California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

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

AGENDA

Tuesday, March 29, 2022
9:30 a.m. -- 1021 O Street, Room 1100
(Please note room change)

BILLS HEARD IN FILE ORDER

1.	AB 1632	Akilah Weber	Restroom access: medical conditions.
2.	AB 1646	Chen	Cannabis packaging: beverages.
3.	AB 1656	Aguiar-Curry	Cannabis: industrial hemp.
4.	AB 1747	Quirk	Contractors: disciplinary action.
5.	AB 1874	Smith	Contractors: unlicensed work.
6.	AB 2105	Smith	Contractors: initial license fee reduction: veterans.
7.	AB 2055	Low	Controlled substances: CURES database.
8.	AB 2155	Villapudua	Cannabis beverages.
9.	AB 2178	Bloom	Physicians and surgeons: special faculty permits: academic medical center.
10.	AB 2194	Ward	Pharmacists and pharmacy technicians: continuing education: cultural competency.
11.	AB 2265	Arambula	Pharmacy: dispensing controlled substances: lockable vials.
12.	AB 2723	Holden	Animals: microchips: theft.

COVID FOOTER

SUBJECT:

We encourage the public to provide written testimony before the hearing by visiting the committee website at http://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. All are encouraged to watch the hearing from its live stream on the Assembly's website at https://www.assembly.ca.gov/todaysevents.

The hearing room will be open for attendance of this hearing. Any member of the public attending a hearing is encouraged to wear a mask at all times while in the building. The public may also participate in this hearing by telephone. We encourage the public to monitor the committee's website for updates.

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1632 (Akilah Weber) – As Amended March 22, 2022

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

SUBJECT: Restroom access: medical conditions.

SUMMARY: Requires a place of business open to the public for the sale of goods or services that has a toilet facility for its employees to allow any individual who is lawfully on the premises to use that toilet facility during normal business hours if the individual uses an ostomy device or suffers from Crohn's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medical condition that requires immediate access to a toilet facility.

EXISTING LAW:

1) Requires permanent food facilities to provide clean toilet facilities in good repair for use by their employees, as specified. (Health and Safety Code (HSC) § 114276)

2) Requires a food facility to provide either clean toilet facilities in good repair for patrons, or prominently post a sign that toilet facilities are not provided, for which the penalty for the first failure is a warning, followed by a fine of not more than $250. (HSC § 114276)

3) Requires food facilities to provide clean toilet rooms in good repair and conveniently located and accessible for use by employees during all hours of operation. The number of toilet facilities required shall be in accordance with applicable local building and plumbing ordinances. Toilet tissue shall be provided in a permanently installed dispenser at each toilet. (HSC § 114250)

4) Provides that food facilities located within amusement parks, stadiums, arenas, food courts, fairgrounds, and similar premises are not required to provide toilet facilities for employee use within each food facility if approved toilet facilities are located within 200 feet in travel distance of each food facility and are readily available for use by employees, as specified. (HSC § 114250.1)

5) Requires every public agency conducting an establishment serving the public or open to the public, and that maintains restroom facilities for the public, to make every water closet for each sex maintained within the facilities available without cost or charge. Defines public agency for these purposes as any agency of the state, city, county, or city and county. (HSC § 118500)

6) Requires publicly and privately owned facilities where the public congregates to be equipped with sufficient temporary or permanent restrooms to meet the needs of the public at peak hours. Defines "facilities where the public congregates" for these purposes to mean sports and entertainment arenas, community and convention halls, specialty event centers, amusement facilities, and ski resorts. (HSC § 118505)

THIS BILL:

1) Defines "department" to mean the State Department of Public Health (CDPH), unless otherwise specified.

2) Defines "eligible medical condition" to mean Crohn's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medical condition that requires immediate access to a toilet facility.

3) Requires a place of business open to the general public for the sale of goods or services that has a toilet facility for its employees to allow any individual who is lawfully on the premises of that place of business to use that toilet facility during normal business hours, even if the place of business does not normally make the employee toilet facility available to the general public, if all of the following conditions are met:

    a) The individual requesting use of the employee toilet facility has an eligible medical condition or uses an ostomy device.

    b) Three or more employees of the place of business are working onsite at the time that the individual requests use of the employee toilet facility.

    c) The employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the requesting individual or would create an obvious security risk to the place of business.

    d) Use of the employee toilet facility would not create an obvious health or safety risk to the requesting individual.

    e) A public restroom is not immediately accessible to the requesting individual.

4) Specifies that the place of business may require the requesting individual to present reasonable evidence that the individual has an eligible medical condition or uses an ostomy device.

5) Specifies that a signed statement issued to the requesting individual by a physician, nurse practitioner, or physician assistant, in accordance with (6) below, is sufficient for purposes of presenting reasonable evidence.

6) Requires the department to develop and post on its website a standard electronic form that may be signed by a health care provider, as specified, to serve as reasonable evidence of the existence of an eligible medical condition or use of an ostomy device.

7) Requires the form mentioned above in (6) to include all of the following components:

    a) Space for the requesting individual's name.

    b) Space for the requesting individual's address.

    c) Space for the requesting individual's date of birth.

d) Space for the health care provider's name, signature, and statement confirming the eligible medical condition or use of an ostomy device.

e) All of the following statements:

i) "MEDICAL ALERT: RESTROOM ACCESS REQUIRED."

ii) "The holder of this form uses an ostomy device or suffers from Crohn's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medical condition that requires immediate access to a toilet facility."

iii) A reference to this article and to any regulations adopted to implement this article.

8) Specifies that a violation is subject to a civil penalty not exceeding $100 for each violation.

9) Specifies that a place of business or an owner or employee of a place of business is not civilly liable unless the violation is willful or grossly negligent.

10) Specifies that a place of business is not required to make any physical changes to an employee toilet facility for purposes of complying with this bill.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "[This bill] will ensure restroom access to Californians with Crohn's disease, ulcerative colitis, other inflammatory bowel disease or medical condition that require access to a toilet facility without delay. This will help eliminate embarrassing accidents that nobody should have to experience."

Background.

The Restroom Access Act. In 2005, the state of Illinois unanimously passed the Restroom Access Act, also known as Ally's Law, which requires businesses to allow individuals experiencing a medical emergency to use employee-only restrooms. The law was inspired by Ally Bain, a teenager with Crohn's Disease, who was denied access to an employee-only restroom at a large retail store where no public restrooms were available and suffered a public accident as a result. Since then 16 other states have enacted similar laws, including Colorado, Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New York, Ohio, Oregon, Tennessee, Texas, Washington, and Wisconsin.

Eligible Medical Conditions and Ostomy Bags. Inflammatory bowel diseases (IBD) such as Crohn's disease and ulcerative colitis and irritable bowel syndrome (IBS) are gastrointestinal (GI) disorders that can greatly impact an individual's quality of life. IBD causes chronic and damaging inflammation of the GI tract, which can cause frequent and/or urgent bowel movements, abdominal pain, diarrhea, or bleeding. IBS is a GI disorder that does not cause inflammation or damage of the GI tract, but nonetheless causes bloating, constipation and/or diarrhea, and abdominal pain. According to the Crohn's & Colitis Foundation, up to 70,000 new cases of IBD are diagnosed in the United States annually, with men and women generally affected at equal rates. IBS is much more common, affecting 10-12 percent of adults in the United States. Individuals under the age of 50 and women are more likely to be affected by IBS.

An ostomy bag is a medical device that is worn outside, generally on the abdomen where it is attached to the colon, and collects waste discharged from the urinary and digestive systems. Ostomy bags are necessary after ostomy surgery, which allows bodily waste to exit the body through the abdomen in response to a condition affecting the urinary or digestive tract.

Bathroom Cards. This bill authorizes a place of business to require proof of an eligible medical condition before allowing someone to use their restroom. A variety of organizations currently offer physical and digital bathroom or restroom access cards for individuals to use if businesses do require proof, stemming from laws similar to this bill in other states. This bill goes a step further and states that a business that requires the individual to present proof must accept the form developed by CDPH and signed by a licensed health care provider under this bill.

Enforcement. A violation of the requirements enumerated in this bill would be subject to a civil penalty of up to $100 if the violation was willful or grossly negligent. This bill would be publically enforced by city attorneys, county district attorneys, or the Attorney General of California. There is no private right of action.

ARGUMENTS IN SUPPORT:

The *Crohn's & Colitis Foundation* writes in support, "Crohn's disease and ulcerative colitis, collectively known as IBD, are painful, medically incurable diseases that affect the digestive system resulting in symptoms that include loss of bowel control and require urgent and sudden use of a restroom. These symptoms leave many IBD patients worrying about whether they will have access to a restroom when in public. Denying restroom access to IBD patients can lead to an embarrassing, avoidable accident that can cause extreme emotional distress. Restroom access is a human need and patients should not be put in a potentially humiliating situation by being denied access to a restroom."

ARGUMENTS IN OPPOSITION:

The *California Business Properties Associatio*n, *California Chamber of Commerce*, *California Retailers Association*, *Family Business Association of California*, and *National Federation of Independent Business* collectively write in opposition: "Other states that have passed their own version of "Ally's Law", it is usually limited to *retail establishments*. In sharp contrast, [this bill] applies to all "place of business open to the general public for the sale of goods or services." Functionally, that means [this bill] applies to almost all businesses, including a bank (with significant security concerns) or a mechanic's shop (with heavy-equipment). This expansion is quite significant because it heightens safety concerns for employees and liability concerns for employers as the affected individual will have to potentially walk through more dangerous areas than may be present in a retail setting. While we are sympathetic to the plight of those suffering from these conditions, we cannot ignore the safety and liability risks created by allowing members of the public access to non-public areas in this broad array of workplaces. Similarly, we cannot ignore the fact that false cards may be used to gain access to areas where valuable information or items may be stored…we would ask that facilities be exempt from allowing access to private locations if there are three or less employees on site, in order to ensure that the employees' safety is more adequately protected."

POLICY ISSUE(S) FOR CONSIDERATION:

Reasonable Evidence of an Eligible Medical Condition. Licensed health care providers are similarly required to attest to an individual's need for an emotional support animal, however the format and contents of the letter are not prescribed. In contrast, this bill would require the CDPH to develop and post on its website a specific form which a licensed physician, nurse practitioner, or physician assistant could then fill out and sign attesting to the requesting individual's eligible medical condition or use of an ostomy bag. If this bill passes out of this committee, the author may wish consider whether such specificity is necessary. This bill is double referred to the Assembly Health Committee, which may wish to further opine on this matter.

IMPLEMENTATION ISSUE(S) FOR CONSIDERATION:

Bill Structure. This bill currently requires CDPH to develop a form for licensed health care providers to attest to an individual's eligible medical condition or use of an ostomy device. The bill specifies that the form include specified components, such as the individuals name and address, and statements, such as "MEDICAL ALERT: RESTROOM ACCESS REQUIRED." This bill also requires CDPH to include a *statement* referencing the law that would be established by this bill and any regulations adopted to implement it. Because this reference is not a specific statement, the author may which to amend the bill so that the reference is listed as a component that must be included on the form rather than a specific statement.

118703. (a) The department shall develop a standard electronic form that may be signed by a health care provider, as specified in subdivision (b) of Section 118702, to serve as reasonable evidence of the existence of an eligible medical condition or use of an ostomy device. The department shall post the form, in a printable format, on the department's internet website.

(b) The form shall include all of the following components:

(1) Space for the requesting individual's name.

(2) Space for the requesting individual's address.

(3) Space for the requesting individual's date of birth.

(4) Space for the health care provider's name, signature, and statement confirming the eligible medical condition or use of an ostomy device.

(5) All of the following statements:

(A) "MEDICAL ALERT: RESTROOM ACCESS REQUIRED."

(B) "The holder of this form uses an ostomy device or suffers from Crohn's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medical condition that requires immediate access to a toilet facility."

~~(C)~~ *(6)* A reference to this article and to any regulations adopted to implement this article.

REGISTERED SUPPORT:

Crohn's & Colitis Foundation

REGISTERED OPPOSITION:

California Business Properties Association
California Chamber of Commerce
California Retailers Association
Family Business Association of California
National Federation of Independent Business

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1646 (Chen) – As Introduced January 13, 2022

SUBJECT: Cannabis packaging: beverages.

SUMMARY: Allows cannabis beverages to be packaged in containers made of any material.

EXISTING LAW:

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

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

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

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

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

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

7) Prohibits an alcoholic beverage from being manufactured, sold, or offered for sale if it contains tetrahydrocannabinol (THC) or cannabinoids, regardless of source. (BPC § 25621.5)

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

9) Prohibits the sale of cannabis products that are alcoholic beverages. (BPC § 26070.2)

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

11) Allows for cannabis beverages to be packaged in glass containers that are clear or any color. (BPC § 26120)

12) Requires the DCC to promulgate regulations governing the licensing of cannabis manufacturers and standards for the manufacturing, packaging, and labeling of all manufactured cannabis products. (BPC § 26130)

THIS BILL:

1) Allows for cannabis beverages to be packaged in clear containers of any material.

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

COMMENTS:

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

> "AB 1646 is a simple technical-fix measure to address an incidental oversight in AB 1222 (Chen) passed last session. When AB 1222 was signed into law allowing that cannabis beverages may be packaged in glass containers that are clear or any color – it overlooked that many cannabis beverages are also packaged in plastic or other type material containers. This was not the intent of the bill and unfortunately it has created some confusion with manufacturers who, unless it is clarified, believe that a glass container can be clear, whereas a plastic container must be painted. This bill makes a technical change to fix this confusion by simply removing the type of container material that can be clear or any color."

Background.

Cannabis Beverage Containers. Statute generally requires that all cannabis and cannabis products must be sold in opaque packaging. Regulations previously promulgated by the California Department of Public Health (CDPH) specifically required that "if the product is an edible product, the package shall be opaque." However, CDPH's regulations further provided that "amber bottles shall be considered opaque for purposes of this section." This allowed cannabis beverage manufacturers to cost-effectively import bottles from Europe, which are frequently colored amber to shield their contents from ultraviolet rays that can cause "skunking" in beer.

In 2021, AB 1222 (Chen) was enacted to further broaden the packaging options for cannabis beverages. That bill added a new provision to MAUCRSA to statutorily provide that "cannabis beverages may be packaged in glass containers that are clear or any color." This language allowed cannabis beverages to be packaged in bottles that were clear, green, or other colors beyond amber. The author contended that as a liquid product undiscernible from beverages not containing cannabis, there was no policy reason for concealing packaging contents.

However, after AB 1222 was enacted, the cannabis beverage industry became concerned that the specific use of the term "glass" in that bill would be construed to unintentionally narrow the kinds of materials cannabis beverages may be packaged in. While prior law presumably allowed materials like plastic or aluminum to be used as containers for cannabis beverages, the language allowing for "glass containers that are clear or any color" would not appear to allow those materials to be used. The intent of this bill is to further clarify the law to provide that there is no restriction on what kind of material in which a cannabis beverage may be packaged, in addition to there being no restriction on color.

Current Related Legislation. AB 2155 (Villapudua) would define "cannabis beverage." *This bill is pending in this committee.*

Prior Related Legislation. AB 1222 (Chen, Chapter 532, Statutes of 2021) provided that cannabis beverages may be packaged in glass containers that are clear or any color.

ARGUMENTS IN SUPPORT:

The **Cannabis Beverage Association** (CBA) is sponsoring this bill. The CBA writes that "AB 1646 simply clarifies that cannabis beverages may be offered in clear containers of any material – not just glass."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

The intent of this bill is to clarify that cannabis beverages may be packaged in containers made from any material, not just glass. However, the language in the bill appears to strike more language than necessary to achieve this goal; the bill would also strike "or any color," which could be interpreted to require cannabis beverage containers to be clear. The author may wish to clarify the intent of the bill by providing that beverages may be packaged in containers of any material that are clear or any color.

AMENDMENTS:

Revert part of the language contained in subdivision (e) back to current law so as to read:

(e) Cannabis beverages may be packaged in containers that are clear or any color.

REGISTERED SUPPORT:

Cannabis Beverage Association *(Sponsor)*
House of Saka, Inc.
SōRSE Technology
The Parent Company

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1656 (Aguiar-Curry) – As Introduced January 14, 2022

SUBJECT: Cannabis: industrial hemp.

SUMMARY: States that the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) does not prohibit a cannabis licensee from manufacturing, distributing, or selling industrial hemp products if the product complies with all applicable state laws and regulations.

EXISTING LAW:

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

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

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

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

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

6) Prohibits the sale of cannabis products that are alcoholic beverages, including an infusion of cannabis or cannabinoids derived from industrial hemp into an alcoholic beverage. (BPC § 26070.2)

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

8) Requires the DCC to prepare a report to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain on or before July 1, 2022. (BPC § 26013.2)

9) Defines "industrial hemp" as a crop that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom. (Health and Safety Code (HSC) § 11018.5(a))

10) Exempts industrial hemp from the regulatory requirements of MAUCRSA. (HSC § 11018.5(b))

11) Establishes a regulatory framework for industrial hemp under the Sherman Food, Drug, and Cosmetic Law (Sherman Law) administered by the California Department of Public Health (CDPH), under which manufacturers of products containing industrial hemp or hemp products are required to obtain a process food registration and comply with good manufacturing practices. (HSC §§ 111920 *et seq.*)

12) Provides the California Department of Food and Agriculture (CDFA) with responsibility for administering and enforcing laws governing the growing, cultivating, and distributing of industrial hemp. (Food and Agricultural Code §§ (FAC) 81000 *et seq.*)

13) Establishes an Industrial Hemp Advisory Board with members appointed by the Secretary of Food and Agriculture to advise the secretary and make recommendations on all matters pertaining to industrial hemp seed law and regulations, enforcement, related annual budgets, and the setting of an appropriate assessment rate necessary for the administration of the law. (FAC § 81001)

14) Allows only approved cultivars to grow industrial hemp. (FAC § 81002)

15) Requires growers of industrial hemp, hemp breeders, and established agricultural research institutions to register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation. (FAC §§ 81003 – 81005)

16) Requires each registered established agricultural research institution, registered grower of industrial hemp, and registered hemp breeder to report on its hemp production in the state and any changes to the location where it will produce hemp to the Farm Service Agency of the United States Department of Agriculture. (FAC § 81004.6)

17) Imposes limitations and prohibitions on the growth of industrial hemp and requires each crop of industrial hemp to be tested by a laboratory to determine the THC levels of a random sampling of its dried flowering tops. (FAC § 81006)

THIS BILL:

1) States that MAUCRSA does not prohibit a cannabis licensee from manufacturing, distributing, or selling products that contain industrial hemp or cannabinoids, extracts, or derivatives from industrial hemp, if the product complies with all applicable state laws and regulations, including those under the Food and Agricultural Code and the Health and Safety Code.

2) Declares that it is the intent of the Legislature to enhance the viability of cannabis licensees in the marketplace by pursuing measures to relieve tax and regulatory requirements, and to authorize licensees to manufacture, distribute, and sell hemp and cannabidiol (CBD) products in compliance with current law.

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

COMMENTS:

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

> "While both hemp and marijuana are members of the cannabis family, they are uniquely distinctive plants. Hemp-derived CBD is not intoxicating because CBD derived from hemp contains only trace amounts of THC (less than 0.3 percent), the psychoactive component in marijuana products. Consumers seek out hemp-derived CBD because it can provide them with relief from pain, inflammation, anxiety, insomnia, and other conditions. Many people have been purchasing hemp-derived CBD topical products at their local natural foods shops, fitness centers, and health stores for some time. In fact, seniors are a significant portion of the people choosing to use hemp CBD, because they do not want to visit a marijuana dispensary. Further, hemp has become an increasingly important crop. It is easy to grow, can be cultivated without toxic pesticides, and serves well as a rotation crop. This is an opportunity for California to make it easier for its citizens to access a non-intoxicating-alternative product they want, and for farmers to establish themselves in a fast-growing industry."

Background.

Cannabis versus Hemp. Scientifically speaking, both industrial hemp and what has commonly been referred to as marijuana are members of the same plant species, *Cannabis sativa*. Under California law, the term "cannabis" typically refers to varieties of the species that contain sufficient levels of the cannabinoid tetrahydrocannabinol (THC) to produce a psychoactive effect, or "high"; this plant and its associated products are regulated by the DCC under MAUCRSA. Hemp, meanwhile, is commonly regarded more as an agricultural plant and has historically been used for products such as paper, textiles, cosmetics, and fabric. By definition, industrial hemp contains less than 0.3% THC, which is considered trace amounts compared to psychoactive cannabis (15-40% THC). Hemp is regulated by the CDFA for agricultural purposes and by the CDPH when it is used in food, beverage, and cosmetic products.

While industrial hemp does not share the same psychoactive properties as cannabis due to its significantly lower amount of THC, both hemp and cannabis contain another cannabinoid known as cannabidiol (CBD). According to the National Institute of Health, CBD has pain relieving, anti-inflammatory, anti-psychotic, and tumor-inhibiting properties. Two products, dronabinol and nabilone, are FDA-approved drugs used for the prevention or treatment of chemotherapy-related nausea and vomiting. There are currently over 100 clinical trials of CBD listed on the National Library of Medicine's website. These trials are testing CBD's utility in treating epilepsy, substance use disorders, pain, psychosis, and anxiety, among other disorders and conditions.

Regulation of Cannabis. After several previous 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. Not

long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was passed to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws.

In early 2021, the Department of Finance released trailer bill language to create a new DCC with centralized authority for cannabis licensing and enforcement activities. This new department was created through a consolidation of the three prior licensing authorities' cannabis programs. As of July 1, 2021, the DCC has been the single entity responsible for administering and enforcing the majority of MAUCRSA.

Regulation of Hemp. SB 566 (Leno, Chapter 398, Statutes of 2013) established the Industrial Hemp Farming Act, which provided a regulatory scheme for the cultivation and processing of industrial hemp that would go into effect upon approval by the federal government. SB 566 required growers of industrial hemp for commercial purposes to register with the county agricultural commissioner of the county in which the grower intends to engage in industrial hemp cultivation among various provisions. Established agricultural research institution were exempted from these requirements.

The U.S. Agriculture Improvement Act of 2018 (known as the Farm Bill) federally legalized the growing, cultivating, and the transporting of industrial hemp between states. However, the Farm Bill resulted in CBD containing products that have been approved by the FDA to be removed from the list of Schedule I substances under the CSA and reclassified as a Schedule V drug. This policy was enacted because of the findings that it does not contain any psychoactive or addictive properties and has a very low abuse potential. This separates industrial hemp from marijuana specific cannabis products, which remains a Schedule I drug on the federal level. The Farm Bill also classifies CBD as a food product. Importantly, the Farm Bill also requires states to devise their own sale restrictions and regulations, of which the U.S. Department of Agriculture (USDA) is responsible for overseeing. SB 153 (Wilk, Chapter 838, Statutes of 2019) revised provisions in SB 566 regulating the cultivation and testing of industrial hemp to conform to the requirements for a state plan under the 2018 Farm Bill. SB 292 (Wilk, Chapter 485, Statutes of 2021) additionally conformed state law to the USDA Interim Final Rule regarding reporting and testing of industrial hemp in the United States.

In 2021, AB 45 (Aguiar-Curry, Chapter 576, Statutes of 2021) was enacted to significantly expand and clarify the framework under which CBD derived from industrial hemp can be used in food, beverages and dietary supplements. The bill revised or added various definitions relating to hemp products and placed new requirements on hemp manufacturers in exchange for more explicit authority to produce manufactured goods containing CBD derived from hemp. In doing so, the bill expressly specified that foods, beverages, dietary supplements, cosmetics, and pet food are not adulterated by the inclusion of industrial hemp cannabinoids.

Integration of Cannabis and Hemp. Notwithstanding the biological and chemical similarities of cannabis and hemp, hemp products are widely considered "non-cannabis goods" for purpose of MAUCRSA. Under § 15407 of the DCC's regulations, licensed cannabis retailers are prohibited from selling any non-cannabis goods besides cannabis accessories and branded merchandise. (Proposed regulations recently announced by the DCC would further allow for the sale of prepackaged non-cannabis infused and food and beverages, subject to local authorization.)

While presumably an individual or entity could both engage in a licensed cannabis business and in a business involving hemp, it is understood that the two supply chains must remain fully distinct.

Whether hemp and cannabis products should be allowed to coexist in a regulatory context has been debated consistently over the past several years. Because both plants contain the same cannabinoids, it is often the case that two essentially identical products—CBD gummies, for example—are regulated and sold differently based on whether the CBD was derived from cannabis or industrial hemp. Many cannabis retailers may wish to also sell products derived from hemp. However, some in the cannabis industry may see hemp as an unwelcomed competitor, and concerns have been expressed that the difference in regulatory systems and consumer safety requirements should keep the two products separated.

AB 45 included language requiring the DCC to prepare a report to the Governor and the Legislature outlining the steps necessary to allow for the incorporation of hemp cannabinoids into the cannabis supply chain. The report is required to include, but is not be limited to, the incorporation of hemp cannabinoids into manufactured cannabis products and the sale of hemp products at cannabis retailers. This report is due no later than July 1, 2022.

Language in AB 45 also stated the intent of the Legislature to consider, in light of the DCC's report, "whether and how to take legislative action concerning the incorporation of hemp into the cannabis supply chain." This bill is intended to serve as a vehicle for effectuating that intent. While it currently contains a simplistic statement that nothing in MAUCRSA prohibits integration, it is presumed that a much more substantive bill would be necessary to resolve the entirety of the DCC's reported recommendations. Were this bill to be amended after July 1 to include this more substantial language, more discussion would likely be prompted as to whether, and how, to integrate hemp into the cannabis supply chain.

Prior Related Legislation. AB 45 (Aguiar-Curry, Chapter 576, Statutes of 2021) established a regulatory framework for industrial hemp under the Sherman Food, Drug, and Cosmetic Law.

SB 292 (Wilk, Chapter 485, Statutes of 2021) conformed current state law to the United States Department of Agriculture's (USDA) Interim Final Rule regarding reporting and testing of industrial hemp in the United States.

SB 153 (Wilk, Chapter 838, Statutes of 2019) revised provisions regulating the cultivation and testing of industrial hemp to conform to the requirements for a state plan under the 2018 Farm Bill.

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.

SB 566 (Leno, Chapter 398, Statutes of 2013) allowed hemp to be grown in California, upon federal approval, by defining "industrial hemp" to be excluded from the definition of "marijuana," a Schedule I controlled substance.

ARGUMENTS IN SUPPORT:

The **U.S. Hemp Roundtable** supports this bill, writing: "When the July 1 report is released, it is the expectation that AB 1656 will be the vehicle for a mutually acceptable cannabis policy to be

adopted. As a result, we urge the committee to support AB 1656 in order to position the bill to play that role later this year."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Canopy Growth Corporation
The Parent Company
U.S. Hemp Roundtable

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1747 (Quirk) – As Introduced January 31, 2022

SUBJECT: Contractors: disciplinary action.

SUMMARY: Provides that willful or deliberate disregard of any state or local law relating to the issuance of building permits constitutes a cause for disciplinary action against a licensee.

EXISTING LAW:

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

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

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

4) States that all boards within the DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (BPC § 101.6)

5) Establishes the Contractors State License Board (CSLB) under DCA to license and regulate contractors and home improvement salespersons. (BPC § 7000 et seq.)

6) Authorizes the registrar of CSLB to investigate the actions of any applicant, contractor, or home improvement salesperson within the state and may deny the licensure or the renewal of licensure of, or cite, temporarily suspend, or permanently revoke any license or registration if the applicant, licensee, or registrant, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action. (BPC § 7090)

7) 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 (License Law) are a cause for disciplinary action of a licensed contractor by CSLB. (BPC § 7110)

8) Authorizes CSLB to assess a civil penalty up to $30,000 dollars for the willful or deliberate disregard of the various state building, labor and safety laws. (BPC § 7099.2)

THIS BILL:

1) Includes the violation of various state building, labor, and safety laws that are subject to disciplinary action under BPC § 7110 to the list of violations for which CSLB is authorized to assess a civil penalty up to $30,000.

2) Adds willful or deliberate disregard of any state or local law relating to the issuance of building permits to BPC § 7110.

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, "When a contractor fails to obtain a building permit, there is no assurance that the proposed project is installed up to code. Projects not installed up to code place owners at risk, prevents consumers from achieving energy savings, and compromises California's building decarbonization efforts. [This bill] addresses these issues by strengthening the Contractors State License Board's (CSLB) ability to discipline licensees that fail to comply with permit requirements by increasing the civil penalty for violations, and clarifies that a licensee failing to obtain a building permit is a chargeable violation."

Background.

Contractors and the CSLB. CSLB is responsible for the implementation and enforcement of the Contractors' State License Law (the laws and regulations related to the licensure, practice, and discipline of the construction industry in California). All businesses and individuals who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by CSLB if the total cost, including both labor and materials, of one or more contracts on the project is $500 or more. The law specifies that CSLB only issues licenses to business entities, although an individual contractor can apply for a license as the owner of a sole proprietorship. Moreover, CSLB registers and regulates home improvement salespersons (HIS). Currently, there are 234,020 active licensees and 24,051 registered HIS Salespersons in California.

All businesses and individuals who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by CSLB if the total cost, including both labor and materials, of one or more contracts on the project is $500 or more. If less than $500 and the work is considered "casual, minor or inconsequential," the individual is exempt from licensure and provisions of the License Law. The exemption does not apply in any case where the construction work is only a part of a larger or major operation, as specified. Nor does the exemption apply to an individual who advertises, by any means, that they are a licensed contractor.

Permit Violations. Building permits are required by law to protect public safety as they insure that construction work is completed according to state and local building requirements. Failure to obtain a building permit can threaten worker and occupant safety and put building owners at risk, potentially resulting in increased liability and costs. Moreover, contractors who disregard building permit requirements have a competitive advantage over other contractors.

In 2017, CSLB established Building Permit Advisory Sub-Committee to consider ways to improve compliance. Since then, CSLB has updated its website to enable individuals to report permit violations, improved communication between CSLB and building departments to report and document permit violations, and produced a training course on permit compliance. Contractors who fail to obtain a building permit are required to complete the training course. Failure to obtain a building permit is a violation of the License Law and are subject to disciplinary action. CSLB may assess a civil penalty up to $5,000 per violation by licensed contractors and $15,000 for unlicensed individuals acting as licensed contractors, issue an order of correction and payment of permit fees and penalties imposed by the local building department,

and suspend or revoke the contractor's license. Between 2014 and 2018, CSLB investigated 4,400 building permit violations and took legal action in approximately 1,200 of those cases.

Prior Related Legislation.

AB 246 (Quirk), Chapter 46, Statutes of 2021, authorized CSLB to take disciplinary action against licensed contractors found to have illegally dumped construction material or debris.

AB 569 (Grayson), Chapter 94, Statutes of 2021, increased 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, and authorized CSLB to issue a Letter of Admonishment in lieu of a citation for multiple violations at a time.

AB 2368 (Quirk and Mathis) of 2020 would have added illegal dumping to the list of violations that constitute a cause for disciplinary action against a contractor by CSLB.

ARGUMENTS IN SUPPORT:

As the sponsor of this bill, the *Contractors State License Board* writes in support: "This bill arose out of CSLB consultation with the California Energy Commission on ways to increase compliance with Title 24 clean energy and quality installation standards for heating, ventilating, and air conditioning (HVAC) equipment. Construction projects not installed to code place owners at a risk, and in the case of HVAC systems, prevents consumers from achieving energy savings and compromises California's building decarbonization efforts. The Board already has authority to discipline contractors for failure to comply with permit requirements (Business and Professions Code §§ 7090 and 7110). To clarify and address the seriousness of this issue in the law, the bill creates a generalized subdivision for permit violations and increases the fines for permit and other serious violations to $30,000."

The *California Building Officials* (CALBO) write in support: "To promote a higher regard for public safety, it is necessary to increase the punishments for blatant disregard of building permits and other local safety measures. CALBO members foster strong relationships with licensed professional contractors in California and appreciates these relationships, however at times, further punishments for failing to respond to code violations is necessary. [This bill] would further strengthen the ability of local building departments to enforce and promote public safety in the built industry, which is why CALBO is proud to support this measure. CALBO believes that [this bill] provides local building officials another tool in their toolbox to enforce building permits therefore increasing public safety."

The *Western States Council of Sheet Metal, Air, Rail and Transportation Workers* and *International Association of Sheet Metal, Air, Rail and Transportation Workers, Sheet Metal Workers' Local Union No. 104* each write in support, "The Increasing enforcement penalties for permit non-compliance is an important step in addressing the widespread lack of permit and Title 24 Energy Code compliance. California Energy Commission (CEC) and the California Public Utilities Commission studies have found that up to 90% of HVAC replacement projects are performed without required permit, inspection, and Title 24 compliance documentation compliance. Contractors who are willing to do work without a permit can perform faulty work and underbid competitors. Contractors that perform unpermitted work are more likely to be unlicensed, use low wage, untrained workers, and to skip acceptance testing or commissioning of systems. If permits are not pulled, then local building departments can't enforce Title 24 Energy

Code standards. If California is going to meet its energy efficiency and greenhouse gas reduction goals, it needs to take concrete steps to improve permit compliance. When HVAC systems are not installed to code, there can be detrimental impacts on the efficiency of those systems. In fact, the California Energy Commission found that up to 85% of replacement HVAC systems are installed incorrectly, which can result in a 20% to 30% increase in energy use by these systems."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

American Subcontractors Association-California
California Building Officials
Contractors State License Board
Flasher Barricade Association
Sheet Metal Workers' Local Union No. 104 (SMART)
Western Electrical Contractors Association
Western States Council of Sheet Metal, Air, Rail, & Transportation

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1874 (Smith) – As Introduced February 8, 2022

SUBJECT: Contractors: unlicensed work.

SUMMARY: Authorizes a person who is not licensed as a contractor to advertise for construction work or a work of improvement if the total cost of labor is less than $500 and the person states in the advertisement that they are not a licensed contractor.

EXISTING LAW:

1) Establishes the Contractors State License Board (CSLB) under the Department of Consumer Affairs (DCA) to license and regulate contractors and home improvement salespersons. (Business and Professions Code (BPC) § 7000 *et seq.*)

2) States that all boards within the DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (BPC § 101.6)

3) Requires the CSLB in consultation with the Director of DCA to appoint a registrar of contractors (Registrar) and sunsets the CSLB and its authority to appoint a registrar on January 1, 2024, as specified. (BPC § 7011)

4) Requires any person who advertises or puts out any sign, card, or device that would indicate to the public that they are a contractor, or who causes their name or business name to be included in a classified advertisement or directory under a classification for construction or work of improvement covered under the Contractors State License Law (License Law) be subject to the License Law regardless of whether their operations as a builder are exempt. (BPC § 7027)

5) Permits a person who is not licensed under the License Law to advertise for construction work or a work improvement covered under the License Law, only if the aggregate contract price for labor, material, and all other items on the project or undertaking is less than $500 and the individual states in the advertisement that the individual is not licensed, as specified. (BPC § 7027.2)

6) States that any person licensed or unlicensed, who willfully and intentionally uses with intent to defraud a contractor's license number that does not correspond to the number on the contractor's license held by that person is punishable by a fine not exceeding $10,000 or by imprisonment, or both, as specified. (BPC § 7027.3)

7) States that it is a misdemeanor for any contractor, whether licensed or unlicensed to perform or engage in asbestos related work, as specified, without certification. (BPC § 7028.1)

8) Empowers the Registrar of Contractors to issue citations containing orders of abatement and civil penalties against persons acting in the capacity of or engaging in the business of a contractor without having a license in good standing. (BPC 7028.6)

9) States that a person who engages in the business of, or acts in the capacity of a contractor, without having a license in connection with the offer or performance of repairs to a residential or non-residential structure, for damage caused by a natural disaster, for which a state of emergency is proclaimed by the Governor, or a major disaster declared by the president of the United States is punishable by a fine up to $10,000 or by imprisonment. (BPC § 7028.16)

10) States that the License Law does not apply, if the aggregate contract price for labor, materials, and all other items, is less than $500 and the work or operations being performed is considered casual, minor, or inconsequential nature. (BPC § 7048)

11) States that the exemption in (5) above does not apply in any case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than $500, as specified, and the exemption does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor or that he or she is qualified to engage in the business of a contractor. (BPC § 7048)

12) Includes the following classification of contracting businesses: General engineering contracting, General building contracting, and Specialty contracting, as defined. (BPC §§ 7055 and 7056)

13) Authorizes the registrar upon their own motion, and requires upon the verification of a complaint in writing of any person, to investigate the action of any contractor, applicant or home improvement salesperson, as specified, and requires the registrar to take disciplinary action if found guilty of or commits any one or more of the acts or omissions constituting causes for discipline. (BPC § 7090)

14) Specifies the projects for which a home improvement contract, as defined, is required, outlines the contract requirements, and limits the items that are included in the contract, or may be provided as an attachment, as specified. (BPC § 7159)

THIS BILL:

1) Authorizes a person who is not licensed as a contractor to advertise for construction work or a work of improvement covered by existing law if the total cost of labor is less than $500 and the person states in the advertisement that they are not a licensed contractor.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, “Currently, CSLB allows unlicensed contractors to perform work, as long as cost of that work is under $500. However, this threshold has not been adjusted since 1998, meaning the rising cost of materials have not been

taken into an account in over two decades. Because of this handymen doing minor, inconsequential, and work are contending with regulations that don't reflect today's economic conditions."

Background.

Contractors and the CSLB. CSLB is responsible for the implementation and enforcement of the Contractors' State License Law (the laws and regulations related to the licensure, practice, and discipline of the construction industry in California). The law specifies that CSLB only issues licenses to business entities, although an individual contractor can apply for a license as the owner of a sole proprietorship. CSLB issues four (4) types of contractors licenses: "A"' General Engineering Contractor license; "B" General Building Contractor license; "B-2" Residential Remodeling Contractor license*;* and "C" Specialty Contractor licenses of which there are 42 classifications. Each licensing classification (I.e. electrical, drywall, painting, plumbing, roofing, and fencing) specifies the type of contracting work permitted in that classification. Specific licenses are also eligible for "Asbestos" or "Hazardous Substance Removal" certifications issued by CLSB. Moreover, CSLB registers and regulates home improvement salespersons (HIS). Currently, there are 234,020 active licensees and 24,051 registered HIS Salespersons in California.

All businesses and individuals who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by CSLB if the total cost, including both labor and materials, of one or more contracts on the project is $500 or more. If less than $500 and the work is considered "casual, minor or inconsequential," the individual is exempt from licensure and provisions of the License Law. The exemption does not apply in any case where the construction work is only a part of a larger or major operation, as specified. Nor does the exemption apply to an individual who advertises, by any means, that they are a licensed contractor.

The threshold for contracting work without a license was last updated in 1998, when SB 2217 (O'Connell) Chapter 633, Statutes of 1998, increased the dollar amount for the exemption from $300 to $500. Until 2004, there was also a statutory requirement that an individual performing work under the $500 exemption threshold notify the consumer that the individual was not a licensed contractor. That requirement was removed in 2004 by SB 1914 (Senate Business and Professions Committee), Chapter 865, Statutes of 2004, because CSLB has no jurisdiction over unlicensed individuals performing work under the exemption.

"B-2" Residential Remodeling Contractor license. In 2020, SB 1189 (McGuire), Chapter 364, Statutes of 2020, created a new license type for individuals specialize in non-structural residential remodeling and home improvement projects. An applicant for a "B" General Building Contractor license must have four years of framing and carpentry experience, which previously prevented many individuals with residential remodeling experience from obtaining a license. The "B-2" Residential Remodeling Contractor license type was created to give these individuals (I.e. handypersons) a pathway to licensure. Contractors with a "B-2" Residential Remodeling license may contract for non-structural residential remodeling and home improvement projects that require at least three unrelated trades or crafts (e.g. kitchen or bathroom remodel). A "B-2" Residential Remodeling licensee can contract for drywall, finish carpentry, flooring, insulation, painting, plastering, roof repair, siding, tiling, or installing, repairing, or replacing any of the following: electrical fixtures (e.g. fans, lights, and outlets); plumbing fixtures (e.g. faucets,

toilets, and tubs); and mechanical fixtures (e.g. air filters and preassembled exhaust fans). A "B-2" Residential Remodeling licensee may not make structural changes to load-bearing walls or make electrical, plumbing, or mechanical work behind the wall.

Enforcement. CSLB's enforcement staff investigate complaints against applicants, licensed contractors, unlicensed individuals acting as licensed contractors, and HIS. In Fiscal Year 2020-21, CSLB received approximately 16,500 complaints. Complaints come from a variety of sources, including consumers, members of the public, licensees, and governmental agencies, although most complaints are filed by homeowners in regards to home improvement and repair projects. Between 2015 and 2020, approximately 26% of complaints from residential consumers stemmed from construction work valued between $501 and $5,000.

Licensing Requirements. To qualify for a contractor license, an individual must be at least 18 years old, have the experience and skills to manage the daily activities of a construction business (including field supervision) or be represented by someone else with the knowledge, experience, and skills who serves as the qualifying individual, or the "qualifier." The qualifier must have at least four full years of experience as a journeyman, foreman, supervising employee, or contractor in the classification for which they are applying within the past ten years before filing the application. Additionally, the applicant must pass various examinations, submit fingerprints for a background check, comply with worker's compensation and liability requirements, and pay a variety of fees.

Licensing Fees. Fees include an Original Application fee, currently set at $450, and Initial License fee, currently ranging from $200 to $350. Additionally, licensees are required to pay renewal fees biennially for active licenses, which currently range from $450 to $700, if paid on time, and every four years for inactive licenses, which currently range from $300 to $500, if paid on time. Reactivating a license currently ranges from $450 to $700. Additional fees may also be assessed based on specific requirements for each license classification or type of business entity.

Inflation. Consumer inflation is measured by the Consumer Price Index, which reflects changes in the prices urban consumers (roughly 93 percent of the U.S. population) pay for goods and services. The average rate of inflation since 1998 is approximately 2.34%, driven up in large part by the current inflation rate: 7.5 %. $500 in 1998 has the same buying power as $877.83 at the time of this writing.

Licensing Laws in Other States. Although each state is different, the threshold for "minor work" or "handyman" exemptions in other states range from $1,000 to $50,000

Prior Related Legislation.

AB 899 (Cunningham) of 2021 would have required the CSLB to annually adjust the $500 amount by regulation to reflect the rate of inflation, as measured by the Consumer Price Index or other method of measuring the rate of inflation that the CSLB determines is reliable and generally accepted. That bill died pending a hearing in this committee.

SB 304 (Archuleta) of 2021 would have increased from $500 to $1,000 the value of a construction contract that is not subject to regulation under the License Law, so long as the nature of the work performed is considered casual, minor, or inconsequential. That bill died in Senate Appropriations.

SB 1189 (McGuire), Chapter 364, Statutes of 2020, created a B-2 Residential Remodeling Contractor license as a new classification of contracting business and revises the definition of home improvement.

SB 315 (Lieu), Chapter 392, Statutes of 2014, prohibited a person who is not licensed as a contractor to advertise for construction work that would cost more than $500, including labor and materials.

AB 2217 (O'Connell), Chapter 633, Statutes of 1998, increased from $300 to $500 the value of a construction contract that is not subject to regulation by the CSLB, so long as the nature of the work performed is "casual, minor, or inconsequential."

ARGUMENTS IN SUPPORT:

None on file.

ARGUMENTS IN OPPOSITION:

The **California Landscape Contractors Association** writes in opposition: "CLCA believes that consumers are best served and protected when licensed contractors perform the work required for their landscape construction projects. [This bill] would effectively allow more non-licensed contractors to perform work on jobs better performed by licensed contractors."

POLICY ISSUE(S) FOR CONSIDERATION:

Advertising For vs. Performing Construction Work. Existing law authorizes an unlicensed individual to *perform* construction work or work of improvement if the total cost of the labor, materials, and all other items is less than $500 and the work is considered casual, minor, or inconsequential in nature. Separately, existing law allows an unlicensed individual to *advertise* for construction work or work of improvement if the total cost of the labor, materials, and all other items is less than $500 and the advertisement discloses that the individual is not a licensed contractor. This bill, in its current form, would allow an unlicensed individual to advertise for work that they are not authorized to perform without a license. The individual would still be required to obtain a license, or be subject to a misdemeanor for performing the work without a license.

Consumer Risk. By applying the $500 threshold solely to the costs of labor, as opposed to labor, materials, and all other items associated with a project, this bill would greatly increase the financial risk that could be assumed by a consumer. While the cost of labor may be limited to $500, the cost of materials and any other items necessary for the work to be completed, would not be limited. While CSLB has the ability to hold licensed contractors accountable for contracted work, consumers' only option for recourse is to seek restitution through the civil courts if an exempt individual does not perform satisfactory work. Moreover, the consumer would be responsible for fixing any repairs or modifications to work done incorrectly, whereas licensees under the CLSB are required to meet specified bond and insurance requirements, which unlicensed persons do not have to obtain. Further, licensed contractors must carry workers' compensation in the event an employee is injured at the worksite.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

California Landscape Contractors Association

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2105 (Smith) – As Introduced February 14, 2022

SUBJECT: Contractors: initial license fee reduction: veterans.

SUMMARY: Requires the Contractors State License Board (CSLB) to grant a 50-percent fee reduction for an initial license to an applicant who provides satisfactory evidence that the applicant is a veteran who has served as an active duty member of the United States Armed Forces or the California National Guard and was honorably discharged.

EXISTING LAW:

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

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

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

4) States that all boards within the DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (BPC § 101.6)

5) Provides that a licensee of a regulatory board whose license expires while on active duty as a member of the California National Guard or the U.S. Armed Forces may reinstate their license without examination or penalty, and that renewal fees, continuing education requirements, or renewal requirements, shall be waived, as specified. (BPC §§ 114 and 114.3)

6) Requires a board, if applicable, 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(b))

7) Requires a board to expedite and assist 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 board to expedite the licensure process for an applicant who meets both of the following requirements:

    a) Supplies evidence satisfactory to the board that 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.

b) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which the applicant seeks a license from the board. (BPC § 115.5)

9) Requires specific regulatory boards to issue temporary licenses to an applicant who holds a current similar license in another state and is the spouse of an active duty member of the Armed Forces that is stationed in California. (BPC § 115.6)

1) Provides for the licensing and regulation of contractors by the Contractors State License Board (CSLB) within DCA. (BPC § 7000 *et seq.)*

2) Authorizes CLSB to set fees by regulation, according to a prescribed schedule. (BPC § 7137)

THIS BILL:

1) Requires CSLB to grant a 50-percent fee reduction for an initial license to an applicant who provides satisfactory evidence that the applicant is a veteran who has served as an active duty member of the United States Armed Forces or the California National Guard and was honorably discharged.

2) Specifies that an applicant is deemed to provide satisfactory evidence of veteran status if they provide with their application a copy of a current and valid driver's license or identification card with the word "Veteran" printed on its face.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "Reducing initial CSLB licensing fees by 50 percent would help remove the financial barrier and ease the burden for veterans currently residing in California. Veterans often gain valuable job skills during military service which can be used upon entering the civilian workforce. Easing this financial barrier will bring skilled labor into California and help chip away at the growing issue of veteran homelessness in the state."

Background.

Contractors and the CSLB. CSLB is responsible for the implementation and enforcement of the Contractors' State License Law (the laws and regulations related to the licensure, practice, and discipline of the construction industry in California). All businesses and individuals who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by CSLB if the total cost, including both labor and materials, of one or more contracts on the project is $500 or more. The law specifies that CSLB only issues licenses to business entities, although an individual contractor can apply for a license as the owner of a sole proprietorship. Moreover, CSLB registers and regulates home improvement salespersons (HIS). Currently, there are 234,020 active licensees and 24,051 registered HIS Salespersons in California.

Veterans in California. According to U.S. Census data, 1,525,746 million veterans resided in California between 2016 and 2020.

Veterans Application Assistance Program. CSLB offers a Veterans Application Assistance Program to assist honorably discharged veterans seeking licensure as a contractor. CSLB automatically expedites the application process for honorably discharged veterans and has staff specially trained to evaluate and apply transferable civilian and military education and experience towards the minimum experience requirement for licensure. Once that requirement has been met, applicants are approved to take the relevant licensing examinations, which they must pass prior to licensure.

Between 2017 and 2021, CSLB expedited and issued 2,743 contractor's licenses and HIS registrations for honorably discharged veterans, although the total number is expected to be higher. CSLB does not track the veteran status of applicants who do not qualify for expedited application processing.

CSLB also has a dedicated webpage for veterans and a specific email contact for veterans who need one-on-one assistance with the application process.

Veteran Designation on California Driver License and ID Card. In 2014, the Legislature passed and Governor Brown signed AB 935 (Frazier), Chapter 644, Statutes of 2014, which required the Department of Motor Vehicles to issue driver's licenses and identification cards with a "veteran" designation to eligible applicants, beginning in November 2015. This designation can assist veterans to access certain privileges and benefits associated with being a veteran without having to carry or present other documents such as a Certificate of Release or Discharge from Active Duty.

Initial Licensing Fees. Existing law authorizes CSLB to set fees by regulation, according to a prescribed schedule. The initial license fee for an active or inactive license for an individual owner is statutorily set at $200 and may be increased up to $250 by CSLB. The initial license fee for an active or inactive license for a partnership, corporation, limited liability company, or joint venture is statutorily set at $350 dollars and may be increased up to $438 by CSLB. These fees were last updated in 2021 and are currently at their statutory minimums of $200 for sole owners and $350 for non-sole owners.

CSLB relies solely on fees to cover all costs associated with administering its licensing and enforcement programs. In FY 2017-18, applicant exam and licensing fees made up 22.1% of CSLBs total revenue.

Fee Reduction. This bill requires CSLB to grant a 50-percent fee reduction for an initial license to an applicant who provides satisfactory evidence that the applicant is a veteran who has served as an active duty member of the United States Armed Forces or the California National Guard and was honorably discharged. This bill further specifies that an applicant is deemed to provide satisfactory evidence of veteran status if they provide with their application a copy of a current and valid driver's license or identification card with the word "Veteran" printed on its face. According to the author, "Reducing initial CSLB licensing fees by 50 percent would help remove the financial barrier and ease the burden for veterans currently residing in California."

Renewal Fees. Existing law provides that a licensee of a regulatory board whose license expires while on active duty as a member of the California National Guard or the U.S. Armed Forces may reinstate their license without examination or penalty, and that renewal fees, continuing education requirements, or renewal requirements, shall be waived, as specified. Since 2013, CSLB has waived one renewal fee. CSLB staff are not aware of any requests being denied.

Other States. States including Florida, Michigan, and Wisconsin have similarly waived initial license fees for honorably discharged veterans.

Current Related Legislation.

SB 1031 (Ochoa Bogh), which is pending the Senate, would require healing arts boards under DCA to charge half as much for a renewal fee for an inactive license compared to a renewal fee of an active license, unless the healing arts board establishes a lower fee.

Prior Related Legislation.

AB 1026 (Smith) of 2021 would have required a regulatory board under DCA to grant a 50-percent fee reduction for an initial license to an applicant who provides satisfactory evidence that the applicant has served as an active duty member of the United States Armed Forces of the California National Guard and was honorably discharged.

AB 1386 (Cunningham) of 2021 would have required regulatory boards under DCA to waive the original licensing fees for military spouses.

AB 107 (Salas), Chapter 693, Statutes of 2021, added ten 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 United States 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, 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.

SB 1324 (Allen) of 2020 would have required DCA, the Commission on Teacher Credentialing, the Department of Real Estate, and the State Department of Public Health to each place a prominently displayed military licensure icon or hyperlink on the home page of its internet website that is linked to information about each occupational board or program for licensure or certification that it administers along with additional information relating to the professional licensure of veterans, service members, and their spouses, as specified.

SB 1137 (Vidak), Chapter 414, Statutes of 2018, required the Department of Veterans Affairs and the DCA to, in consultation with each other, take appropriate steps to increase awareness regarding professional licensing benefits available to veterans and their spouses, as specified.

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 of 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 United States Armed Forces members.

ARGUMENTS IN SUPPORT:

American Legion-Department of California, AMVETS-Department of California, California Association of County Veterans Service Officers, California State Commanders

Veterans Council, Military Officers Association of America-California Council of Chapters, and Vietnam Veterans of America-California State Council collectively write in support: "One of the biggest challenges faced by servicemembers upon discharge from the military and reintegrating into the civilian world is obtaining a job. Entering an occupation with plenty of room for advancement and the opportunity to be in business for oneself in the construction trades is an ideal way for veterans to build a lifetime career. While most high school graduates enter the civilian workforce upon graduation and begin the pathway to a career, the young men and women who chose to serve our country for four or more years are behind the curve when they seek to re-join the civilian world. [This bill] will help benefit these veterans by reducing one of the financial barriers to entry in these professions."

The **Contractors State License Board** writes in support: "This bill is consistent with CSLB's continued practice of assisting past and present military personnel and their spouses/domestic partners with application and licensure documentation."

The **State Building and Construction Trades Council of California** writes in support: "Our unions have learned that the discipline and drive that one learns during their military service transfers well to a career in the construction industry and we are proud to support bills that make their transition back to civilian life easier. Benefits and recognition for our former service members are often lacking. This legislation provides a meaningful benefit for those seeking to enter the construction industry."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

American Legion, Department of California
Amvets, Department of California
California Association of County Veterans Service Officers
California State Commanders Veterans Council
Contractors State License Board
Military Officers Association of America, California Council of Chapters
State Building & Construction Trades Council of California
Vietnam Veterans of America, California State Council

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2055 (Low) – As Introduced February 14, 2022

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

SUBJECT: Controlled substances: CURES database.

SUMMARY: Transfers responsibility for the maintenance and operation of the CURES prescription drug monitoring program (PDMP) from the Department of Justice (DOJ) to a department specified by the Governor, effective April 1, 2023.

EXISTING LAW:

1) Establishes the Controlled Substance Utilization Review and Evaluation System (CURES), a PDMP maintained by the DOJ for the purposes of collecting records of dispensed controlled substances for review by licensed prescribers and dispensers, regulatory investigators, law enforcement, and statistical researchers. (Health and Safety Code (HSC) § 11165(a))

2) Requires pharmacists and other dispensers to report information to CURES within one working day relating to prescriptions of Schedule II, III, IV, and V controlled substances. (HSC § 11165(d))

3) Requires health care practitioners in receipt of a federal Drug Enforcement Administration (DEA) registration providing authorization to prescribe controlled substances, as well as pharmacists, to register for access to the CURES database. (HSC § 11165.1(a))

4) Requires certain health care practitioners to consult the CURES database to review a patient's controlled substance history before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least once every six months thereafter if the substance remains part of the treatment of the patient, with certain exemptions. (HSC § 11165.4)

5) Requires the DOJ to upgrade CURES to allow health information technology systems that meet certain patient privacy and data security requirements to interoperate with the database, allowing prescribers and dispensers to make queries through their electronic health record applications. (HSC § 11165.1)

6) Enables security printers and prescribers to report stolen or lost prescription pads to the DOJ through CURES. (HSC § 11165.3)

7) Provides dedicated funding for the CURES program through an annual license fee assessed for licensees authorized to prescribe or dispense controlled substances in California. (Business and Professions Code (BPC) § 208)

8) Authorizes the DOJ to seek voluntarily contributed private funds from insurers, health care service plans, qualified manufacturers, and other donors for the purpose of supporting CURES. (HSC § 11165.5)

9) Allows the DOJ to conduct audits of CURES and its users and issue citations and fines for system misuse. (HSC § 11165.2)

10) Requires the CURES database to comply with all applicable federal and state privacy and security laws and regulations and requires the DOJ to establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES. (HSC § 11165(c))

THIS BILL:

1) Provides that beginning April 1, 2023, full responsibility for the maintenance and operation of CURES shall be transferred from the Department of Justice to a department specified by the Governor.

2) Authorizes the successor department to adopt emergency regulations to reorganize, clarify, or make consistent regulations, including regulations adopted by the DOJ before or in place as of April 1, 2023.

3) Transfers all agreements, memoranda of understanding, and contracts in support of the CURES database that are in effect as of April 1, 2023 from DOJ to the successor department.

4) Clarifies that the bill does not restrict, eliminate, or substantially modify the authority of the DOJ to engage in any investigation or enforcement activity, either independently or on behalf of a board or state agency.

5) Requires the DOJ to submit a report to the appropriate policy and fiscal committees of the Legislature on the status of the transfer on or before February 1, 2023.

6) Requires the DOJ to provide staff support to the successor department until that department has hired its own staff, until January 1, 2024.

7) Makes various conforming changes to statutorily reflect the transfer beginning April 1, 2023.

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

COMMENTS:

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

> "Currently, CURES remains housed under the DOJ because it evolved from early tools established primarily for law enforcement investigations. However, experts and policymakers now recognize that combating prescription drug abuse should be approached through a health-oriented lens, rather than through criminal prosecution. Forty-nine states have PDMPs like CURES; however, California is only one of four states that houses their PDMP in a law enforcement agency. While the Attorney General has worked laudably to advance the state's progress against the opioid abuse crisis, CURES would be better positioned in a more health focus department."

Background.

History of Prescription Monitoring. California's scheme for tracking drug prescriptions dates back to the early twentieth century. Senate Bill 367 (Lukens) in 1905 first established the licensing and regulation of pharmacists in California, creating the California State Board of Pharmacy (BOP) and prohibiting any person to "manufacture, compound, sell, or dispense any drug" without a license. In 1929, Senate Bill 182 (Young) outlawed the dispensing of certain drugs without a written prescription from a licensed physician, dentist, or veterinarian. These prescriptions were required to include the name and address of the individual receiving the drug, and for three years all prescription records were required to remain "open to inspection by the prescriber and properly authorized officers of the law, including all inspectors of the division of narcotic enforcement and of the state board of pharmacy." This requirement was later expanded to include all prescription drugs.

The California Triplicate Prescription Program (TPP) became the nation's first comprehensive prescription tracking system when it launched in 1939 under Attorney General Earl Warren. Under the TPP, physicians and other prescribing health professionals were required to use serialized triplicate prescription forms when prescribing a Schedule II controlled substance. One copy was provided to the patient; another was retained for the prescriber's records. The third copy of each triplicated prescription was sent to the Bureau of Narcotics Enforcement within DOJ, which used the records to investigate potential fraud or criminal diversion of controlled substances.

CURES was first established by Assembly Bill 3042 (Takasugi) in 1996, a bill sponsored by Attorney General Dan Lungren. AB 3042 effectuated a Controlled Substances Prescription Advisory Council recommendation that DOJ develop a "technologically sophisticated data monitoring system to collect as much data as is needed and provide easy access to the data collected for educational, law enforcement, regulatory, and research purposes." CURES was initially a provisional pilot project operating concurrently with the TPP; both programs collected Schedule II prescription data for law enforcement to identify cases of diversion. Assembly Bill 2655 (Matthews) extended the pilot and authorized licensed health professionals to request CURES data for prescriptions dispensed to their patients.

In 2003, Senate Bill 151 (Burton) made CURES a permanent program and eliminated the TPP. This bill enacted a number of other significant reforms to state laws governing the prescribing of controlled substances, intending to "increase patient access to appropriate pain medication and prevent the diversion of controlled substances for illicit use." SB 151 replaced the triplicate prescription form requirement for Schedule II drugs with a new requirement that these prescriptions be issued on a special form obtained from an approved security printer. This bill also added Schedule III drug data to CURES, contingent upon available funding from DOJ.[1]

During this period of time, CURES was primarily used for investigatory searches of prescription records to identify potential fraud or diversion of controlled substances. However, after a series of high-profile prescription drug deaths, a growing national movement called for states to empower safer prescribing practices through web-based solutions to what became identified as a public health crisis. While CURES allowed prescribers to request patient activity reports

[1] Schedule IV drugs were added by Assembly Bill 2986 (Mullin) in 2006, and Schedule V drugs were added by Assembly Bill 528 (Low) in 2019.

through mail or fax, other states began to launch searchable "prescription drug monitoring program" databases (PDMPs) to enable health professionals to more easily access their patients' prescription histories. In 2004, Kentucky became the first state to implement a PDMP with the release of its eKASPER program, and 23 other states soon followed suit.

California's efforts to upgrade CURES into a searchable, client-facing PDMP were initially inhibited by budget challenges. The database's funding structure at the time made much of the system's operation contingent on the availability of funding from the limited special funds for the state's healing arts boards, with additional money provided by DOJ through its General Fund allocation and federal grant dollars. Implementing a new online database would require additional resources. In 2005, Attorney General Bill Lockyer sponsored Senate Bill 734 (Torlakson) to evaluate what would be necessary to create a real-time PDMP, contingent upon the acquisition of private outside funding, which was later contributed by Kaiser Permanente.

In 2008, Attorney General Jerry Brown announced that the new PDMP upgrades to CURES would be made possible through $3.5 million in private funding secured through a partnership with the Troy and Alana Pack Foundation. This patient safety foundation was founded by activist Robert Pack in honor of his 7- and 10-year-old children, who were killed in a car accident caused by prescription drug abuse. DOJ launched the reinvented CURES PDMP in 2009, and its release was celebrated as a step forward both for combating prescription drug abuse from a public health perspective and for preventing criminal drug diversion through law enforcement investigations.

However, as California's economy fell into recession, the state's budget crisis imperiled continued operation of the database. In 2010, Senator Mark DeSaulnier introduced Senate Bill 1071 to provide permanent funding for CURES through a fee or tax on prescription drug manufacturers and importers, but the bill failed passage in committee. The next year, Senate Bill 360 by Senator DeSaulnier was signed into law, which codified the new CURES PDMP and established a CURES Program Special Fund where administrative fines imposed by DOJ for system misuse could be deposited. The system still lacked a dedicated funding source.

Sustainable funding for CURES was effectively eliminated when the 2011-12 Budget Act cut DOJ's General Fund allocation by $71 million, defunding the entire Bureau of Narcotics Enforcement along with its support for CURES. DOJ attempted to preserve the program within existing resources, utilizing unpaid interns and temporarily redirecting staff. Without stable funding, however, the program struggled with technical challenges and gained a reputation in the health professional community for being difficult to use and offering poor user support.

In 2012, Senator DeSaulnier authored Senate Bill 616 to support the CURES budget through healing arts board licensing fee increases that could be triggered in the event that DOJ could not find sufficient funding to cover the costs of operating CURES. This bill failed passage in committee. Much of the opposition to the bill came from members of the health professional community, who resisted the proposal that the system's users should fund its operation through increased licensing fees without receiving the benefit of a demonstrably better resulting database.

Attorney General Kamala Harris sponsored Senate Bill 809 in 2013, again authored by Senator DeSaulnier, to ultimately resolve the CURES funding crisis. The bill assessed a new $6 annual fee on healing arts board licenses, generating reliable revenue for the CURES Fund. In exchange, the bill codified a number of improvements to the system that would be implemented by DOJ through an approximately $3 million budget allocation that was included in the 2013-14

Budget Act. New features included the ability for licensees to delegate their authority to initiate a CURES query to an assistant and a new "streamlined application and approval process" to replace the previous paper-based registration process. The bill also required all licensees with controlled substances prescribing rights to register for the system by January 1, 2016.

The new funding arrangement required DOJ to partner with the Department of Consumer Affairs (DCA), which administered the CURES Fund, in its development of the upgraded system. The improved database, which would come to be called "CURES 2.0," was built through a pair of vendor contracts, redesigning a new user interface and developing a series of algorithms to automatically alert prescribers of patterns indicative of at-risk patient behavior. The new 2.0 system also allowed prescribers to flag exclusivity compacts, added peer-to-peer communication, and significantly improved user profile management.

The rollout of CURES 2.0 is generally considered to have been successful, with a soft launch of the newly redesigned database beginning in July of 2015. The full rollout of the system was delayed until January 1, 2016 when it was discovered that many health professionals were utilizing outdated internet browser technology that did not meet CURES 2.0's enhanced security requirements. Technical issues delayed the release of the new web-based registration system, resulting in legislation to push back the deadline for prescribers to register to July 1, 2016.

With a consistently funded and thoroughly modernized CURES database in place, advocates resumed calling for use of the system to become a requirement for practitioners who prescribe new controlled substances. A requirement that health professionals consult CURES before writing a new prescription for controlled substances was originally included in SB 809 but was subsequently amended out. Proposition 46, referred to as the Troy and Alana Pack Patient Safety Act of 2014, included provisions that would have required prescribers to check CURES before prescribing a Schedule II or III drug for the first time; this initiative failed in part due to opposition arguments against mandating CURES use before the system upgrades were complete. After the proposition was defeated, supporters remained committed to pursuing legislation.

Senate Bill 482 (Lara), introduced in 2015 and subsequently signed into law in 2016, represented a significant achievement for the patient safety advocacy community when it enacted the state's first mandated use of the CURES database for prescribers. Absent certain exceptions, SB 482 required health practitioners to consult a patient's history in CURES prior to prescribing them a Schedule II, III, or IV controlled substance for the first time, and then at least once every four months as long as the prescription continued to be renewed. Other legislative measures were subsequently introduced to take advantage of CURES 2.0's new scalable architecture, which allows for additional upgrades to be more easily made to the database.

Placement of CURES Database. California is one of only four states that houses its PDMP within a law enforcement agency. This is because the database traces its origins back to the TPP, created in 1939 within the Bureau of Narcotics Enforcement, which was principally considered a tool for law enforcement to investigate cases of criminal drug diversion. The earliest iterations of prescription monitoring in California were not available to health professionals, but served to aid law enforcement in cracking down on illicit drug activity.

As national attention to combatting the opioid crisis has grown, experts have established that abuse and addiction are best addressed through a public health lens, rather than through criminal prosecution. While regulatory investigators and local law enforcement may still utilize PDMP data, prescription drug misuse and diversion by patients should be treated by medical

professionals rather than stigmatized as a chiefly criminal concern. This paradigm shift has led most states away from housing their PDMPs within a justice department, with some states having transitioned their own databases away from their Department of Justice in recent years.

Most states house their PDMP within either their state's health department or a licensing agency. Over half of all states currently have their PDMP within either their Board of Pharmacy or their licensing department (equivalent to the DCA in California). The majority of other states house their PDMP within either their Department of Health or their Department of Human Services.[2]

The intent of this bill is to bring California into conformity with PDMPs in the vast majority of other states by transferring maintenance and operation of CURES from the DOJ to a department with a health-focused mission statement. While doing so would not immediately change the scope or use of CURES by health practitioners, regulators, and law enforcement, it would represent the treatment-oriented approach to combatting the opioid crisis that has become recognized as best practice across the country. It would also ensure that any future changes to the system will be governed by health experts. While as currently drafted, the bill does not identify the successor department—requiring the Governor to select which agency should accept transfer of the system—it is presumed that the bill will likely be amended at a future date to confirm which department will take on responsibility for maintaining and operating CURES.

Prior Related Legislation. AB 2055 (Low) from 2021 stated the intent of the Legislature to transfer CURES from the DOJ to the Department of Public Health. *This bill died without a hearing in this committee.*

AB 528 (Low, Chapter 677, Statutes of 2019) reduced the required timeframe in which pharmacists are required to report dispensed prescriptions to CURES from seven days to the following business day, added Schedule V drugs to CURES, and changed the requirement for health practitioners to continue consulting the CURES database from every four months to every six months beginning July 1, 2021.

AB 1751 (Low, Chapter 478, Statutes of 2018) provides a framework for the CURES PDMP to connect with other states that comply with California's patient privacy and data security standards.

AB 1752 (Low) would have reduced the required timeframe in which pharmacists are required to report dispensed prescriptions to CURES from seven days to the following business day and would have added Schedule V drugs to CURES. *This bill was held under submission on the Senate Appropriations suspense file.*

AB 1753 (Low, Chapter 479, Statutes of 2018) allows the DOJ links uniquely serialized prescription pads with CURES.

AB 2086 (Gallagher, Chapter 274, Statutes of 2018) allows prescribers of controlled substances to review a list of patients for whom they are listed as being the prescriber in CURES.AB 3042 (Takasugi, Chapter 345, Statutes of 2002) first established CURES as a pilot project operating concurrently with the state's Triplicate Prescription Program.

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[2] https://www.aanp.org/advocacy/advocacy-resource/policy-briefs/issues-at-a-glance-prescription-drug-monitoring-programs-pdmp

SB 151 (Burton, Chapter 406, Statutes of 2003) made CURES the state's permanent prescription tracking program and added Schedule III drugs to the database.

SB 734 (Torlakson, Chapter 487, Statutes of 2005) created the framework to upgrade the CURES prescription database into a searchable, client-facing PDMP.

AB 2986 (Mullin, Chapter 286, Statutes of 2006) added Schedule IV drugs to the CURES database.

SB 809 (DeSaulnier, Chapter 400, Statutes of 2013) established new healing arts license fees to fund the development and maintenance a new and improved "CURES 2.0" database.

SB 482 (Lara, Chapter 708, Statutes of 2016) mandated that health practitioners consult a patient's history in CURES prior to prescribing them a Schedule II, III, or IV controlled substance for the first time and then at least once every four months as long as the prescription continued to be renewed.

AB 40 (Santiago, Chapter 607, Statutes of 2017) required the DOJ to facilitate interoperability between health information technology systems and the CURES database, subject to a memorandum of understanding setting minimum security and privacy requirements.

ARGUMENTS IN SUPPORT:

The **California Medical Association** (CMA) is sponsoring this bill. According to the CMA, "AB 2055, and the transferring of administrative responsibility for the CURES database from DOJ to a better-suited agency will result in this state resource being managed by a state agency that has the clinical knowledge and capacity, experience in managing large healthcare databases, relationships with the state's healthcare facilities, and an understanding of how to oversee research to ensure that the database can be effectively used as a clinical tool by healthcare providers for the benefit of their patients and that the data is used for research appropriately."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Medical Association *(Sponsor)*
California Orthopedic Association

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2155 (Villapudua) – As Amended March 10, 2022

SUBJECT: Cannabis beverages.

SUMMARY: Defines "cannabis beverage" as a form of edible cannabis product that is intended to be consumed in its final state as a beverage.

EXISTING LAW:

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

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

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

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

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

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

7) Prohibits an alcoholic beverage from being manufactured, sold, or offered for sale if it contains tetrahydrocannabinol (THC) or cannabinoids, regardless of source. (BPC § 25621.5)

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

9) Prohibits the sale of cannabis products that are alcoholic beverages. (BPC § 26070.2)

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

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

12) Allows for cannabis beverages to be packaged in glass containers that are clear or any color. (BPC § 26120)

13) Requires the DCC to promulgate regulations governing the licensing of cannabis manufacturers and standards for the manufacturing, packaging, and labeling of all manufactured cannabis products. (BPC § 26130)

THIS BILL:

1) Provides that for purposes of MAUCRSA, "cannabis beverage" means a form of edible cannabis product that is intended to be consumed in its final state as a beverage.

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

COMMENTS:

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

> "Cannabis beverages are the fastest growing segment among all consumer cannabis products. They are also a relatively new product, and as such, have yet to be specifically defined in the Business and Professions Code. Unfortunately, this lack of recognition of the product in California Code means that liquid beverages must fall under "edibles," i.e., gummies, chocolates, et. al. Forcing liquid beverages to be categorized as "edibles" leaves the Dept. of Cannabis Control unable to develop regulations for testing, labelling, packaging, etc. that is specific to liquids. This poorly serves both consumers and producers, who struggle to follow testing standards designed specifically for solid edible products."

Background.

Brief Overview of Cannabis Regulation in California. After several prior attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was passed to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws.

On January 16, 2019, the state's three cannabis licensing authorities—the Bureau of Cannabis Control, the California Department of Food and Agriculture, and the CDPH—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.

In early 2021, the Department of Finance released trailer bill language to create a new DCC with centralized authority for cannabis licensing and enforcement activities. This new department was created through a consolidation of the three prior licensing authorities' cannabis programs. As of July 1, 2021, the DCC has been the single entity responsible for administering and enforcing the majority of MAUCRSA.

Cannabis Beverages and Other Edible Products. Manufactured cannabis products are essentially finished goods containing cannabis that include ingredients or materials beyond the cannabis plant itself. The most common forms of manufactured cannabis products include cannabis concentrates, such as vape cartridges or tinctures; topical cannabis products, such as lotions, creams or balms; and edible products, such as baked goods, candies, or beverages.

The original language of MCRSA first vested authority for regulating cannabis manufacturers with the California Department of Public Health (CDPH), where it remained until 2021 when the DCC assumed most functions previously divided between the three cannabis licensing authorities. MAUCRSA includes a number of provisions aimed primarily at ensuring that manufactured products are safe for consumers and unappealing to children. Specifically, MAUCRSA requires that all edible cannabis products be:

(1) Not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis.

(2) Produced and sold with a standardized concentration of cannabinoids not to exceed 10 milligrams tetrahydrocannabinol (THC) per serving.

(3) Delineated or scored into standardized serving sizes if the cannabis product contains more than one serving and is an edible cannabis product in solid form.

(4) Homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(5) Manufactured and sold under sanitation standards established by the department that are similar to the standards for preparation, storage, handling, and sale of food products.

(6) Provided to customers with sufficient information to enable the informed consumption of the product, including the potential effects of the cannabis product and directions as to how to consume the cannabis product, as necessary.

(7) Marked with a universal symbol.

MAUCRSA defines "edible cannabis product" as cannabis product that is intended to be used, in whole or in part, for human consumption (including chewing gum). This broad definition captures both solid edibles (e.g. cookies or gummies) as well as liquid edibles (cannabis

beverages). However, representatives of the cannabis beverage industry have pointed out that many of the requirements and proposals for cannabis edibles generally do not necessarily make sense for liquid beverages, and have suggested that cannabis beverages should be distinctly regulated from other edible manufactured products.

This bill would not exempt cannabis beverages from any current requirements of manufactured cannabis products or edibles, nor would it create any new requirements for cannabis beverage manufacturers. However, by adding a specific definition for cannabis beverages, the author's intent is to provide an additional framework for future proposals to be enacted with more specificity toward that industry. In doing so, the bill would presumably also provide the DCC with clear authority to treat beverages more distinctly in future rulemaking.

Current Related Legislation. AB 1646 (Chen) would allow cannabis beverages to be packaged in containers made of any material. *This bill is pending in this committee.*

Prior Related Legislation. AB 1222 (Chen, Chapter 532, Statutes of 2021) provided that cannabis beverages may be packaged in glass containers that are clear or any color.

ARGUMENTS IN SUPPORT:

The **California Beverage Association** (CBA) is the sponsor for this bill. According to the CBA, "cannabis beverages are the fastest growing segment among all consumer cannabis products. They are also a relatively new product, and as such, have yet to be specifically defined in the Business and Professions Code. This lack of recognition of the segment means that our liquid beverages are forced to fit into the existing category of "edibles," which more accurately and intuitively applies to gummies, chocolates, and so forth." The CBA argues that "this bill will provide much-needed clarity by creating a codified definition of cannabis beverage that will allow the creation of a framework for the development of regulations and laws to correctly and specifically apply to cannabis beverages."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Cannabis Beverage Association *(Sponsor)*
SōRSE Technology

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2178 (Bloom) – As Introduced February 15, 2022

SUBJECT: Physicians and surgeons: special faculty permits: academic medical center.

SUMMARY: Revises the definition of "academic medical center" for purposes of obtaining a special faculty permit under the Medical Board of California (MBC).

EXISTING LAW:

1) Regulates the practice of medicine under the Medical Practice Act and establishes the MBC to administer and enforce the act. (Business and Professions Code (BPC) §§ 2000-2529.6)

2) Defines the practice of medicine as "any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person." (BPC § 2052(a))

3) Prohibits the practice of medicine unless licensed by the MBC or otherwise authorized under law. (BPC § 2052)

4) Defines an "academic medical center" as a facility that meets all of the following:

   a) Is licensed by the State of California. (BPC § 2168(a)(2)(A))

   b) Conducts both internal and external peer review of the faculty for the purpose of conferral of academic appointments on an ongoing basis. (BPC § 2168(a)(2)(B))

   c) Conducts clinical and basic research for the purpose of advancing patient care. (BPC § 2168(a)(2)(C))

   d) Trains a minimum of 250 residents and postdoctoral fellows on an annual basis commencing each January 1. (BPC § 2168(a)(2)(D))

   e) Has more than 100 research students or postdoctoral researchers annually. (BPC § 2168(a)(2)(E)(i))

   f) Has foreign medical graduates in clinical research. (BPC § 2168(a)(2)(E)(ii))

   g) Offers clinical observership training. (BPC § 2168(a)(2)(E)(iii))

   h) Is accredited by the Western Association of Schools and Colleges and the Accreditation Council for Graduate Medical Education. (BPC § 2168(a)(2)(E)(iv))

5) Authorizes faculty at an academic medical center to practice medicine within the center without a California medical license if they obtain a special faculty permit and meet specified requirements, including meeting the definition of "academically eminent" and holding a license in another jurisdiction. (BPC §§ 2168(a)(1), 2168.1)

THIS BILL:

1) Revises the definition of "academic medical center" as follows:

    a) For the requirement that the facility trains a minimum of 250 residents and postdoctoral fellows on an annual basis commencing each January 1, deletes the term "postdoctoral."

    b) For the requirement that the facility has foreign medical graduates in clinical research, deletes the term "clinical."

    c) For the requirement that the facility offers clinical observership training, changes "observership training" to "observer experiences."

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

COMMENTS:

Purpose. The bill is sponsored by *Cedars-Sinai*. According to the author, "In order to develop a well-rounded medical education program, academic medical centers work to attract top faculty from around the world. To license foreign-educated and trained physicians, academic medical centers, such as Cedars-Sinai, utilize the special permits section of the Business and Professions Code. Through affiliation agreements with the David Geffen School of Medicine at UCLA, Cedars-Sinai trains medical students from UCLA and Charles R. Drew University and has successfully obtained Special Licenses for both faculty and research fellows. In 2020, I carried [AB 2273 (Bloom), Chapter 280, Statutes of 2020], which clarified existing statute relative to special faculty permits and academic medical centers in order to facilitate the use of these permits by academic medical centers. [This bill] further clarifies the language defining an academic medical center by accurately reflecting the types of trainees and learning experiences offered at these institutions."

Background. A person who wants to practice medicine in California must meet the licensing requirements established in statute and apply for a license with the MBC. Special faculty permits (SFPs) are an exception to that rule, allowing "academically eminent" physicians to teach and practice medicine through a medical institution or center. This bill makes three substantive changes to the definition of "academic medical center" for purposes of the SFP program.

First, it renames "postdoctoral fellows" to "fellows" for purposes of the minimum number of trainees each year. According to the sponsors, in medical schools or centers "fellows" is used to describe clinical fellows, while "postdoctoral fellows" is used to describe research trainees.

Second, it changes the requirement that a facility has foreign medical graduates in "clinical research" to remove the term "clinical" and just leave "research." The relevant Merriam-Webster definition of "clinical" is "of, relating to, or conducted in or as if in a clinic: such as (a) involving direct observation of the patient" or "(b) based on or characterized by observable and diagnosable symptoms." As a result, it would allow facilities to qualify for the SFP program if they have foreign medical graduates in any kind of research, not just research involving actual patients.

Third, it changes the requirement that a facility offers clinical "observership training" to instead require "observation experiences." According to the sponsors, the "observership training" is

already required as part of the curriculum of all Accreditation Council for Graduate Medical Education (ACGME), and all qualifying facilities are ACGME-accredited. As a result, the requirement in statute is duplicative. Instead, this bill would require "observation experiences," which the sponsors state are in addition to observership training and provide experience observing care, treatment, or other practices at the facility.

Prior Related Legislation. AB 2273 (Bloom), Chapter 280, Statutes of 2020 authorized academic medical centers to submit applications for SFPs with the MBC and authorized an SFP holder, a visiting fellow, and a holder of a certificate of registration to practice medicine within the academic medical center and its affiliated facilities.

ARGUMENTS IN SUPPORT:

The *California Hospital Association* writes in support, "All Californians benefit when our state can recruit the best and brightest medical experts to train future physicians and medical professionals—an initiative that California's hospitals wholeheartedly support. The state's academic medical centers further this effort by recruiting top faculty from around the world, utilizing the Special Faculty Permit (SFP) provisions of the California Business and Professions Code. [This bill] facilitates this effort by clarifying the language that allows academic medical centers to apply for SFPs—without changing the substance of the requirements."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Cedars-Sinai (sponsor)
California Hospital Association

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2194 (Ward) – As Introduced February 15, 2022

SUBJECT: Pharmacists and pharmacy technicians: continuing education: cultural competency.

SUMMARY: Requires pharmacists and pharmacy technicians to complete at least one hour of continuing education through a cultural competency course focused on LGBTQ+ patients.

EXISTING LAW:

1) Establishes the Pharmacy Law. (Business and Professions Code (BPC) §§ 4000 *et seq.*)

2) Establishes the California State Board of Pharmacy (Board) to administer and enforce the Pharmacy Law, comprised of seven pharmacists and six public members. (BPC § 4002)

3) Provides that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. (BPC § 4001.1)

4) Authorizes the Board to adopt rules and regulations as may be necessary for the protection of the public. (BPC § 4005)

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

6) Defines "pharmacy technician" as an individual who assists a pharmacist in a pharmacy in the performance of their pharmacy-related duties. (BPC § 4038)

7) Declares pharmacy practice to be "a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes" and that "pharmacy practice is continually evolving to include more sophisticated and comprehensive patient care activities." (BPC § 4050)

8) Authorizes a pharmacist to do all of the following, among other permissible activities, as part of their scope of practice:

   a) Provide consultation, training, and education to patients about drug therapy, disease management, and disease prevention.

   b) Provide professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals, and participate in multidisciplinary review of patient progress, including appropriate access to medical records.

   c) Order and interpret tests for the purpose of monitoring and managing the efficacy and toxicity of drug therapies in coordination with the patient's primary care provider or diagnosing prescriber.

d) Administer immunizations pursuant to a protocol with a prescriber.

e) Furnish emergency contraception drug therapy, self-administered hormonal contraceptives, naloxone hydrochloride, HIV preexposure and postexposure prophylaxis, and nicotine replacement products, under certain conditions.

f) Administer drugs and biological products that have been ordered by a prescriber.

(BPC § 4052)

9) Authorizes a pharmacy technician to perform packaging, manipulative, repetitive, or other nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist; holds the pharmacist responsible for the duties performed under his or her supervision by a technician. (BPC § 4115(a))

10) Limits a pharmacy with only one pharmacist to no more than one pharmacy technician, and states that the total ratio of pharmacy technicians to any additional pharmacist shall not exceed 2:1. (BPC § 4115(f))

11) Imposes a maximum penalty of $2,000 for any person who knowingly violates any of the provisions of the Pharmacy Law, when no other penalty is provided, and in all other instances where a person violates the Pharmacy Law, imposes a maximum penalty of 1,000. (BPC § 4321)

12) Authorizes a pharmacist to seek recognition as an advanced practice pharmacist if they meet certain education and training requirements. (BPC § 4210)

13) Requires a pharmacist to complete 30 hours of approved courses of continuing pharmacy education every two years in order to have their license renewed. (BPC § 4231)

THIS BILL:

1) Defines “cultural competency course” as a cultural competency and humility course that meets the following criteria:

a) The course focuses on patients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, or queer, or who question their sexual orientation or gender identity and expression.

b) The course is approved from an accreditation agency approved by the Board.

c) The course covers recognized health disparities faced by Black, Indigenous, and people of color.

d) The course contains elements demonstrating how sexual identity is directly impacted through intersectionality.

2) Requires pharmacists to submit proof to the Board that they have completed at least one hour of participation in a cultural competency course as part of their 30 hours of required continuing education as a condition of their biannual license renewal.

3) Requires a pharmacy technician to submit proof to the Board that they have completed at least one hour of participation in a cultural competency course as a condition of their biannual license renewal.

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

COMMENTS:

Purpose. This bill is co-sponsored by the **California Pharmacists Association** and **Equality California**. According to the author:

> "Healthcare providers have a responsibility to maintain their knowledge of the most recent advances in healthcare. AB 2194 requires pharmacists and pharmacy technicians to have one hour of continuing pharmacy education (CE) that provides culturally competent care to members of the LGBTQ+ community. This bill will help ensure that pharmacists have the necessary tools to provide care to the LGBTQ+ community."

Background.

Continuing Education for the Pharmacy Profession. The Board currently regulates over 47,000 pharmacists, 550 advanced practice pharmacists, 6,500 intern pharmacists, and 70,000 pharmacy technicians. Pharmacists are required to earn at least 30 units of continuing education (CE) every two years after their first renewal cycle. Advanced practice pharmacists must earn an additional 10 units. The subject matter is required to be "pertinent to the socioeconomic and legal aspects of health care, the properties and actions of drugs and dosage forms and the etiology, and characteristics and therapeutics of the disease state."

Pharmacists typically self-certify completion of their CE requirements. The Board conducts random audits of its renewal applicants to ensure compliance with CE. Whenever an audit reveals a deficiency, the Board typically instructs the licensee to obtain the required CE units and issues a citation and fine for misrepresenting completion of CE on the renewal form. For pharmacists who do not comply, their licenses are converted from active to inactive status until a renewal fee is paid and CE is completed. The Board is authorized to make exceptions from these requirements in emergency or hardship cases.

The Board is not responsible for approving CE providers or courses. Two accreditation agencies are responsible for approving continuing education providers and courses: the ACPE and the California Pharmacists Association. CE providers are not audited. Statute does allow the Board to accept CE approved by other healing arts boards if it meets standards of relevance to pharmacy practice. Pharmacists are also eligible to receive CE credit for attending meetings of the Board or its committees. Credit is also awarded for successfully passing the examination administered by the Commission for Certification in Geriatric Pharmacy.

Currently, there are few CE course requirements that pharmacists must take as part of their 30 hours within the Pharmacy Law. However, there is some specificity in both statute and regulations. Section 1732.5(b) in the Board's regulations requires at least two of the 30 CE hours for a pharmacist license renewal consist of participation in law and ethics courses provided by the Board. Pharmacists who engage in furnishing prescription nicotine replacement products must complete CE specifically on smoking cessation therapy. Pharmacists who initiate or administer vaccinations must complete one hour in CE focused on immunizations and vaccines.

LGBTQ+ Patient Needs. In 2019, SB 159 (Wiener, Chapter 532, Statutes of 2019) was enacted to authorize a pharmacist to furnish preexposure prophylaxis (PrEP) and postexposure prophylaxis (PEP) in under certain conditions. PrEP involves a combination of two antiretroviral medications that significantly reduce the risk of contracting HIV in high-risk individuals, first approved by the federal Food and Drug Administration (FDA) in 2012. The FDA recommends PrEP for HIV-negative gay or bisexual men who have unprotected sex; heterosexual women who regularly have unprotected sex with partners who are at risk of HIV; and individuals who engage in the use of injectable drugs using shared needles. PEP refers broadly to any medication intended to prevent infection from occurring after exposure to a pathogen. One of the first PEP treatments developed during the HIV/AIDS pandemic was azidothymidine or AZT, combined with other antiretroviral medications. An early common use of AZT was to prevent mother-to-child transmission of HIV and treat health care workers exposed to HIV-positive patients.

The efficacy of PrEP diminishes significantly if it is not taken consistently. The CDC urges individuals who are on PrEP to take the drug every single day and see a health care provider every three months. Because missing a dose of PrEP can jeopardize its effectiveness in preventing HIV, supporters of SB 159 expanded the scope of practice of pharmacists to increase the availability and accessibility of the drug, which could previously only be obtained with a prescription from a health provider such as a physician and surgeon.

The CDC recommends using PEP in emergency situations, beginning within 72 hours after a recent possible exposure to HIV. Use of PEP can help prevent an HIV infection following exposure through unprotected sex, needle sharing, or other activities prone to causing infection. A full course of PEP consists of one pill a day for a 28-day regimen. Patients who are regularly exposed to these emergency scenarios are encouraged to instead begin using PrEP.

Similarly to PrEP, PEP was previously only available with a prescription. Safeguards in the bill required a pharmacist to confirm that the patient meets the CDC's clinical criteria, offer to provide HIV testing, counsel the patient on the use of PEP and its potential side effects, and notify the patient's primary care provider of the treatment. The author of SB 159 argued that expanding access to the drug was critical to ensuring its availability to individuals in crisis, particularly those in at-risk communities.

With many pharmacists now providing critical HIV prevention care, advocates both within the pharmacy profession and within the LGBTQ+ community have observed an urgent need to improve cultural competency for pharmacists to better understand the needs of their LGBTQ+ patients. This bill would achieve that goal by requiring CE specifically in LGBTQ+ cultural competency for both pharmacists and pharmacy technicians. Doing so would arguably go beyond furthering the pharmacy profession's administration of PrEP/PEP but would ensure that an important patient population with unique pharmacy needs is better understood by the health professionals who serve them.

Prior Related Legislation. AB 465 (Nazarian, Chapter 167, Statutes of 2021) requires the prelicensing education courses for professional fiduciaries to include at least one hour of instruction in cultural competency and at least 2 hours of instruction in ethics, cultural competency, or both every year as a condition of license renewal or restoration.

SB 159 (Wiener, Chapter 532, Statutes of 2019) authorized a pharmacist to furnish preexposure prophylaxis (PrEP) and postexposure prophylaxis (PEP) under certain conditions.

ARGUMENTS IN SUPPORT:

The **California Pharmacists Association** (CPhA) is co-sponsoring this bill. CPhA explains that "in 2019, CPhA sponsored SB 159 (Wiener) (Chapter 532, 2019), which granted pharmacists the authority to initiate and furnish HIV preexposure prophylaxis (PrEP) and postexposure prophylaxis (PEP). The legislature agreed that pharmacists have the proper education and training to provide this life-saving medication. However, we understand of equal importance is the ability to provide care to the LBTQ+ community with cultural humility."

Equality California (EQCA) is also co-sponsoring this bill. According to EQCA, "AB 2194 is the next step in addressing the role that pharmacists play in closing health gaps for marginalized communities in California. Pharmacists and technicians provide critical services, particularly for patients who may not feel safe consulting a physician." EQCA argues that "ensuring that pharmacists and technicians have a strong foundation in how to provide affirming and inclusive care to LGBTQ+ patients will expand access to care and help to reduce the disparities in health and well-being that LGBTQ+ people continue to face."

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:

Currently, licensed pharmacists are required to take CE courses, with some specificity as to their content. However, licensed pharmacy technicians are not required to complete any CE. Pharmacy technicians who choose to obtain a voluntary certification through a certifying organization may be required to take continued training as part of their recertification requirements; however, the Board does not currently monitor or receive proof of that training. As this bill continues through the legislative process, the author may wish to consider whether there are administrative implications to requiring the Board to begin enforcing compliance of CE requirements for pharmacy technicians and whether these potential implementation challenges are sufficiently justified by the policy merits of the bill.

REGISTERED SUPPORT:

California Pharmacists Association *(Co-Sponsor)*
Equality California *(Co-Sponsor)*
APLA Health
Desert AIDS Project
Los Angeles LGBT Center

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2265 (Arambula) – As Introduced February 16, 2022

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

SUBJECT: Pharmacy: dispensing controlled substances: lockable vials.

SUMMARY: Requires a pharmacist who dispenses a Schedule II or Schedule IIN controlled substance to dispense the drug in a lockable vial paid for by the drug's manufacturer, include the code for the lockable vial in any patient notes, and provide the patient with an educational pamphlet on the risks associated with opioids.

EXISTING LAW:

1) Allows only a physician, dentist, podiatrist, veterinarian, naturopathic doctor, registered nurse, certified nurse-midwife, optometrist, or out-of-state prescriber to write or issue a prescription. (Health and Safety Code (HSC) § 11150)

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

3) Prohibits medical professionals from prescribing, administering, or dispensing a controlled substance to an addict, as defined. (HSC § 11156)

4) Lists a number of required features that must be included for all prescription forms for controlled substances, including fraud-prevention identifiers, printing information, and information relating to the prescribing practitioner. (HSC § 11162.1)

5) Requires all prescriptions and dispensations of controlled substances to meet a series of requirements including use of a controlled substance prescription form, presence of a signature and date in ink, and the address of the patient. (HSC § 11164)

6) Requires a prescriber to discuss with a minor, or the minor's representative, prior to dispensing or issuing a prescription of opioids for the first time, the risks of addiction and overdose associated with the use of opioids and the increased risk of opioid addiction to an individual suffering from mental and substance abuse disorders. (HSC § 11158.1)

7) Establishes the Controlled Substance Utilization Review and Evaluation System (CURES), a database maintained by the California Department of Justice for the purposes of collecting records of dispensed controlled substances for review by licensed prescribers and dispensers, regulatory investigators, law enforcement, and statistical researchers. (HSC § 11165)

8) Requires schools and youth sports organizations to annually provide athletes of all ages, as well as the parents or guardians of athletes 17 years of age or younger, with a copy of the

Opioid Factsheet for Patients published by the Centers for Disease Control and Prevention, and requires that a signed document acknowledging receipt of the factsheet be returned prior to the athlete's participation in the sport. (HSC § 124236)

9) Requires a prescriber to provide information regarding, and offer a prescription for, naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid depression to a patient certain conditions are present. (Business and Professions Code (BPC) § 471)

10) Establishes the California State Board of Pharmacy (Board) to administer and regulate the Pharmacy Law. (BPC § 4001)

11) Requires labeling of all containers of prescription drugs stating information about the drug, directions for use, the names of the patient and the prescriber, and other information. (BPC § 4076)

12) Requires a pharmacy or practitioner to prominently display on the label or container for any opioid that is dispensed to a patient for outpatient use a notice that states "Caution: Opioid. Risk of overdose and addiction." (BPC § 4076.7)

13) Requires most pharmacies that dispense Schedule II, III, or IV controlled substances to display safe storage products, as defined, in a place on the building premises that is located close to the pharmacy. (BPC 4106.5)

THIS BILL:

1) Establishes the California Safe Dispensing Act, to become operative on June 30, 2023.

2) Defines "lockable vial" as a prescription locking vial that qualifies as a "safe storage product" that is made of materials classified as "generally recognized as safe" under federal regulations.

3) Requires a pharmacist who dispenses in solid oral dosage form a controlled substance in Schedule II or Schedule IIN of the federal Controlled Substances Act to dispense the controlled substance in a lockable vial.

4) If the lockable vial uses an alphanumeric passcode or other code, requires the pharmacist to include the code in any patient notes in the database or other system used by the pharmacy in the dispensing of prescription drugs.

5) Requires that the patient to choose the code, or the patient's parent or legal guardian if the patient is a minor or otherwise unable to authorize medical care, or the conservator of the patient if the conservator has been given the power to make health care decisions for the patient.

6) Provides that a pharmacist shall not dispense a Schedule II controlled substance in a lockable vial directly to a patient who, because of a physical or mental condition, would have difficulty opening the lockable vial.

7) Exempts from the requirement that a pharmacist dispense a Schedule II or Schedule IIN drug in a lockable vial if one or more of the following applies:

a) The prescription, dispensation, and administration of the controlled substance occurs in a hospital or other inpatient care facility.

b) The patient or the patient's representative who is authorized to choose the code for the lockable vial requests to their prescriber or the pharmacist that the patient's medication not be dispensed in a lockable vial.

c) The prescriber indicated on the prescription that the patient requested not to receive their medication in a lockable vial.

8) Provides that the manufacturer of a controlled substance shall compensate the pharmacy for the cost of each lockable vial, as well as dispensing costs and services, within 30 days of receiving a claim.

9) Requires the Board to establish a reasonable rate of compensation that is not less than $2.50 per lockable vial.

10) Subjects a manufacturer who fails to reimburse a pharmacy within the time period and for the amount specified to a civil penalty of $1,000 per day for each day the manufacturer is delinquent in reimbursing the pharmacy, assessed and recovered in a civil action brought by the Board in the name of the people of the State of California.

11) Authorizes a pharmacy technician or other pharmacy staff to complete all tasks in the bill that are not otherwise prohibited by law.

12) Requires that any vendor that contracts with a pharmacy to provide a lockable vial shall make available at all times assistance online or through a toll-free number for patient use.

13) Requires a pharmacist who dispenses a Schedule II or Schedule IIN drug to additionally provide a copy of the Opioid Factsheet for Patients published by the federal Centers for Disease Control and Prevention.

14) Provides that a practitioner who prescribes a controlled substance dispensed in a lockable vial shall not be liable for any adverse consequences that result from either the failure of any lockable vial to prevent unauthorized access or a patient not being able to access medication in a lockable vial, without affecting a person's liability for existing product defect damages.

15) Authorizes the Board to not take administrative action against a pharmacy if it determines that compliance would create a financial hardship on the pharmacy or that the pharmacy was temporarily out of stock of lockable vials after taking reasonable steps to ensure an adequate supply for all dispensations of Schedule II or Schedule IIN controlled substances.

16) Exempts correctional pharmacies, correctional clinics, or patients of the Department of Corrections and Rehabilitation from the bill.

17) Makes various findings and declarations.

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

COMMENTS:

Purpose. According to the author:

> "We should all welcome common-sense solutions when it comes safeguarding our prescribed medications, especially since some people don't suspect that their friends and family may be accessing dangerous pharmaceuticals in their own medicine cabinets. By requiring that these highly addictive medications be dispensed in tamper-proof containers, AB 2265 will help reduce unauthorized access to potentially harmful medications and educate consumers on what to do when pilfering has been discovered in their household."

Background.

Overview of the Opioid Crisis. In October of 2017, the White House declared the opioid crisis a public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country. According to the Centers for Disease Control and Prevention, as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28 percent increase over the previous year. Additionally, the number of Americans who died of an overdose of fentanyl and other opioids more than doubled during that time with nearly 20,000 deaths. These death rates compare to, and potentially exceed, those at the height of the AIDS epidemic.

Opioids are a class of drugs prescribed and administered by health professionals to manage pain. Modern use of the term "opioid" typically describes both naturally occurring opiates derived from the opium poppy as well as their manufactured synthetics. Common examples of prescription opioids include oxycodone (OxyContin, Percocet); hydrocodone (Vicodin, Norco, Lorcet); codeine; morphine; and fentanyl. Heroin is also an opioid.

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

The abuse of prescription drugs was historically viewed as a criminal concern analogous to street narcotics cases regularly investigated by law enforcement. In recent years, however, an expert consensus has evolved around the opinion that the opioid crisis must be addressed through the lens of public health policy. This belief is supported by research demonstrating how health professionals may have inadvertently contributed to the origins of the crisis. It is widely accepted that health professionals will play a necessarily critical role in any meaningful solutions.

In the opioid crisis's broader national context, there has been a persistent perception that California represents a relatively minor segment of an epidemic more typically identified with states like New Hampshire and West Virginia. However, there is substantial evidence that communities in California have been much harder hit than may be generally believed. For example, in 2015, several rural counties in California saw as many or more drug overdose deaths per 100,000 residents than some Midwestern states. It has been reported than some small

counties had more opioid prescriptions than residents. In total, the California Department of Public Health estimates that nearly 2,000 Californians died of an opioid overdose in 2016.

Safe Storage Products. Among the many solutions to preventing prescription drug abuse and overdose, patient safety advocates have championed the use of safe storage products designed to ensure that children and adolescents, as well as adults with diminished cognitive function, cannot access dangerous medications kept within the home. Reports of accidental poisonings resulting from child access to their parents' medicine cabinets are common anecdotes used to support policies to promote better storage practices.

According to the National Center on Addiction and Substance Abuse, 90 percent of individuals with substance use disorder began using substances before the age of 18, while 70 percent of prescription drugs obtained for non-medical use (12 years and older) came from a household. A study by the Partnership for Drug-Free Kids found that more than three in five teens said pain relievers were easy to obtain from their parents' medicine cabinets.

In response to both public policy imperative and financial incentive as awareness of the opioid crisis grows, a number of manufacturers have begun to market products aimed at providing safe storage options within the home. Current law requires that these products be carried and displayed at the majority of larger pharmacy chains. This bill would go a step further and require that every Schedule II or Schedule IIN drug be dispensed with one of these products, which would then be subsequently paid for by the manufacturer of the drug.

Prior Related Legislation. AB 1430 (Arambula) from 2021 was substantially similar to this measure. *This bill died on the Assembly Committee on Appropriations suspense file.*

SB 1084 (Umberg) from 2020 was substantially similar to this measure. *This bill died in the Senate Committee on Business, Professions, and Economic Development.*

AB 2859 (Caballero, Chapter 240, Statutes of 2018) Requires certain pharmacies that dispense Schedule II, III, or IV controlled substances to display safe storage products, as defined, for sale in a place on the building premises that is located close to the pharmacy.

SB 1109 (Bates, Chapter 693, Statutes of 2018) requires a prescriber to discuss the following with a minor, or the minor's parent, guardian, or other adult authorized to consent to the minor's medical treatment, information relating to the risks associated with opioids prior to dispensing or issuing a prescription of opioids to a minor for the first time.

AB 2592 (Cooper) from 2016 would have required all pharmacies in receipt of opioid abuse prevention grant dollars to offer all patients who are prescribed an opioid a medicine locking closure package. *This bill died on the Assembly Appropriations suspense file.*

ARGUMENTS IN SUPPORT:

None on file.

ARGUMENTS IN OPPOSITION:

The **California Retailers Association** (CRA) and **National Association of Chain Drug Stores** (NACDS) oppose this bill. The CRA and NACDS argue that "requiring pharmacies to dispense

Schedule II prescription drugs in lockable vials will do little to prevent theft and abuse of these controlled substances, all the while creating unwarranted and significant pharmacy workflow challenges." They point out that "patients who are concerned about prescription drug pilfering already have the ability to purchase lockable vials where available" and state that they would remove their opposition "if the lockable vial mandate is made voluntary and if the requirement for pharmacies to maintain patients' combination codes is removed."

POLICY ISSUES:

Retention of Passcodes. Under the requirements of this bill, once a patient or their representative has selected a code for their lockable vial, the pharmacy would be responsible for including that code in any patient notes in their database or other system. Presumably this would be to ensure that the pharmacy is in a position to assist a patient with accessing their medication in the event that they forget their code. However, this could result in unknown but potentially significant costs to pharmacies in informational technology updates and workforce associated with confirming patient identities and providing code reminders, and pharmacies may not be best positioned to provide immediate customer service to patients in urgent need of their code. Meanwhile, more cost effective or convenient solutions may already be available – for example, Safe RX, a major manufacturer of safe storage products that would be covered under this bill, provides its own free registration program for vial codes.

IMPLEMENTATION ISSUES:

Compensation Rate Establishment. This bill would require the California State Board of Pharmacy to establish a reasonable rate of compensation for pharmacy services associated with dispensing controlled substances under the provisions of the bill, not to exceed $2.50 per lockable vial. This requirement is outside the scope of the Board's regular activities as a licensing entity and it is unclear what methodology it should use in that calculation. The author may wish to reconsider whether the Board is the appropriate entity to carry out this responsibility.

AMENDMENTS:

Strike the contents of paragraph (3) of subdivision (b) in Section 2 of the bill and insert:

> *(3) Provide the patient with information regarding the online assistance or toll-free number made available by the vendor providing the lockable vial pursuant to subdivision (e).*

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

California Chamber of Commerce
California Retailers Association
Mallinckrodt, LLC.
National Association of Chain Drug Stores

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

Date of Hearing: March 29, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2723 (Holden) – As Introduced February 18, 2022

SUBJECT: Animals: Microchips: Theft.

SUMMARY: This bill would establish additional requirements on various types of public animal shelters related to microchip registration and the release of dogs and cats and modifies the definition of dog theft and associated penalties.

EXISTING LAW:

1) Requires a public animal control agency or shelter to microchip a cat or dog with current information before releasing a cat or dog to an owner seeking to reclaim the animal, adopt out, sell, or rehome to a new owner. *(Food and Agriculture Code (FAC) §31108.3)*

2) Current law also allows a shelter or rescue group that does not have microchipping capability on location to enter into an agreement with the owner or new owner to present proof, within 30 days, that the cat or dog is microchipped. *(FAC §31108.3)*

3) Governs the operation of animal shelters by setting a minimum holding period for stray cats, dogs, and other animals; current law also requires animal shelters to ensure that those animals, if adopted, are spayed or neutered. *(FAC §§ 30501 et seq.; 31751 et seq.; 32000 et seq.)*

4) Requires that during the holding period as indicated above, and before the adoption or euthanasia of a dog or cat detained, a public or private shelter shall scan the cat or dog for a microchip that identifies a number associated with the owner of the cat or dog. Current law also directs the public or private shelter shall make every reasonable effort to contact the owner and notify them that their cat or dog has been rescued and is available for reunification. *(FAC § 31108 (c))*

5) Requires that during the holding period and before an adoption or euthanasia of a detained cat or dog, a public or private shelter shall scan the cat or dog for a microchip in order to identify the microchip's number associated with the pet's owner. Current law directs shelters and rescue groups to make every reasonable effort to connect the owner of the missing pet and notify them that their pet is safe and available for reunification identifies the owner of that cat and shall make reasonable efforts to contact the owner and notify him or her that his or her cat is impounded and is available for redemption. *(FAC § 31752 (d))*

6) Prohibits a public animal control agency or shelter, society for the prevention of cruelty to animals' shelter, humane society shelter, or rescue group from releasing a dog or cat to an owner seeking to reclaim it, or adopt out, sell, or give away a cat or dog to a new owner, unless the cat or dog is microchipped with current information on the owner or new owner of the cat or dog. *(FAC § 31108.3. (a) (1)).*

7) Requires an agency, shelter, or group does that not have microchipping capability on location, to make a good faith effort to locate available free or discounted regional

microchipping services and provide that information to the owner or new owner. *(FAC §31108.3. (B))*

8) Specifies that a shelter or rescue group may require proof that the cat or dog is microchipped with current information on the owner reclaiming the dog or new owner receiving the cat or dog before releasing, adopting out, selling or giving away as specified. *(FAC §31108.3.(A) (3))*

9) Specifies that an owner reclaiming the cat or dog or new owner receiving the cat or dog is not required to register the dog's microchip number with a microchip registry company that will use, without the owner's or new owner's consent, the personal information of the owner or new owner for purposes other than to reunite the owner or new owner with the dog. *(FAC §31108.3.(A) (4))*

10) Exempts from the requirement for the cat or dog to be microchipped if a licensed veterinarian certifies in writing that the cat or dog is medically unfit for the microchipping procedure due to the animal's physical condition that could potentially be aggravated by the procedure. (FAC §31108.3.(b) (1))

11) Exempts from the requirement for the dog or cat to be microchipped if the agency, shelter, or group receives a signed form from the owner reclaiming the dog or new owner receiving the dog that states that the cost of microchipping would impose an economic hardship for the owner or new owner. *(FAC §31108.3. (2) (a)).*

12) Specifies that shelter or rescue group that does not provide the microchip is subject to a civil penalty of $100, unless it does not have microchipping capability on location upon the owner or new owner obtaining the agreement. (FAC §31108.3. (c) (1)).

THIS BILL:

1) Requires a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group, prior to releasing a dog or cat to an owner seeking to reclaim it or giving it to a new owner, to ensure the owner or new owner is registered with the microchip registry company when they microchip the dog or cat.

2) Specifies that the agency, shelter or group shall not be registered with a microchip registry company as the primary owner of the dog or cat 90 days after the dog or cat has been released of given away.

3) Clarifies that an agency, shelter or group that does not have microchipping capability on location must make a good faith effort to maintain a list of local and regional free or discounted regional services rather than locate available services.

4) Prohibits an agency, shelter, or group from releasing a microchipped dog or cat to a person seeking to reclaim it if the person is not listed with the microchip registry company as the primary owner or authorized by the person listed as the primary owner.

5) Deletes the current prohibitions on felonious dog theft and instead defines "steal a dog" as either:

a) Takes, leads away, carries away, confines, secretes, or converts a dog, when that action is not otherwise authorized by law.

b) Conceals the identity of a dog or its owner by obscuring, altering, or removing from the dog any collar, tag, license, tattoo, or other identifying device or mark.

6) Applies the previous penalties for felonious dog theft to "steals a dog."

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: "…Currently, California law does not require that owners of lost, microchipped pets be informed of their pet's discovery so long as a shelter or rescue group is the primary contact registered to the microchip. As such, pet owners possess no timely or meaningful redress to reclaim their lost pets if an aforementioned organization elects to not inform them of their pet's discovery. Additionally, criminal offenders are increasingly engaging in pet theft, with California becoming the epicenter of recent 'dognapping.' These brazen and aggressive pet thefts carry minimal consequences for these highly personal, highly emotional crimes.

For these reasons, I have introduced [this bill], which will create greater legal avenues for owners to their pets and prioritize the contacting of pets' true owners in instances of pet recovery and theft by requiring that the pet owner be listed as the microchip primary contact instead of pet adoption organizations. Furthermore, it would require these organizations to microchip all cats and dogs placed up for adoption except in extraneous circumstances. Additionally, [this bill] seeks to provide a meaningful deterrent from engaging in pet theft by better defining pet theft and the penalties for pet theft."

Background.

This bill intends to build upon and update current microchipping protocols generally used by animal shelters, rescue groups, and nonprofits to ensure the pet's owner is listed as the direct contact with the microchipping company. This update seeks further increase the likelihood of lost companion animals being returned to their owners.

Visible identification tags or implanted microchips can significantly increase the chances of lost companion animals being returned to their homes. A study published in the Journal of the American Veterinary Medical Association (AVMA) showed that dogs without microchips were returned to their owners 21.9% of the time, whereas microchipped dogs were returned to their owners 52.2% of the time. Cats without microchips were reunited with their owners only 1.8% of the time, whereas microchipped cats went back home 38.5% of the time. The study notes that microchipped animals that weren't returned to their owners was due to incorrect or outdated owner information.

How a Microchip Works. A microchip is a small electronic chip enclosed in a glass cylinder, approximately the size of a grain of rice. The microchip itself does not have a battery, and is activated by a handheld scanner that is passed over the chip. Once activated, the microchip

transmits an identification number to the scanner, which then displays the information on the scanner's screen.

Animal shelters and veterinary offices typically use these scanners to read the chip's identification number on a found animal. Each microchip contains a registration number and the phone number of the registry associated with the brand of the chip. In the early years of animal microchip technology, different chip companies maintained separate databases, unique frequencies, and proprietary scanners to display information, which created problems if an animal had a brand-specific microchip that a scanner could not read. These challenges have been largely addressed today, as microchip companies now produce universal scanners to read microchip information regardless of brand. In 2009, the American Animal Hospital Association (AAHA) created the AAHA Universal Pet Microchip Lookup Tool - a free, internet-based resource that assists with microchip identification by checking participating pet recovery services' registries and help determine which registry should be contacted. The AAHA Microchip Lookup Tool can be accessed online at petmicrochiplookup.org. Additionally, organizations such as the American Microchip Advisory Council continue to work to develop a network of registry databases to streamline to process of obtaining registered information and returning pets to their homes.

A common misconception: Microchips are not a GPS tracking device and cannot actively locate an animal if it is lost. As a result, it is recommended that pet owners keep contact information up to date with the microchip manufacturer at all times. The Humane Society also notes that although microchips are a good option for pet identification, physical collars and identification tags should consistently be used as a primary form of identification for all companion animals.

How a Microchip is Implanted. A microchip is injected under an animal's skin using a large-bore hypodermic needle. According to the AVMA, the procedure is no more painful that an injection, and generally does not require surgery or anesthesia. The animal's subcutaneous tissue usually bonds to the chip within 24 hours, preventing the chip from moving or migrating to another part of the body. A veterinarian is not required for the procedure, as microchip implantation is not considered the practice of veterinary medicine. As a precaution, while the procedure may be performed by a veterinary assistant or a registered veterinary technician, supervision by a veterinarian is recommended.

Studies indicate there are no major health risks associated with microchipping a pet. The British Small Animal Veterinary Association maintains a database of adverse reactions to microchips: since the database was started in 1996, over 4 million animals have been microchipped and only 391 adverse reactions have been reported. Of these reactions, migration of the microchip from its original implantation site is the most common problem reported.

The bill being considered this year continues the current exemption option for an animal if a licensed veterinarian certifies in writing that the animal is medically unfit for the procedure.

Cost of Microchipping. The cost of microchipping a dog or a cat may vary by region, microchip brand, and where the procedure is performed. Veterinary offices, clinics, and hospitals may provide this service between $5 and $75. However, shelters may be able to provide microchipping services at a much lower cost: according to the bill's sponsor, the market rate for any shelters ranges between $4 to $8 per microchip. In addition, local municipalities and non-profit organizations may offer microchipping at low-to-no cost to pet owners, and pet suppliers may also offer monthly microchip clinics. With multiple avenues for microchipping an animal

available, pet owners are encouraged to research options in their region. Depending on the microchip brand, additional fees may be charged: some microchip companies charge a one-time registration fee while others may charge an annual fee.

Prior Related Legislation.

SB 573 (Chang),Chapter 108, Statutes 2020 required a public animal control agency or shelter, as specified, to microchip a dog or cat with current information before releasing a dog or cat to an owner seeking to reclaim it, or adopt out, sell, or give away to a new owner. That bill also allowed a shelter or rescue group that does not have microchipping capability on location to enter into an agreement with the owner or new owner to present proof, within 30 days, that the dog or cat is microchipped.

SB 64 (Chang) of 2019 would have required a shelter or rescue group to microchip a dog or cat with current information before releasing a dog or cat to an owner seeking to reclaim it, or adopt out, sell, or give away to a new owner. Would have allowed a shelter or rescue group that does not have microchipping capability on location to enter into an agreement with the owner or new owner to present proof, within 30 days, that the dog or cat is microchipped. That bill was vetoed by the Governor, who provided the following veto message: "I am supportive of the important objective of this legislation to reunite more pets with their families and thereby decrease the number of euthanized animals in California. However, by requiring microchipping as a condition of reclaiming a pet, this bill has the unintended consequence of creating a burden for those who may already be struggling with the basic costs of caring for their pets and thereby do not have the financial capacity to pay for the microchip implant and the annual fees."

SB 702 (Lieu) of 2011would have required an owner of an animal that is adopted or impounded and claimed by the owner from a local animal shelter to implant an identifying microchip in the animal upon release, if a microchip is available. If not available for implantation, the owner must do so within 30 days of release of their animal from the shelter. This bill was vetoed by the Governor, who provided the following veto message: "This measure would prohibit any animal control agency, animal shelter, or rescue group from releasing, selling, or giving away a dog or cat that has not been microchipped. Under current law, local agencies and shelters can - and should - require animals to be microchipped before being released. There is no need for state law to mandate the procedure, which would then require the state to pay for it."

ARGUMENTS IN SUPPORT:

Social Compassion in Legislation and several animal welfare organizations collectively write in support: "We would like to express our support for Assembly Bill 2723, which would clarify the definition of and consequences for the theft of pet dogs and cats, provide greater consumer protections to assist in the reclamation of lost pet dogs and cats that are microchipped, and create improved standards for the microchipping practices of animals adopted out by public animal control agencies/shelters and rescue groups...Clarifying the definition of and consequences for the theft of pet dogs and cats is a vital and necessary next step in combating the rising scourge of pet theft afflicting pet owners.

As a consequence of the increased demand for pets spurred by the isolation and stress of the COVID-19 pandemic and of increased theft broadly due to the COVID-19 pandemic, pet theft has increased as much as 60-70% for some pet breeds. Such pet theft has immense social-emotional effects on pet owners while there is little consequence for offenders. Reports have

shown that the loss of a pet from theft causes substantial psychological harm to 78% of victims, and severe psychological and physiological harm in 37% of victims. Therefore, it is urgent that the state enact greater deterrents, like the ones in this bill, to address this highly emotional, highly personal criminal act which affects defenseless pets and harms Californians so viscerally."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

What is the impact on an animal shelter's ability to successfully reunite lost pets with their owners? The California Animal Welfare Association and the San Diego Humane Society are not currently opposed but expressed concerns with the bill in its current form. Though microchips are used in shelters for pet identification and reunification with the owner, the chip is only one tool used. While a truly useful, microchips are imperfect as a sole source of owner identification. Microchip information is rarely updated to represent new owners, so often calling on a chip can yield no owner or no return calls. Further, there may be a loving owner present to reclaim their pet, but with an outdated or unregistered chip, shelters would have to deny that reunification despite other proper documentation of ownership. This narrowing of a shelter's option to chips only severely limits prevents shelters and rescue groups from using other means to reunite pets with their families.

In addition, the bill can result in animals without updated chip information languishing in shelters. If space is indefinitely required to hold these animals, this will impact lifesaving outcomes of other dogs and cats in the shelter.

The majority of shelters and rescue groups use microchips when confirming the animal's identification – the identification is displayed as a number when scanned – but there is a variety of credible criteria and options shelters and rescue groups could utilize when trying to reunite an owner with their pet. For example, an animal's collar with license tags, which typically contains the owner's phone number and home address, an animal's veterinary records, recent photographs, etc. Relying on microchips as the only method for reunification places a certain population of pet owners at a disadvantage. Private rehoming is encouraged as a way to prevent an animal from a shelter stay, and the microchips are not always updated to reflect new ownership in those transactions. In some cases, pet owners are left with a family pet due to strict rules from landlords, relocation for school or work, sudden illness, or environmental disaster. There are also cases where family members care for a deceased family member's dog or cat. Finally, the strict definition of pet ownership proposed in this bill does not consider California's growing number of unhoused individuals with companion pets.

IMPLEMENTATION ISSUES:

Shelters and Reunification Goal for Families: Current law already requires animal shelters and rescue groups to disseminate information regarding the benefits of microchipping animals and how to register as the primary contact associated with their pet's microchip. Current law also requires shelters and rescue groups to make every effort to reunite lost pets with their owner(s).

Should the Legislature approve policy that may result in unintended consequences for shelters, rescue groups, related non-profits, and city services that would create barriers for family's

reunification of a lost dog or cat? If microchip status and information is the only factor considered for reclaiming a missing pet, some owners won't be able to comply. As a result, missing pets will stay with the shelter and be denied reunification with their owner. This potential situation would dramatically impact capacity issues, safety, and create unnecessary stress and anxiety for the pet and owner.

The author may wish to consider additional amendments in the next policy committee to address the possible unintended impact the bill may have on shelter and rescue groups located in various communities where shelter and rescue resources are scarce and every dollar matters for basic services and operation. The author's office has convened multiple stakeholder groups with various chapters of the Humane Society, animal shelters, non-profits, county and city animal control, etc. The author's office indicated he will continue to work with the coalition of stakeholders and looks forward to addressing and eliminating potential negative impacts on local shelters and rescue groups.

REGISTERED SUPPORT:

Social Compassion in Legislation
Animal Issues Movement
143 Collective
Several individuals

REGISTERED OPPOSITION:

None on File.

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