003. Increased from \$2,000 to \$5,000 the amount which the Board may not exceed when assessing civil penalties for specified violations of the Contractors Law.

ARGUMENTS IN SUPPORT:

According to the *Construction Employer's Association (CEA)*, "On behalf of the (CEA), which is comprised of over 100 of the largest union-affiliated building contractors in the state who perform in excess of \$30 billion annually in construction volume, I am writing to express CEA's support for your measure AB 569.

[This bill] would raise CSLB penalty amounts for the first time in at least a decade. CEA believes that the increase will create a greater deterrence for unscrupulous contractors and subcontractors who may currently violate laws and regulations because existing penalty amounts are relatively low. Violating these laws and regulations jeopardizes worker safety, harms project owners and creates an unlevel playing field versus legitimate contractors."

REGISTERED SUPPORT:

Contractors State License Board (Sponsor)
California Pool & Spa Association
Construction Employers' Association
Flasher Barricade Association
Housing Contractors of California
Plumbing-heating-cooling Contractors Association of California
Pool & Hot Tub Alliance

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Danielle Sires / B. & P. / (916) 319-3301

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 246 (Quirk) – As Introduced January 13, 2021

SUBJECT: Contractors: disciplinary actions.

SUMMARY: Provides the Contractors State License Board (CSLB) the authority to take disciplinary action against licensed contractors found to have illegally dumped construction material or debris.

EXISTING LAW:

- 1) Establishes the Contractors State License Board (CSLB or Board) under the Department of Consumer Affairs to license and regulate contractors and home improvement salespersons. (Business and Professions Code (BPC) § 7000 et seq.)
- 2) Authorizes the registrar of the Board to investigate the actions of any contractor within the state and cite, temporarily suspend, or permanently revoke any license or registration if licensee or registrant is guilty of or commits any one or more of the acts or omissions in the Contractors State License Law constituting causes for disciplinary action. (BPC § 7090)
- 3) Provides that willful or deliberate disregard by a licensed contractor of various state building, labor, and safety laws that exist outside of the Contractors State License Law (i.e., outside of BPC § 7000 et seq.) are a cause for disciplinary action of a licensed contractor by the Board. (BPC § 7110)
- 4) Separately from the Contractors State License Law, provides in Section 374.3 of the Penal Code, that it is unlawful for any person dump waste in a manner proscribed by the section.

THIS BILL:

- 1) Would reorganize the provisions of BPC § 7110 from a paragraph to an enumerated form with subdivisions and adds illegal dumping to the list of violations that constitute a cause for disciplinary action against a contractor by the Contractors State License Board.
- 2) Would add to the list violations – the willful or deliberate disregard by a licensed contractor is a cause of disciplinary action by the Board – a licensed contractor’s violation of Section 374.3 of the Penal Code.

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

COMMENTS:

Purpose. This bill is sponsored by the *Contractors State License Board*. According to the Author, “Illegal dumping is a huge issue state-wide and impacts public health, public safety, property, and the overall quality of our environment. Cities across the state are identifying popular areas for illegal dumping – alleys, unoccupied property and in some instances, sidewalks. Material illegally dumped ranges from mattresses and discarded electronics to more hazardous items like batteries. Local governments and district attorneys have reported that

discarded construction material is also being illegally dumped. Construction material can consist of asphalt, concrete, paint, drywall, lumber, brick, rock, ceramics, and metal of all types.

While the growing amount of illegal dumping is of concern to local governments, there are several challenges in attacking this problem. AB 246 provides another tool to address this growing concern. Specifically this bill will grant the CSLB authority to discipline licensees who have illegally dumped illegal construction material or debris.”

Background. Under existing law the CSLB has no direct authority to discipline the license of a contractor responsible for the unlawful dumping of construction debris, because that act is not a violation of the Contractors State License Law.

As a result, this bill would add the act of “illegal dumping” in violation of a state or local law to the statute that allows CSLB to the existing statute that allows CSLB to discipline licensees for violations of the law that exist outside of its practice act (such as Penal Code § 374.3).

According to the Contractors State License Board (sponsor), the CSLB would rely on the finding of a local or state agency that the Penal Code dumping section was violated as the necessary evidence to take disciplinary action against the license.

Prior Related Legislation.

AB 2368 (Quirk), 2020. This bill was referred to Assembly Business and Professions Committee but was never set for a hearing.

ARGUMENTS IN SUPPORT:

According to the *Contractors State License Board*, “There is evidence that unlawful dumping of construction debris by licensed contractors is a problem in California and it is going unaddressed. Illegal dumping poses health, safety, and environmental concerns within our communities. Currently, contractors illegally dumping construction materials is not a violation of the Contractors State License Law.

By making such activity a violation of the Board’s practice act, AB 246 will provide CSLB direct authority to hold contractors accountable for this activity. To do so, CSLB would use an illegal dumping finding by another government entity to support an administrative disciplinary action against the contractor’s license. AB 246 will ensure the contractor’s license can be disciplined for illegal dumping to help deter contractors from engaging in this behavior.”

According to the *Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force)*, “The Task Force supports the proposed legislation as the bill would help to deter illegal dumping and helps to ensure that waste is properly processed, reducing environmental damage and public health risks. Illegal dumping has significant social, environmental, and economic impacts statewide. California local governments spend tens of millions of dollars annually to remove and clean up illegally dumped materials.”

REGISTERED SUPPORT:

Contractors State License Board (Sponsor)

California Pool & Spa Association

Flasher Barricade Association

Housing Contractors of California

Los Angeles County Solid Waste Management Committee/integrated Waste Management Task Force

National Stewardship Action Council

Plumbing-heating-cooling Contractors Association of California

Pool & Hot Tub Alliance

Republic Services - Western Region

Western Electrical Contractors Association

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Danielle Sires / B. & P. / (916) 319-3301

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1138 (Blanca Rubio) – As Introduced February 18, 2021

SUBJECT: Unlawful cannabis activity: enforcement.

SUMMARY: Subjects any person who aids and abets unlicensed commercial cannabis activity to civil penalties of up to \$30,000 per day.

EXISTING LAW:

- 1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act 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 al.*)
- 2) Provides for twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness; requires each licensee except for testing laboratories to clearly designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)
- 3) Establishes the Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, previously named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, for purposes of regulating microbusinesses, transportation, storage, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC § 26010)
- 4) Requires the BCC 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) Provides the Department of Food and Agriculture with responsibility for regulating cannabis cultivators. (BPC § 26060)
- 6) Provides the Department of Public Health with responsibility for regulating cannabis manufacturers. (BPC § 26130)
- 7) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements as well as local laws and ordinances. (BPC § 26030)
- 8) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)
- 9) Requires that all advertisements and marketing accurately and legibly identify the licensee responsible for its content, by adding, at a minimum, the licensee's license number, and

prohibits a technology platform from displaying an advertisement by a licensee on an Internet Web page unless the advertisement displays the license number. (BPC § 26151)

- 10) Prohibits a licensee from publishing or disseminating advertisements or marketing of cannabis and cannabis products while the licensee's license is suspended. (BPC § 26152)
- 11) Authorizes the Legislature to, by majority vote, enact laws to implement the state's regulatory scheme for cannabis if those laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64). (BPC § 26000)
- 12) Provides that all persons concerned in the commission of a crime, including those who aid and abet in its commission, are principals in that crime. (Penal Code § 31)

THIS BILL:

- 1) Subjects a person aiding and abetting unlicensed commercial cannabis activity to civil penalties of up to \$30,000 for each violation.
- 2) Provides that each day of operation of unlicensed commercial cannabis activity that a person is found to have aided and abetted shall constitute a separate violation.
- 3) Allows for cannabis associated with an aiding and abetting violation to be destroyed, and that the person in violation shall be responsible for the cost of the destruction of cannabis associated with their violation.
- 4) Provides for a three year statute of limitations for an action for civil penalties from the date of discovery of the violation by a licensing authority or a participating agency.
- 5) Requires civil penalties imposed and collected pursuant to this bill to be deposited into the General Fund, except that actions brought by the Attorney General, a district attorney, or a county counsel shall first be used to reimburse the prosecuting agency.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel. Because the bill authorizing the expenditure of civil penalties, which are general funds, to be used to reimburse the Attorney General and the licensing authority or participating agency, the bill would make an appropriation.

COMMENTS:

Purpose. This bill is co-sponsored by the **United Cannabis Business Association** and **United Food and Commercial Workers, Western States Council**. According to the author:

This legislation is important to ensure that our communities are protected from unlicensed and illegal cannabis operations. Currently, there are thousands of advertisements for illegal cannabis operations in the state. We are putting the public at risk because we are allowing for these illegal advertisements for cannabis operators that are not testing their products. The unlicensed market also worsens California's fiscal standing by allowing large amounts of tax revenue to go uncollected, hindering one of the main elements of Proposition 64. This legislation will ensure that our communities are protected.

Background.

Early 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. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Proposition 215 also included findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

The regulatory scheme for medicinal cannabis was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program (MMP.) Under the MMP, qualified patients were eligible to obtain a voluntary medical marijuana patient card, which could be used to verify that the patient or a caregiver had authorization to cultivate, possess, transport, or use medicinal cannabis. The MMP's identification cards were intended to help law enforcement officers identify and verify that cardholders were allowed to cultivate, possess, or transport limited amounts of cannabis without being subject to arrest. The MMP also created protections for qualified patients and primary caregivers from prosecution for the formation of collectives and cooperatives for medicinal cannabis cultivation.

Without the adoption of a formal framework to provide for state licensure and regulation of medicinal cannabis, a proliferation of informally regulated cannabis collectives and cooperatives were largely left to the enforcement of local governments. As a result, a patchwork of local regulations was created with little statewide involvement. More restrictive laws and ordinances by cities and counties were ultimately upheld by the California Supreme Court in *City of Riverside v. Inland Empire Patients* (2013) 56 Cal. 4th 729, which held that state law did not expressly or implicitly limit the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medicinal cannabis be prohibited from operating within its borders.

Even after several years of allowable 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. The constant threat of action by the federal government created apprehension among California's cannabis community.

A document issued by the United States Attorney General in 2013 known as the "Cole memorandum" indicated that the existence of a strong and effective state regulatory system, and a cannabis operation's compliance with such a system, could allay the threat of federal enforcement interests. Federal prosecutors were urged under the memo to review cannabis cases on a case-by-case basis and consider whether a cannabis operation was in compliance with a strong and effective state regulatory system prior to prosecution. The memo was followed by Congress's passage of the Rohrabacher-Farr amendment, which prohibits the United States Department of Justice from interceding in state efforts to implement medicinal cannabis.

MCRSA. After several 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 consisted of a package of

legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). 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 to be administered by the newly established BCC within the Department of Consumer Affairs, the CDPH, and the CDFA, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

- The BCC to license and regulate dispensaries, distributors, transporters, and (subsequently) testing laboratories, and to provide oversight for the state's regulatory framework;
- The CDPH to license and regulate manufacturers; and
- The CDFA to license and regulate cultivators.

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 may also choose to ban cannabis establishments altogether.

AUMA. 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 law retained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

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 addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that were scheduled to take effect on the same date. The same agencies given authority under MCRSA remained responsible for implementing regulations for adult use.

Under the AUMA, the BCC within the Department of Consumer Affairs continues to serve as the lead regulatory agency for all cannabis, both medicinal and non-medicinal. The AUMA includes 19 different license types compared to the original 17 in MCRSA, and provides the Department of Consumer Affairs (and the BCC) with exclusive authority to license and regulate the transportation of cannabis. The AUMA also authorizes vertical integration models which allows for the holding of multiple license types, as previously prohibited under MCRSA. Additionally, while MCRSA required both a state and local license to operate, the AUMA only stipulated a state license; however, the state is also directed not to issue a license to an applicant if it would "violate the provisions of any local ordinance or regulation."

The language of the AUMA allows for legislative modifications that "implement" or "give practical effect" to the law by a majority vote. However, what constitutes "implementing" has

been interpreted to be limited. Consequently, proposed changes to the voters' intent in the AUMA require a two-thirds vote and of those, some may be deemed to require voter approval.

MAUCRSA. In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced 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 and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

Regulations. On January 16, 2019, the state's three cannabis licensing authorities—the BCC, the CDPH, and the CDFA—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively. These final regulations replaced emergency regulations that had previously been in place, and made various changes to earlier requirements following the public rulemaking process. The adoption of final rules provided a sense of finality to the state's long history in providing for the regulation of lawful cannabis sale and use.

Consolidation of Regulatory Entities. In early 2021, the Department of Finance released trailer bill language proposing to create a new Department of Cannabis Control with centralized authority for cannabis licensing and enforcement activities. This new department would be created through a consolidation of the three current licensing authorities' current programs. If the proposed reorganization is successful, there will likely need to be additional rulemaking to reconcile the state's regulations with the newly created department.

Regulation of Advertisements and Marketing. Existing law generally requires that all advertisements and marketing of cannabis businesses display information regarding the licensee responsible for the content, which must include "the licensee's license number." This requirement applies to all cannabis-related advertising, which must also be "truthful and appropriately substantiated." Advertising and marketing in broadcast, cable, radio, print, and digital communications is limited to venues where at least 71.6 percent of the audience is reasonably expected to be 21 years of age or older, and direct marketing must verify age.

The requirement that all advertisers verify and display a cannabis business's state license has resulted in regulatory scrutiny, as many platforms and publishers have been accused of shirking the law. In February of 2018, the Assembly Committee on Business and Professions held an informational hearing entitled *Cannabis Regulation: An Update on Statewide Implementation*. During this hearing, legislators cited specific examples of cannabis advertising where license numbers did not appear to be displayed. In May of 2018, the City of Sacramento put a local weekly newspaper on notice for advertising cannabis businesses that did not appear to be licensed. The city issued a similar threat to a popular internet site aimed at marketing local cannabis retailers, which did not consistently display current license numbers on its pages.

Internet Advertising and Enforceability. In addition to general provisions governing the advertising and marketing of cannabis businesses, statute further specifies that "a technology platform shall not display an advertisement by a licensee on an Internet Web page unless the advertisement displays the license number of the licensee." In the wake of the development of California's legal cannabis market, a number of online advertisers have begun soliciting and

accepting agreements to advertise cannabis businesses such as dispensaries and retail stores. Public awareness of websites that exclusively advertise cannabis-related businesses has grown alongside the state's regulatory scheme, as a series of tech startups have competed for market share dominance in a burgeoning industry.

Meanwhile, regulators and policymakers have criticized higher-profile internet platforms engaged in cannabis business advertising for circumventing state laws and regulations, including the requirement that webpages feature the license number of any advertised cannabis licensee. Adding confusion to these criticisms was the lack of clarity about how technology platforms are expected to comply with the law when some dispensaries – including collectives and cooperatives currently operating under a legal grace period – operate lawfully but do not possess state license numbers. The author believes that because these advertisers would arguably be “aiding and abetting” the sale of unlicensed cannabis, this bill would provide for a reliable cause of action against both traditional and internet media advertisers who knowingly help market or otherwise facilitate the purchase of illicit cannabis and cannabis products.

A productive discussion has been sustained between internet platforms and state regulators in regards to how cannabis businesses' license statuses should be verified and displayed for businesses that advertise online. For example, one major advertiser of cannabis and cannabis products recently announced that it had purged all unlicensed businesses from its site voluntarily. However, these conversations have taken place within a shadow of doubt as to whether the state has authority to enforce its requirements against websites. A federal law commonly referred to as Section 230 of the Communications Decency Act (CDA § 230) has been traditionally interpreted by courts as providing broad immunity for internet service providers and internet websites against responsibility for content posted by third parties. Specifically, 47 U.S.C. § 230 states that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

CDA § 230 has been cited by a number of websites that allow third party users to directly upload and manage their own content. First Amendment advocates believe this legal shield is critical as the internet continues to serve as a bastion of free speech. Numerous mainstream sites frequently cite the federal law whenever criticisms of user-generated content are levied, with an insistence that good actors take voluntary steps to prevent illicit site activity but that internet companies are themselves incapable of being held legally responsible for that activity.

In October of 2016, California Attorney General Kamala D. Harris filed criminal charges against corporate officers for the website Backpage.com, formally bringing allegations that the site had long willfully enabled sex trafficking and prostitution by criminal enterprises. State prosecutors acknowledged the obstacles posed by CDA § 230 in their effort to hold Backpage accountable for its engagement in unlawful activity. Initial filings included accusations of deliberate participation in the illegalities executed through the site, offering evidence that Backpage derived the overwhelming majority of its revenue from the site's “adult” section and created content for affiliated sites linked to sex trafficking. Nevertheless, it was ruled that Backpage was still immunized against responsibility for criminal content on the site due to CDA § 230.

Ultimately, Congress passed H.R. 1895, referred to as “FOSTA-SESTA,” which specifically exempted advertisements for prostitution from the protections offered under CDA § 230. Following the bill's signature into federal law, the CEO of Backpage entered into a plea agreement for conspiracy and money laundering, and the website was finally shut down.

However, the amendments made to CDA § 230 very specifically targeted sex trafficking advertisements like those under Backpage, and the federal law remains a substantial impediment to enforcement against advertisers of cannabis businesses.

It is worth noting that MAUCRSA's advertisement and marketing requirements do not only apply to internet platforms dealing exclusively in cannabis business listings. Domains frequently included in the Alexa Top 50 websites visited in the United States that advertise mainstream businesses like restaurants, service professionals, and retail stores include local listings for cannabis businesses. Like with cannabis-specific platforms, these websites frequently do not list license numbers for dispensaries and cannabis retailers. If regulators were to broaden their enforcement efforts to include these kinds of major websites, it is likely that CDA § 230 would be cited in their defense as well.

Prior Related Legislation. AB 2122 (B. Rubio) was substantially similar to this bill. *This bill failed passage in the Senate Judiciary Committee.*

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

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.

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

ARGUMENTS IN SUPPORT:

The **United Cannabis Business Association (UCBA)** is co-sponsoring this bill. According to UCBA, "this legislation brings much needed support in enforcement which will be utilized to limit access to the untested, untraceable, untaxed and often dangerous products flowing through illicit stores every single day." UCBA writes, "the illicit cannabis market must be shut down to ensure that legal operators can see an increase of patients and consumers which creates union jobs, and increase revenue for childcare workers."

The **United Food and Commercial Workers Western States Council (UFCW)** is also co-sponsoring this bill. UFCW states: "This bill will ensure that illegal and unlicensed cannabis operators will not be able to advertise on an internet website, online service, online application, or mobile application." UFCW argues that "this is a public safety issue. The interests of these advertising and marketing platforms to profit from unlicensed and untaxed cannabis advertisers should not override the protection of the public."

ARGUMENTS IN OPPOSITION:

Drug Policy Alliance (DPA) opposes this bill. According to DPA, "while we agree with efforts to continue refining the regulatory enforcement tools for administration of the cannabis program, we have concerns with the legislation." DPA writes that the bill's proposed fines "marginalize those individuals with no added benefit in incentivizing regulatory compliance by the principal

equity stakeholders. Fines expose those individuals, who are often working for modest hourly wages, to drivers' license suspension, arrest, jail, and wage garnishment. as presently drafted." DPA further argues that "we are also concerned that the bill would allow proceeds of enforcement efforts to be retained by the Attorney General and local prosecuting entities rather than returned to the General Fund. In this way, it may result, in some cases, of inequitably aggressive enforcement efforts in some communities in an effort to increase the Attorney General's budget at a time when we must do more to reduce the law-enforcement role in policing while reinvesting in social services, public health and harm-reduction services."

REGISTERED SUPPORT:

United Food and Commercial Workers Western States Council (*co-sponsor*)

United Cannabis Business Association (*co-sponsor*)

Angeles Emeralds

Body and Mind

CMG/Caliva

Long Beach Collective Association

San Francisco Cannabis Retailers Alliance

Social Equity LA

Southern California Coalition

REGISTERED OPPOSITION:

Drug Policy Alliance

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

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 107 (Salas) – As Amended February 25, 2021

SUBJECT: Licensure: veterans and military spouses.

SUMMARY: Adds ten Department of Consumer Affairs (DCA) licensing boards to the existing list of boards that are required to issue temporary licenses to the spouses of active-duty members of the U.S. Armed Forces, as specified; requires all other DCA boards to issue permanent licenses to applicants who meet similar requirements; and requires the Department of Veterans Affairs, the DCA, the Commission on Teacher Credentialing, the Department of Real Estate, and the Department of Public Health to include specified licensing information relating to service members, spouses, and veterans on their websites and annually report specified licensing information to the Legislature.

EXISTING LAW:

- 1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Provides for the regulation and licensure of various professions and vocations by boards, bureaus, and other entities within the DCA. (BPC §§ 100-144.5)
- 3) Defines “board,” as used in the BPC, as the board in which the administration of the provision is vested, and unless otherwise expressly provided, includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.” (BPC § 22)
- 4) Requires that any licensee or registrant of any board, commission, or bureau within the DCA whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces, may, upon application, reinstate their license or registration without examination or penalty. (BPC § 114)
- 5) Requires every board within the DCA to waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard. (BPC § 114.3)
- 6) Requires a DCA board to inquire in every license application if the individual applying for licensure is serving in, or has previously served in, the military and, if the board’s governing law authorizes veterans to apply military experience and training towards licensure requirements, to post information on the board’s website about the ability of veteran applicants to apply military experience and training towards licensure requirements. (BPC § 114.5)
- 7) Requires a DCA board to expedite the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged. (BPC § 115.4)

- 8) Requires a DCA board to expedite the licensure process for an applicant who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and who holds a current license in another state, district, or territory of the United States in the profession or vocation for which they are seeking a license from the board. (BPC § 115.5)
- 9) Requires seven DCA boards to, after appropriate investigation, issue temporary licenses to an applicant, if the applicant meets specified requirements, including, among other things, that
 - 1) the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders;
 - 2) the applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license; and the applicant submits a signed affidavit attesting to meeting the requirements of the temporary license. (BPC § 115.6)
- 10) Includes the following licenses under the temporary license requirement:
 - a) Registered nurse licenses under the Board of Registered Nursing.
 - b) Vocational nurse and psychiatric technician licenses under the Board of Vocational Nursing and Psychiatric Technicians of the State of California.
 - c) Speech-language pathologist and audiologist licenses under the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board but not hearing aid dispenser licenses.
 - d) Veterinarian licenses under the Veterinary Medical Board but not registered veterinary technicians.
 - e) All licenses under the Board for Professional Engineers, Land Surveyors, and Geologists.
 - f) All licenses under the Medical Board of California.
 - g) All licenses under the Podiatric Medical Board of California.
- 11) Establishes separate temporary licensing authorization for all applicants applying for a permanent license with the Board of Registered Nursing. Temporary licenses issued under that authorization expire after six months and may be renewed twice. (BPC § 2733)

THIS BILL:

- 1) Makes legislative findings and declarations.
- 2) Makes the following changes to the current temporary license requirements:
 - a) Adds the following boards and all license types to the existing requirement to issue temporary licenses:
 - i) The Dental Board of California.

- ii) The Dental Hygiene Board of California.
 - iii) The California State Board of Pharmacy.
 - iv) The State Board of Barbering and Cosmetology.
 - v) The Board of Psychology.
 - vi) The California Board of Occupational Therapy.
 - vii) The Physical Therapy Board of California.
 - viii) The California Board of Accountancy.
- b) Adds previously excluded licenses under the Veterinary Medical Board.
 - c) Specifies that the revenues from fees for temporary licenses issued by the California Board of Accountancy shall be credited to the Accountancy Fund.
 - d) Modifies the attestation requirement to specify that the applicant attests to meeting the temporary license requirements in the same area and scope of practice issued in the other state, district, or territory of the United States, rather than just the temporary license requirements.
 - e) Requires that the boards issue temporary licenses within 30 days of receiving the required documentation.
 - f) Adds that temporary licenses expire upon issuance of a license by endorsement, in addition to the current expiration requirements of 12 months, upon issuance of an expedited license, or denial of the application.
 - g) Requires the boards required to issue temporary licenses to submit to the DCA for approval draft regulations necessary to administer the temporary license programs by January 1, 2022.
 - h) Exempts boards from the temporary license requirements if the board already has a similar process in place.
- 3) Establishes a license requirement for the boards not included under the temporary license provisions with the same requirements:
- a) Requires DCA boards not specified under the temporary license provisions to, after appropriate investigation, issue a license to an applicant if the applicant meets all of the following requirements:
 - i) The applicant supplies evidence satisfactory to the board that the applicant is an honorably discharged veteran of the Armed Forces of the United States or is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

- ii) The applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a license from the board.
 - iii) The applicant submits an application to the board that includes a signed affidavit attesting to the fact that the applicant meets all of the requirements for the license, in the same area and scope of practice as issued in the other state, district, or territory of the United States, and that the information submitted in the application is accurate, to the best of the applicant's knowledge. The application must also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.
 - iv) The applicant must not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under the BPC at the time the act was committed, and a violation may be grounds for the denial or revocation of a license issued by the board.
 - v) The applicant must not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.
 - vi) The applicant must, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.
- b) Authorizes a board to adopt regulations necessary to administer the new provisions.
- 4) Makes a conforming change to the Accountancy Fund provisions.
- 5) Establishes requirements relating to posting information and reporting:
- a) Requires the Department of Veterans Affairs to place a prominently displayed military licensure icon or hyperlink on its internet website, in an appropriate location pertaining to licensure and employment opportunities for veterans, service members, and spouses, that links to the internet websites identified in this bill.
 - b) Requires the DCA, the Commission on Teacher Credentialing, the Department of Real Estate, and the State Department of Public Health to place a prominently displayed military licensure icon or hyperlink on the home page of their internet websites, linked to information for each occupational board or program for licensure or certification that it administers, including:
 - i) General licensure or certificate information.
 - ii) Each licensing agency's process for expediting applications for service members, veterans, and spouses, including the average processing times for expedited applications and the number of expedited applications requested in the calendar year.

- iii) The availability of temporary or provisional licensure, specific requirements needed to obtain a temporary or provisional license, and how long the provisional or temporary license is valid.
- c) Requires the DCA to establish a specific gateway aligned with the existing “Board and Bureau Military Contact Information,” “Expedited Licensure,” and “Renewal Fee Waivers” gateways on their Military Member Resources page, including a list of all boards that provide temporary or provisional licensure, with hyperlinks linking to each board’s military licensure data.
- d) Requires the DCA to establish a “Licensure by Endorsement” section on its internet website listing all boards that offer an option for licensure by endorsement, accompanied by a hyperlink to each board’s military licensure data.
- e) Requires the DCA, the Commission on Teacher Credentialing, the Department of Real Estate, and the State Department of Public Health to compile information on military, veteran, and spouse licensure into an annual report for the Legislature that includes all of the following:
 - i) The number of applications for a license submitted by active duty service members, separating service members, veterans, or military spouses per calendar year.
 - ii) The number of licenses issued and denied, including reason for denial, to active duty service members, separating service members, veterans, and military spouses per calendar year.
 - iii) The number of licenses of active duty service members, separating service members, veterans, or military spouses that were suspended or revoked per calendar year.
 - iv) The number of applications for waived renewal fees received from active duty service members and military spouses per calendar year.
 - v) The number of fee waivers issued to active duty service members and military spouses per calendar year.
 - vi) The average length of time between application and issuance of licenses for active duty service members, separating service members, veterans, or military spouses per board and occupation.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, “We must do more for military spouses, who are six times more likely to be unemployed, find a job so that they can put food on the table. Transferring professional licenses that spouses have already earned should be a seamless process that allows spouses to quickly find well-paying jobs in their field. This program has already worked for 6 years, and by expanding it to include more common occupations of military spouses we can ensure our military families will thrive in California.”

Background. This bill seeks to improve license portability for military spouses. It would increase the number of boards required to issue temporary licenses to military spouses, establish a similar licensing process for the boards not included under the temporary license provisions, and establish various website posting and reporting requirements.

In California, many professions require a license to legally practice. As a result, when the spouse or partner of an active duty member of the military travels with the member to California under military orders, they may be required to apply for a new license, even if they are licensed in a different state. However, the process of applying for a new license can be lengthy, expensive, and burdensome. Military spouses may under this process multiple times, despite having little choice in when or how often they move.

To assist with these burdens, existing law provides for several accommodations of both military family and veteran license applicants. DCA boards are required to ask about the military status of each of their applicants so that military experience may potentially be applied toward licensure training requirements. DCA boards are also required to expedite licensure for military veterans as well as the spouses and partners of active duty military to reduce license processing wait times.

Temporary Licenses. If licensed in another state, and depending on the license, military spouses and other applicants may be able to issue to utilize provisions that recognize out-of-state licenses, also known as reciprocity or licensure by endorsement. However, depending on the specific license requirements and the potential differences in requirements between states, applicants may still experience long wait times as their qualifications are reviewed.

To address this issue, some DCA boards may issue temporary licenses. In general, temporary licenses allow an applicant to practice for a limited period, allowing them to practice while the remainder of the qualifications is obtained or verified. Because license requirements are intended to protect the public, applicants usually must be able to immediately demonstrate meeting some of the qualifications required for licensure and pass a background check.

Seven DCA boards are also required to issue temporary licenses to military spouses after an appropriate investigation. However, each board specified under the current law administers the temporary licenses differently:

- 1) *Board of Registered Nursing.* The Board of Registered Nursing has separate temporary licensing provisions in the Nursing Practice Act that apply to all endorsement applicants and it continues to follow utilize those requirements, not the requirements specific to military spouses. Upon verification of the out-of-state license and completion of a background check, the board issues a temporary license that In its *2020 Sunset Review Report*, the BRN expedited the following endorsement applications for military spouses:

FY 2017-18	FY 2018-19	FY 2019-20
489	388	503

- 2) *Board of Vocational Nursing and Psychiatric Technicians.* A vocational nursing or psychiatric technician temporary license is only issued upon request, and only after the evaluation has been completed, the application has been approved for licensure, and fingerprints are cleared. The fee is the same (\$220). Therefore, there is no functional difference between a license by endorsement and a temporary license, except that a

temporary license expires. In its *2019 Sunset Review Report*, the BVNPT reported expediting the applications of 52 military spouses licensed in another state since 2013.

- 3) *Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board*. Only the speech-language pathology and audiology licenses are included under the temporary license provisions, but the board does offer a temporary license process for hearing aid dispensing licenses. Updated numbers were not readily available, but in its *2016 Sunset Review Report*, the board reported expediting two applications for military spouses who were licensed in another state since 2013.
 - a) Speech-language pathology and audiology applicants can request a temporary license only or temporary and full licensure. To get a temporary license, applicants must submit with the application a fee (\$30 for temporary license and \$90 for permanent license), verification of licensure from each state a license is held, and fingerprints plus fingerprinting fees (\$49 if out of state). Either way, after issuance of a temporary license, applicants must submit education and other qualifications for licensure.
 - b) Hearing aid dispenser applicants can request a temporary license while taking the California written and practical examinations (\$400). They must possess an active and current hearing aid dispensing license from another state. The temporary license is valid for 12 months and is not renewable. During those 12 months, the applicant must take and pass both examinations. If the applicant fails either exam, they must surrender their temporary license.
- 4) *Veterinary Medical Board*. The board allows veterinarian applicants who have practiced full-time for two out of the last three years, and meet specified education and training requirements, to apply for a temporary license (\$250) along with endorsement. Within one year of temporary licensure, the applicant must complete a California-specific Veterinary Law Examination (VLE) (\$100) and a 3-day educational curriculum on regionally-specific diseases and conditions. It does not currently issue temporary licenses to registered veterinary technicians.

In its *2019 Sunset Review Report*, the Veterinary Medical Board reported expediting the following military spouses:

FY 2015-16	FY 2017-18	FY 2018-19	FY 2019-20
2	110	169	150

- 5) *Board for Professional Engineers, Land Surveyors, and Geologists*. The board provides for licensure by “comity,” which is the same as endorsement or reciprocity, but does not issue temporary licenses. The board staff report that there are no differences between the requirements for a temporary license and a standard license, so applications for both are treated the same and they issue a permanent license. The existing temporary licensing provisions also require that all applicants pass California-specific examinations.

The board would still expedite the processing of military spouse applications who have an out-of-state-license, but in their *2018 Sunset Review Report*, they reported not having received any applications.

- 6) *Medical Board of California*. The board does not issue temporary licenses, and in its *2020 Sunset Review Report*, it reported issuing 45 physician licenses to military spouse applicants who had an out-of-state license between FYs 2016-17 and 2018-19.
- 7) *Podiatric Medical Board of California*. The board does not issue temporary licenses, and in its *2019 Sunset Review Report*, it reported having only expediting the license of one military spouse applicant since its last review, and in its last review, it reported having not received any.

This bill would additionally require the temporary license requirement to be expanded to all licenses issued by the Dental Board, the Dental Hygiene Board, the State Board of Pharmacy, the Board of Accountancy, the Veterinary Medical Board, the State Board of Barbering and Cosmetology, the Board of Psychology, the Board of Occupational Therapy, and the Physical Therapy Board. The boards selected were identified by the Department of Defense as having higher impacts on their service members and facilities.

Non-Temporary Endorsement Licenses. Section 3 of this bill would create a parallel licensing system for military spouses and veterans for the remaining DCA boards, which include:

- 1) California Architects Board.
- 2) Contractors State License Board.
- 3) Bureau for Private Postsecondary Education.
- 4) Bureau of Household Goods and Services.
- 5) Board of Behavioral Sciences.
- 6) The State Athletic Commission.
- 7) The Cemetery and Funeral Bureau.
- 8) The Bureau of Security and Investigative Services.
- 9) The Court Reporters Board of California.
- 10) The Landscape Architects Technical Committee.
- 11) The Bureau of Automotive Repair.
- 12) The Respiratory Care Board of California.
- 13) The Acupuncture Board.
- 14) The Arbitration Review Program.
- 15) The Physician Assistant Board.
- 16) The Osteopathic Medical Board of California.
- 17) The Naturopathic Medicine Committee.
- 18) The Professional Fiduciaries Bureau.
- 19) The State Board of Chiropractic Examiners.
- 20) The Bureau of Real Estate Appraisers.
- 21) The Structural Pest Control Board.
- 22) The Bureau of Cannabis Control.
- 23) Any other boards subject to the DCA's jurisdiction by law.

The application requirements are mostly the same as the existing temporary license provisions, but several provisions relating to the board's investigatory authority and expiration and revocation were left out, suggesting that the license issued under that section would be a permanent license.

Web Links and Reporting. There is currently no centralized location for military applicant data, and therefore can be difficult to find. Section 4 of this bill would establish provisions to allow for

that data to be made available. Those provisions were taken from SB 1324 (Allen) of 2020, which was not set for hearing in the Senate Committee on Business, Professions, and Economic Development.

At the time, the author stated that the provisions would help the legislature gather the necessary data to understand the scope of the issues facing members of the military and their families. The intent was to establish a more streamlined and accessible source of information related to the licensure of veterans, service members, and military spouses by requiring occupational boards to create prominently displayed icons on their internet websites that link to information about military licensing. Additionally, each agency would be required to submit statistics related to military licensing in California on their webpages and in an annual report to the legislature.

Current Related Legislation. AB 225 (Gray), which is pending in this Committee, would make the changes to the permanent licensing provisions proposed under this bill, except that it would exclude non-healing arts boards and extend the duration of the temporary license to 30 months instead of 12 months.

AB 410 (Fong), which is pending in this Committee, would establish the statutory language needed to enter California into the Nurse Licensure Compact, an interstate compact that allows reciprocity (without the need for endorsement) for registered nurses that carry a multi-state license issued under the compact.

Prior Related Legislation. AB 2185 (Patterson) of 2020 would have required each DCA licensing board that does not have an out-of-state license endorsement process to issue a license to an applicant if the applicant is the spouse of an active duty member of the Armed Forces of the United States, holds a license in good standing and practiced for three of the last five years, passes a California jurisprudence examination, passes a background check, and pays applicable fees. AB 2185 died pending hearing in this Committee.

AB 2459 (Salas) of 2020 would have made the changes to the temporary licensing provisions proposed under this bill. AB 2459 died pending hearing in the Senate Committee on Business, Professions and Economic Development.

AB 3045 (Gray) of 2020 would have added similar permanent licensing provisions proposed under this bill. AB 3045 died pending hearing in the Senate Committee on Business, Professions and Economic Development.

SB 1324 (Allen) of 2020 would have added the website requirements proposed under this bill. SB 1324 died pending hearing in the Senate Committee on Business, Professions and Economic Development.

AB 186 (Maienschein), Chapter 640, Statutes of 2014 first established the temporary license provisions that this bill is amending.

SB 1226 (Correa), Chapter 657, Statutes of 2014 established the requirement that DCA boards expedite applications from honorable discharged veterans and established equivalency in-lieu course requirements for private security officers.

AB 1904 (Block), Chapter 399, Statutes of 2012 established the requirement that DCA boards expedite the licensing process for spouses of active duty Armed Forces members.

ARGUMENTS IN SUPPORT:

The *California Association for Health Services at Home* writes in support, “Our nation owes much to our men and women in uniform and their families. The service of these brave military professionals is essential to our freedom. And while these outstanding Americans are in harm’s way thousands of miles away, their spouse are left home to care for their families. Many of these spouses have professional careers of their own and allowing them to pursue their profession through the issuance of a temporary license while they settle their families in our state is clearly the right thing to do and in the best interest of all Californians.”

The San Diego Military Advisory Council writes in support, “Licensure impediments including cost challenges are significant issues for our military partners and spouses.... As our military families move into California the ability for the spouse to continue work is key to affording to live in our state. Licensing challenges are a top contributor to military spouse unemployment and under-employment, and the nonprofit Blue Start Families’ recent survey found military spouse employment is the top concern among military spouses.”

The *United States Department of Defense, Office of the Assistant Secretary of Defense* writes in support:

Addressing licensure issues for the spouses of our military Service members has been a priority for the Department for several years. Military spouses are disproportionately affected by state-specific licensure requirements that can cause delays and gaps in employment, with over 34 percent of the working population requiring state licensure to practice in their professions and an annual cross-state relocation rate ten times higher than their civilian counterparts. Accordingly, military spouses experience unemployment and underemployment at significantly higher rates than their civilian peers, which has been compounded by the Covid-19 pandemic.

State policies that enhance existing licensure provisions for military spouses relieve one of the many stressors of frequent military moves by enabling spouses to more quickly transfer their licenses in order to obtain employment in a new state. These policies facilitate greater career sustainability for military spouses, improving their families’ financial security and overall resilience. The need for such policies in California is underscored by the fact that California hosts over 62,000 active duty military spouses, the highest in the U.S. This number represents over eleven percent of military spouses, DoD-wide.

In closing, DoD is very appreciative of California’s ongoing commitment and efforts to support our military Service members and their families, especially concerning licensure and career portability for military spouses.

ARGUMENTS IN OPPOSITION:

None on file

POLICY ISSUES:

Temporary License vs. Full-License. This bill would establish a parallel licensing structure for all DCA boards that are not included, as well as any other entities the DCA may have jurisdiction over. However, it is unclear whether there is a reason to have separate provisions for the boards, and the inclusion of some boards under the temporary licensing provisions and the rest under a different licensing provision would appear arbitrary.

Also, the new licensing provisions require the boards to issue a license but are silent on the ability to revoke them. As a result, it is unclear whether the boards would have to initiate a formal disciplinary action to revoke a license if the initial investigation shows that the licensee does not meet the California requirements for that license.

Inclusion of Veterans. This bill would include honorable discharged veterans in the new licensing provisions. However, discharged veterans are not actively moving between states under military orders in the way that the spouses of active-duty members are. Therefore, it is unclear whether veterans should be included in either the temporary license provisions or the new licensing provisions.

Scope of Practice. This bill adds that the signed affidavit attesting to the fact that the applicant meets all of the requirements for the temporary and new license include that the applicant meets the requirements “in the same area and scope of practice as issued in the other state, district, or territory of the United States” as the out-of-state license that the applicant holds. It is unclear whether identifying the out-of-state scope of practice is necessary, as the scope of practice under the new license will be the California scope of practice, and the education and training requirements being attested to will relate to that scope.

IMPLEMENTATION ISSUES:

Inclusion of All DCA Boards. This bill would include at least 22 new DCA boards under the new licensing provisions, however not all board licenses relate to a profession or vocation that would move across state lines. For example, the Bureau of Automotive Repair regulates facilities that would not move across state lines, and the Athletic Commission regulates martial arts fighters and promoters that do not go through standardized training or examinations that translate to the goals under this bill.

Other boards that may not fit well from a regulatory purpose perspective include:

- The Bureau for Private Postsecondary Education
- The Bureau of Household Goods and Services
- The Cemetery and Funeral Bureau
- The Arbitration Review Program
- The Bureau of Cannabis Control

There are also boards established by initiative statute that may conflict with the provisions of this bill, including:

- The State Board of Chiropractic Examiners
- The Bureau of Cannabis Control

Also, there may be some boards with clearly different standards or require a state-specific primary examination that no other states use, such as the California Acupuncture Board. If this bill passes this Committee, the author may wish to work with the DCA and its boards and bureaus on exclusions.

Vagueness. The existing temporary license provisions, and the new licensing provisions based on those provisions, are generally vague as to the requirements for either license. Under current law, the only specified requirements are that an applicant:

- 1) Apply for a temporary license
- 2) Supply evidence of being the spouse of an active duty service member who is in the state on official military orders
- 3) Supply evidence of a valid out-of-state license
- 4) Attest to meeting the temporary license requirements, that the information provided in the application is accurate, and that the out-of-state license is in good standing.
- 5) Supply fingerprints via live scan or FBI hard card at the request of the board (which the board will always request).

The current law does not specify the requirements of the temporary license or the required documentation in the application. Instead, it requires an “appropriate investigation” and separately authorizes a board to “conduct an investigation of an applicant for purposes of denying or revoking a temporary license.” This appears to provide a significant amount of discretion to the boards. As noted earlier, each board under the current law implements the requirements differently, with four out of the seven boards effectively not issuing temporary licenses.

If this bill passes this Committee, the author may wish to amend the bill to include greater specificity to ensure boards are implementing the section as intended and provide consistency for applicants.

Delays Due to Fingerprints. This bill would require that the boards subject to the temporary license provisions issue the license “within 30 days of receiving the required documentation.” However, there may be delays out of the board’s control as the fingerprints are processed by the Department of Justice.

Regulation Requirements. This bill would require, rather than authorize, boards subject to the temporary license provisions to promulgate regulations. However, there may be boards that can implement the requirements, or have implemented the requirements, without regulations. Requiring those boards to promulgate regulations if they do not need to may delay the implementation of this bill.

Board of Registered Nursing (BRN). This Committee’s analysis of AB 186 (Maienschein), Chapter 640, Statutes of 2014 noted, “Some boards, such as the BRN and the Board for Professional Engineers, Land Surveyors, and Geologists already have a process under existing law to issue temporary licenses to out-of-state applicants that expire within a specified time frame. This bill would conflict with those laws.” While the staff for the Board for Professional Engineers, Land Surveyors, and Geologists have noted that the temporary licensing laws have since been repealed, the BRN’s statute remains and the BRN continues to rely on that statute.

Fees. This Committee's analysis of AB 186 (Maienschein), Chapter 640, Statutes of 2014 noted that the temporary license provisions do not establish or authorize fees, which are typically authorized in statute. If this bill passes this Committee, the author may wish to amend the bill to authorize a fee that does not exceed the cost of administering the license provisions.

AMENDMENTS:

- 1) To 1) clarify that boards must issue a temporary license within 30 days of receiving the results of a background check, 2) limit the application of the bill to professions and vocations rather than businesses and other non-compatible license types, and 3) include all boards under the temporary license provisions rather than the permanent license provisions, the author should amend the bill as follows:

On pages 5-6, starting on line 22:

115.6. (a)(1) Except as provided in subdivision ~~(h)~~, (i), a board within the department shall, after appropriate investigation, issue ~~the following eligible~~ temporary licenses *license to practice a profession or vocation* to an applicant ~~within 30 days of receiving the required documentation pursuant to meeting~~ *who meets* the requirements set forth in subdivision ~~(c)~~:
(c).

~~(1) Registered nurse license by the Board of Registered Nursing.~~

~~(2) Vocational nurse license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.~~

~~(3) Psychiatric technician license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.~~

~~(4) Speech language pathologist license issued by the Speech Language Pathology and Audiology and Hearing Aid Dispensers Board.~~

~~(5) Audiologist license issued by the Speech Language Pathology and Audiology and Hearing Aid Dispensers Board.~~

~~(6) All licenses issued by the Veterinary Medical Board.~~

~~(7) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.~~

~~(8) All licenses issued by the Medical Board of California.~~

~~(9) All licenses issued by the Podiatric Medical Board of California.~~

~~(10) All licenses issued by the Dental Board of California.~~

~~(11) All licenses issued by the Dental Hygiene Board of California.~~

~~(12) All licenses issued by the California State Board of Pharmacy.~~

~~(13) All licenses issued by the State Board of Barbering and Cosmetology.~~

~~(14) All licenses issued by the Board of Psychology.~~

~~(15) All licenses issued by the California Board of Occupational Therapy.~~

~~(16) All licenses issued by the Physical Therapy Board of California.~~

~~(17) All licenses issued by the California Board of Accountancy. Revenues~~

~~(2) Revenues from fees for temporary licenses issued under this paragraph by the California Board of Accountancy shall be credited to the Accountancy Fund in accordance with Section 5132.~~

On page 5, after line 21, insert:

(d) A board shall issue a temporary license pursuant to this section within 30 days following receipt of the documentation specified in subdivision (c) if the results of the criminal background check do not show grounds for denial.

- 2) To create a single licensing structure for military spouses, as well as remove veterans from the military spouse provisions, the author should amend the bill to delete section 3.
- 3) To ensure boards promulgate regulations only if necessary, the author should amend the bill as follows:

On page 8, lines 9-13:

(h) A board shall submit to the department for ~~approval~~ approval, if necessary to implement this section, draft regulations necessary to administer this section by June 15, 2022. These regulations shall be adopted pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

- 4) To avoid conflicts with initiatives or constitutional requirements, the author should amend the bill as follows:

On page 8, lines 14-20:

(i)(A) This section shall not apply to a board that has a process in place by which an out-of-state licensed applicant in good standing who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States is able to receive expedited, temporary authorization to practice while meeting state-specific requirements for a period of at least one year.

(B) This section shall apply only to the extent that it does not amend an initiative or violate constitutional requirements.

REGISTERED SUPPORT:

California Association for Health Services At Home
San Diego Military Advisory Council
United States Department of Defense

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 646 (Low) – As Introduced February 12, 2021

SUBJECT: Department of Consumer Affairs: boards: expunged convictions.

SUMMARY: Requires professional licensing boards under the Department of Consumer Affairs that post information on their internet website about a revoked license due to a criminal conviction to update or remove information about the revoked license should the board receive an expungement order related to the conviction, as specified.

EXISTING LAW:

- 1) Establishes the Department of Consumer Affairs within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Creates various boards, bureaus, and commissions under the jurisdiction of the Department of Consumer Affairs whose purpose are to regulate private businesses and professions deemed to engage in activities that have potential impact on the public health, safety, and welfare of the people of California. (BPC § 101)
- 3) Creates the Medical Board of California under the jurisdiction of Department of Consumer Affairs, responsible for regulating California physicians and surgeons. (BPC § 2001)
- 4) Authorizes a board to suspend or revoke a current license under its jurisdiction on the grounds that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (BPC § 490)
- 5) Requires certain boards to publish on the internet information on accusations, suspensions, revocations, and related disciplinary actions taken by a board against a licensee under its jurisdiction. (BPC § 27)
- 6) Specifies additional internet posting requirements of licensee disciplinary-related information, in addition to suspensions and revocations information, for the Medical Board of California. The information to be posted include temporary restraining orders, interim suspension orders, citations, probations, limitations on practice, disciplinary actions taken by a hospital, and accusations filed by the Office of the Attorney General. Requires the Medical Board to post licensee information on its website regarding civil judgements, arbitration, and settlements, as specified. (BPC § 2027)
- 7) Requires the Medical Board of California, within six months of receiving an expungement order for a misdemeanor or felony conviction, to post a notification of the expungement order and its date on its internet website. (BPC § 2027)
- 8) Provides for a post-conviction expungement process for individuals convicted of a crime, by authorizing a judicial court, at its discretion, to dismiss a person's guilty verdict and releasing them from any penalty that was issued as a result of the conviction, but only if the person has

fulfilled their conditions of probation in its entirety, is not serving a prison sentence, and is not charged with a crime. (PEN § 1203.4)

THIS BILL:

- 1) Requires a board to update information on its internet website for individuals who had their license revoked if the board receives a copy of an expungement order granted to the ex- licensee. Specifically, boards who post disciplinary information on their web sites would be required to do either of the following:
 - a) Post notification of the expungement order and the date it was granted, if the ex- licensee reapplies for licensure or has been granted a new license; or
 - b) Remove the original posted information on the license revocation, if the ex- licensee does not currently have a license and does not apply for licensure.
- 2) Requires a board to update or remove information on the revocation within six months of receiving the expungement order related to the conviction.
- 3) Requires a person seeking to have their license revocation history updated or removed to pay a fee to the board in the amount of \$50, unless another amount is determined by the board to cover the costs associated with administering the website changes.
- 4) Clarifies that the Medical Board of California's internet web site posting requirements take precedence over the bill's provisions, should a conflict occur.

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

COMMENTS:

Purpose. According to the author, "[This bill] is designed to reduce employment barriers for people with previous criminal records who have been rehabilitated and whose conviction has been dismissed, or expunged, through the judicial process. Under current law, individuals who have successfully rehabilitated may continue to face stigma and barriers to find employment. Although they are intent on positively contributing to society by finding employment and self-sufficiency, state records may not reflect an expungement that was granted by the courts. [This bill] allows individuals who were formerly licensed through the state of California to appropriately reflect the record of their rehabilitation as granted by the judicial branch, and improve their opportunity to seek meaningful employment."

Background. *Suspension and Revocation of Licenses.* Boards under the jurisdiction of the Department of Consumer Affairs exercise the authority to take disciplinary action against a current licensee. Generally, under the umbrella of BPC 490, boards may suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the professions.

In 2018, the legislature enacted AB 2138, which, among other provisions to reduce barriers to licensure, enumerates what criteria the boards must consider to determine whether a crime is substantially related to the profession. Effective July 1, 2020, boards will need to examine factors

such as the nature and gravity of the offense, the number of years elapsed since the offense, and evidence of rehabilitation.

Due to the diverse and unique nature of each profession, every board has additional statutory standards within their practice act that define unprofessional conduct that may lead to disciplinary action. For example, private investigators may face license suspension or revocation for impersonating a law enforcement officer, while a veterinarian may have their license suspended or revoked for cruelty to animals.

Online Disclosure of Disciplinary Actions Generally. To allow for consumer transparency, certain boards under the Department of Consumer Affairs are required to post on their internet website disciplinary information on a licensee. Members of the public can access information online and check the validity of a license, its issuance and expiration date, and if it has faced disciplinary action from the board.

While the public can access general, basic license information across all boards through the Department of Consumer Affairs' online portal, the disciplinary information required to be disclosed online can vary from board to board.

Online Disclosure of Disciplinary Actions under the Medical Board of California. The Medical Board of California is already required, within six months of receiving a certified copy of an expungement order, to post notification of the expungement order and its date online; effectively complying with one of AB 1616's proposed provisions.

Under BPC 2027, the Medical Board of California has additional and more comprehensive online disclosure requirements of disciplinary history for licensed physicians and surgeons under the board's jurisdiction. This includes the requirement to post temporary restraining orders, interim suspension orders, citations, probations, and limitations on practice ordered by the board or the board of another state, disciplinary actions taken by a hospital, and accusations filed by the Office of the Attorney General. The Medical Board is also required to disclose online licensee information regarding civil judgements, arbitration awards, and certain citations and settlements.

As currently written, AB 1616 gives precedence to all of the online posting requirements enumerated for the Medical Board of California over the bill's own provisions, should a conflict occur.

Expungement Relief in California. The California Penal Code grants judicial courts discretionary authority to issue expungements – a process also known as a dismissal. An expungement generally releases a person convicted of a crime from the negative consequences of a conviction by setting aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismissing the accusation or complaint.

An expungement does not delete nor seal the record of conviction. If an entity is authorized to request a criminal background check on an individual, the background check would reveal the expunged conviction, and note the dismissal on the record.

In order to be eligible for an expungement, a person must have completed the term of their probation in its entirety. In addition, they must not be serving a sentence nor be charged with

another criminal offence. Expungement cannot be granted if a person is convicted for specified sex crimes or Vehicle Code violations.

Expungement and Licensure. Under BPC 480, boards under the Department of Consumer Affairs may deny a license based on specific past criminal convictions. However, an individual may not be denied a license on the basis of a conviction that has been expunged, dismissed, or if the person has received a certificate of rehabilitation.

For rehabilitated individuals that were convicted of a crime, the permanent nature of a criminal record can create challenge in finding employment and stability after incarceration. While an expungement does not eliminate the person's record, it provides a potential opportunity for a rehabilitated individual to secure employment through state licensure.

Current Related Legislation.

SB 731 (Durazo). Criminal records: relief. Would make arrest record relief available to a person who has been arrested for a felony, including a felony punishable in the state prison, as specified. *This bill is currently set to be heard on April 6, 2021 in Senate Committee on Public Safety.*

Prior Related Legislation.

AB 1616 (Low). Department of Consumer Affairs: boards: expunged convictions. This was the original introduction of the current version AB 646 (Low) which was held, due to COVID-19 restrictions, in Senate Committee on Business Professions and Economic Development.

AB 2138 (Chiu/Low, Chapter 995, Statutes of 2018). Reduced barriers to licensure for individuals with prior criminal convictions by limiting a regulatory board's discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

AB 2396 (Bonta, Chapter 737, Statutes of 2014). Prohibits a board within the Department of Consumer Affairs from denying a license based solely on a conviction that has been withdrawn, set aside, or dismissed by the court.

ARGUMENTS IN SUPPORT:

According to the *California Psychological Association*, “[This bill] requires a Department of Consumer Affairs (DCA) board to update its required website posting for a person whose license was revoked because they were convicted of a crime upon receiving a certified copy of an expungement order for that offense. Importantly, expungement cannot be granted if a person is convicted for certain sex crimes or Vehicle Code violations.

While an expungement does not eliminate the person's record, it provides a potential opportunity for a rehabilitated individual to secure employment through state licensure. Further, if the individual agrees to not seek to practice in the profession for which the license was revoked, it is fair, provided expungement, to give the individual a chance for a new start by removing the record of the license revocation.

This bill would support the practice of licensees who have sought resolution for crimes they may have committed and ensure that websites within the DCA do not become a scarlet letter for future employment.”

REGISTERED SUPPORT:

California Psychological Association
Contractors State License Board

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Danielle Sires / B. & P. / (916) 319-3301

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 723 (Low) – As Introduced February 16, 2021

SUBJECT: Marriage and family therapy: scope of practice

SUMMARY: This bill updates the Business and Professions Code to clarify that the scope of practice for marriage and family therapists includes the application of psychotherapeutic and family systems and theories, principles, and methods in the delivery of services to individuals, couples, or groups in order to assess evaluate, and treat relational issues, emotional disorders, behavioral problems, mental illness, alcohol and substance use, and to modify intrapersonal and interpersonal behaviors. This bill provides intent language declaring that its provisions do not expand or constrict the scope of practice of marriage and family therapists.

EXISTING LAW:

- 1) Establishes the Board of Behavioral Sciences within the Department of Consumer Affairs, responsible for licensing and regulating marriage and family therapists, clinical social workers, professional clinical counselors, and educational psychologists (Business and Professions Code (BPC) Section 4990 et seq).
- 2) Outlines the educational, coursework and training requirements for a marriage and family therapist license (BPC Section 4980.36 and Section 4980.37).
- 3) Defines the practice of marriage and family therapy as a service performed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate satisfying, and productive marriage and family adjustments (BPC Section 4980.02).
- 4) States that the application of marriage and family therapy principles and methods includes, but is not limited to, the use of applied psychotherapeutic techniques to enable individuals to mature and grow within marriage and the family, the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships, and the use, application, and integration of marriage and family therapy coursework (Section 4980.02).

THIS BILL:

- 1) Updates the definition of the practice of marriage and family therapy as the application of psychotherapeutic and family systems theories, principles, and methods in the delivery of services to individuals, couples, or groups in order to assess, evaluate, and treat relational issues, emotional disorders, behavioral problems, mental illness, alcohol and substance use, and to modify intrapersonal and interpersonal behaviors.
- 2) Clarifies that the application of marriage and family therapy principles and methods includes, but is not limited to, the following activities:
 - a. Assessment, evaluation, and prognosis.
 - b. Treatment, planning, and evaluation.

- c. Individual, relationship, family, or group therapeutic interventions.
 - d. Relational therapy.
 - e. Psychotherapy.
 - f. Client education.
 - g. Clinical case management.
 - h. Consultation.
 - i. Supervision.
 - j. Use, application, and integration of marriage and family therapy coursework as required under existing law.
- 3) Declares that the bill's provisions do not constitute a change in existing law, and states that it the intent of the legislature that this act shall not be construed to expand or constrict the existing scope of practice of marriage and family therapists.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Association of Marriage and Family Therapists**. According to the author: "AB 723 will modernize and clarify the scope of practice for Marriage and Family Therapists (MFTs) and accurately portray the type of care that they currently provide to Californians. Existing law describing the work of MFTs is outdated, and AB 723 will bring a much needed refresh that will reflect the diverse education, training, and treatment modalities provided by MFTs."

Background.

Marriage and Family Therapists. Marriage and Family Therapists (MFTs) are licensed mental health professionals who have received specified education and training, allowing them to diagnose and treat a wide range of mental, emotional and behavioral problems within the context of marriage, couples, and family systems. This can include addressing marital/couple conflicts, alcoholism and drug abuse, and other relationship issues within a family. In California, the MFT profession is regulated under the Licensed Marriage and Family Therapist Act (Act), a set of laws that outlines the licensure requirements, scope of practice, and responsibilities of MFTs. The Act is enforced by the Board of Behavioral Sciences (Board), a state regulatory agency under the umbrella of the Department of Consumer Affairs which is responsible for the licensing, examination, and enforcement of professional standards of MFTs as well as other categories of mental health professionals. Only individuals who have been duly licensed by the Board may engage in the practice of marriage and family therapy. As of 2021, over 47,900 MFTs have active licenses in California.

Education, Training, and Licensure Requirements. In order to obtain licensure as an MFT, a candidate must obtain a qualifying doctoral or master's degree from an approved educational institution. The Act provides specifications on the MFT educational curriculum, including coursework on theories, principles, and methods related to marriage and family therapy, and how they can be applied therapeutically with individuals, couple, families, adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships. MFT instruction covers a wide array of subjects, including assessment, diagnosis and treatment planning, psychological testing, psychopharmacology, cultural competency and sensitivity, human sexuality, substance use disorders and addition, and more. Upon graduation, candidates for licensure can subsequently

register with the Board and accrue 3,000 hours of documented supervised work experience. Finally, candidates for licensure must also pass two examinations administered by the Board: a California law and ethics examination, and a clinical examination.

Scope of Practice. The BPC currently defines the practice of marriage and family therapy as service performed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments. The BPC further states that the application of marriage and family therapy principles and methods includes, but is not limited to, the use of applied psychotherapeutic techniques, to enable individuals to mature and grow within marriage and the family, the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships, and the use, application, and integration of the coursework and training, as specified in California law and described above.

This bill updates this scope of practice language and integrates MFT educational and training references outlined in existing statutes into the definition of the practice of marriage and family therapy. Under AB 723, marriage and family therapy is defined as the application of psychotherapeutic and family systems theories, principles, and methods in the delivery of services to individuals, couples, or groups in order to assess, evaluate, and treat relational issues, emotional disorders, behavioral problems, mental illness, alcohol and substance use, and to modify intrapersonal and interpersonal behaviors. In addition, this bill updates examples of the of marriage and family therapy applications to include assessment, evaluation, and prognosis; treatment, planning, and evaluation; individual, relationship, family, or group therapeutic interventions; relational therapy; psychotherapy; client education; clinical case management; consultation; supervision; and the use, application, and integration of the coursework and training, as specified in California law.

AB 723 states that changes to the BPC are declaratory of existing law, and that it is the intent of the Legislature that this act shall not be construed to expand or constrict the existing scope of practice for MFTs.

Current Related Legislation.

None.

Prior Related Legislation.

None.

ARGUMENT IN SUPPORT:

The California Association of Marriage and Family Therapists writes in support: “California has made significant strides to recognize the impact of behavioral conditions and substance use disorders on society. This bill helps to further this achievement by updating the MFT scope of practice to accurately portray the clinical skill set possessed by MFTs referenced in their education and training requirements. The present-day MFT practice statute contains an oversimplified short description and refers to other statutes rather than specifying the MFT scope of practice.”

The Board of Behavioral Sciences writes in support: “It has been many years since substantive changes were made to the LMFT scope of practice, and in that time the diversity of the settings

that LMFTs practice in and the skill sets utilized in these settings have evolved dramatically. During the development of this proposal, the bill's sponsor, the California Association of Marriage and Family Therapists (CAMFT) has taken great care to reach out to stakeholders and representatives of other mental health professions in order to obtain feedback and address concerns. The Board believes the result of this collaborative effort is a clear and more accurate representation of current LMFT practice.”

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association of Marriage and Family Therapists (Sponsor)
Board of Behavioral Sciences

Opposition

None.

Analysis Prepared by: Patrick Le / B. & P. / (916) 319-3301

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1102 (Low) – As Introduced February 18, 2021

SUBJECT: Telephone medical advice services.

SUMMARY: Clarifies that a telephone medical advice service is required to ensure that all health care professionals who provide telephone medical advice services from an out-of-state location are operating consistent with the laws governing the professionals' respective state licenses and clarifies that a telephone medical advice service is required to comply with directions and requests for information made by the respective in-state healing arts licensing boards.

EXISTING LAW:

- 1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency to house specified licensing boards, bureaus, and commissions for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (Business and Professions Code (BPC) §§ 100-144.5)
- 2) Regulates telephone medical advice services through the licensing boards responsible for the practice of the licensees providing the advice. (BPC §§ 4999-4999.7)
- 3) Defines "telephone medical advice" as a telephonic communication between a patient and a health care professional in which the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding the patient's or a family member's medical care or treatment, including assessment, evaluation, or advice provided to patients or their family members. (BPC § 4999.7(b))
- 4) Defines "telephone medical advice service" as any business entity that employs, or contracts or subcontracts, directly or indirectly, with, the full-time equivalent of five or more persons functioning as health care professionals, whose primary function is to provide telephone medical advice, that provides telephone medical advice services to a patient at a California address. The definition does not include a medical group that operates in multiple locations in California if no more than five full-time equivalent persons at any one location perform telephone medical advice services and those persons limit the telephone medical advice services to patients being treated at that location. (BPC § 4999)
- 5) Defines "health care professional" as an employee or independent contractor who provides medical advice services and is appropriately licensed, certified, or registered as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions, as a physician and surgeon, as a registered, as a psychologist, as a naturopathic doctor, as an optometrist, as a marriage and family therapist, as a licensed clinical social worker, as a licensed professional clinical counselor, or as a chiropractor, and who is operating consistent with the laws governing the licensee's respective scopes of practice in the state in which the licensee provides telephone medical advice services. (BPC § 4999.7)

- 6) Requires a telephone medical advice service to comply with the following requirements:
- a) Ensuring that all health care professionals who provide medical advice services are appropriately licensed, certified, or registered as a physician and surgeon, as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions, as an occupational therapist, as a registered nurse, as a psychologist, as a naturopathic doctor, as a marriage and family therapist, as a licensed clinical social worker, as a licensed professional clinical counselor, as an optometrist, or as a chiropractor, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided. (BPC § 4999.2(a)(1))
 - b) Ensuring that all health care professionals who provide telephone medical advice services from an out-of-state location are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are operating consistent with the laws governing their respective scopes of practice. (BPC § 4999.2(a)(2))
 - c) Ensuring that the telephone medical advice provided is consistent with good professional practice. (BPC § 4999.2(b))
 - d) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years. (BPC § 4999.2(c))
 - e) Ensuring that no staff member uses a title or designation when speaking to an enrollee, subscriber, or consumer that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered health care professional, unless the staff member is a licensed, certified, or registered professional. (BPC § 4999.2(d))
 - f) Complying with all directions and requests for information made by the DCA. (BPC § 4999.2(e))
 - g) Notifying the DCA within 30 days of any change of name, physical location, mailing address, or telephone number of any business, owner, partner, corporate officer, or agent for service of process in California, together with copies of all resolutions or other written communications that substantiate these changes. (BPC § 4999.2(f))

THIS BILL:

- 1) Clarifies that a telephone medical advice service is required to ensure that all health care professionals who provide telephone medical advice services from an out-of-state location are operating consistent with the laws governing their respective licenses.
- 2) Clarifies that a telephone medical advice service is required to comply with all directions and requests for information made by the respective healing arts licensing boards.

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

COMMENTS:

Purpose. This bill is sponsored by the author. This bill would clarify that the telephone medical advice companies must comply with directions and requests for information from not just the DCA, but also any licensing board that has jurisdiction over the type of advice being provided. Further, by virtue of hiring the professionals, the companies themselves may be providing services under state law. As a result, the oversight over these companies should be clarified to also include the licensing boards.

Background. Prior law required businesses that employed, or contract or subcontract with, the full-time equivalent of 5 or more persons functioning as health care professionals, whose primary function is to provide telephone medical advice, that provided telephone medical advice services to a patient at a California address to be registered with the Telephone Medical Advice Services Bureau and further required telephone medical advice services to comply with the requirements established by the DCA. However, the Telephone Medical Advice Services Bureau was sunset (abolished) as of January 1, 2017.

At the time, the bureau was under the direct control of the DCA. When the bureau sunset, there was no DCA unit or division to assume the duties overseeing telephone medical advice companies, so the enforcement duties were transferred to individual boards through their existing authority over the practice of the relevant licensed practitioners.

However, the language still requires the companies to comply with DCA direction and requests for information. The DCA has limited authority over licensing boards and their licensees. Licensing boards are “semi-autonomous,” meaning they make the majority of their own decisions, such as whether to begin an investigation against a licensee and whether to take disciplinary action. However, state law is not clear as to the authority of the boards over the telephone medical advice service businesses, so boards currently only look to the individual licensees instead. This bill would clarify that the enforcement of the regulation of telephone medical advice services is within the jurisdiction of the boards by requiring them to comply with directions and requests from the boards, not just the DCA.

It would also clarify that a person who resides out of state and provides telephone medical advice in California must comply with the specific licensing requirements (e.g. not delinquent), not just the scope of practice requirements of their own state’s license.

Prior Related Legislation. AB 1529 (Low), Chapter 830, Statutes of 2019, as introduced, was identical to this bill but was substantially amended to address a different topic.

SB 1039 (Hill), Chapter 799, Statutes of 2016, among other things, sunset the Telephone Medical Advice Services Bureau and shifted the oversight over telephone medical advice services to the respective healing arts licensing boards responsible for enforcing those requirements and any other laws and regulations affecting those health care professionals licensed in California.

SB 800 (Committee on Business, Professions and Economic Development), Chapter 426, Statutes of 2015, among other things, expanded the health care professionals under the telephone medical advice registration program to include naturopathic doctors and licensed professional clinical counselors and required a telephone medical advice service to notify the DCA of certain business changes, and to submit quarterly reports.

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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