California State Assembly

BUSINESS AND PROFESSIONS

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CHAIR

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AGENDA

Tuesday, April 20, 2021
9 a.m. -- State Capitol, Assembly Chamber

BILLS HEARD IN FILE ORDER

1.	AB 462	Carrillo	Licensed Professional Clinical Counselor Act.
2.	AB 691	Chau	Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations. (Urgency)
3.	AB 501	Cristina Garcia	Reduction of human remains and the disposition of reduced human remains.
4.	AB 269	Patterson	Nursing: licensure: renewal fees: reduced fee.
5.	AB 492	Patterson	Cosmetology students: externships.
6.	AB 287	Quirk	Civil actions: statute of limitations.
7.	AB 1302	Quirk	Commercial cannabis billboards: placement restrictions.
8.	AB 1015	Blanca Rubio	Board of Registered Nursing: workforce planning: nursing programs: clinical placements.
9.	AB 1026	Smith	Business licenses: veterans.
10.	AB 852	Wood	Nurse practitioners: scope of practice: practice without standardized procedures.
11.	AB 1034	Bloom	Cannabis: retail preparation, sale, or consumption of noncannabis food and beverage products.
12.	AB 1282	Bloom	Veterinary medicine: blood banks for animals.
13.	AB 1222	Chen	Cannabis packaging: beverages.
14.	AB 651	Gipson	Endowment care cemeteries: examination, investigation, and discipline.
15.	AB 273	Irwin	Cannabis: advertisements: highways.
16.	AB 1328	Irwin	Clinical laboratory technology and pharmacists.
17.	AB 1014	McCarty	Cannabis: retailers: delivery: vehicles.
18.	AB 471	Low	Bureau of Automotive Repair: administration: citations: safety inspections.

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.

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

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 462 (Carrillo) – As Introduced February 8, 2021

SUBJECT: Licensed Professional Clinical Counselor Act.

SUMMARY: Eliminates the requirement that Licensed Professional Clinical Counselors complete additional, specified education and training in order to assess and treat couples and families. Eliminates the requirement that Associate Professional Clinical Counselors complete no less than 150 hours of clinical experience in a hospital or community mental health setting to gain full licensure. Maintains that professional clinical counseling does not include the provision of clinical social work services.

EXISTING LAW:

1) Creates the Board of Behavioral Sciences (Board) within the Department of Consumer Affairs, responsible for licensing and regulating marriage and family therapists, clinical social workers, professional clinical counselors, and educational psychologists (Business and Professions Code (BPC) Section 4990 et seq).

2) Establishes the Licensed Professional Clinical Counselor Act (Act) which outlines, among other items, the licensure requirements, scope of practice, and responsibilities of licensed professional clinical counselors. (BPC Section 4999.10 et seq.)

3) Sets the educational requirements to be eligible for licensure as a licensed professional clinical counselors, including the core areas of studies, coursework, and required supervised practicums and clinicals. (BPC 4999.32 and BPC 4999.33)

4) Requires an applicant for professional clinical counselor licensure to register as an associate and complete 3,000 postdegree hours of supervised experience, including 150 of clinical experience in a hospital or community mental health setting. (BPC Section 4999.46(c)(4))

5) Requires an applicant for professional clinical counselor licensure to pass a California law and ethics examination as well as a clinical examination. (BPC Section 4999.53)

6) Prohibits a person from practicing or advertising the practice of professional clinical counseling without a license issued by the Board. (BPC Section 4999.30)

7) Defines "professional clinical counseling" as the application of counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems, and the use, application, and integration of the coursework and training that is specified in California law. Further states that professional clinical counseling includes conducting assessments for the purpose of establishing counseling goals and objectives to empower individuals to deal adequately with life situations, reduce stress, experience growth, change behavior, and make well-informed, rational decisions. (BPC Section 4999.20(a))

8) Defines "counseling interventions and psychotherapeutic techniques" as the application of cognitive, affective, verbal or nonverbal, systemic or holistic counseling strategies that include principles of development, wellness, and maladjustment that reflect a pluralistic society. (4999.20(b))

9) Defines "assessment" in the context of the Act as selecting, administering, scoring, and interpreting tests, instruments, and other tools and methods designed to measure an individual's attitudes, abilities, aptitudes, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral concerns and development and the use of methods and techniques for understanding human behavior in relation to coping with, adapting to, or ameliorating changing life situations, as part of the counseling process. Further states that assessment in this context does not include the use of projective techniques in the assessment of personality, individually administered intelligence tests, neuropsychological testing, or utilization of a battery of three or more tests to determine the presence of psychosis, dementia, amnesia, cognitive impairment, or criminal behavior. (BPC Section 4999.20(c)).

10) Prohibits a professional clinical counselor from assessing or treating couples or families unless the professional clinical counselor has completed all of the following training and education:

    a) Either six semester units or nine quarter units specifically focused on the theory and application of marriage and family therapy, or completing a named specialization or emphasis area on the qualifying degree in marriage and family therapy; marital and family therapy; marriage, family, and child counseling; or couple and family therapy.

    b) No less than 500 hours of documented supervised experience working directly with couples, families, or children.

    c) A minimum of six hours of continuing education specific to marriage and family therapy, completed in each license renewal cycle. (BPC Section 4999.20(a)(3))

THIS BILL:

1) Eliminates the requirement that a professional clinical counselor must complete additional training and education to assess and treat couples and families. Specifically, eliminates the requirement to complete:

    a) Either six semester units or nine quarter units specifically focused on the theory and application of marriage and family therapy, or completing a named specialization or emphasis area on the qualifying degree in marriage and family therapy; marital and family therapy; marriage, family, and child counseling; or couple and family therapy.

    b) No less than 500 hours of documented supervised experience working directly with couples, families, or children.

    c) A minimum of six hours of continuing education specific to marriage and family therapy, completed in each license renewal cycle.

2) Eliminates the requirement that an associate professional clinical counselor must gain 150 hours of clinical experience in a hospital or community mental health setting as a condition of licensure.

3) Maintains that the definition of professional clinical counseling does not include the provision of clinical social work services.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Association for Licensed Professional Clinical Counselors.** According to the author: "This bill eliminates the requirement for Licensed Professional Clinical Counselors to complete additional coursework or complete additional supervised training hours in order to assess and treat couples and families. The bill also removes the requirement for Associate Professional Clinical Counselors to obtain 150 hours of supervised clinical experience in a hospital or community mental health setting in order to become licensed. These requirements only exist in California and eliminating them will not impact the quality of treatment provided. By removing these barriers to licensure and practice this bill will provide greater access to needed mental health services in California."

Background.

Board of Behavioral Sciences. The Board of Behavioral Sciences, a state entity under the umbrella of the Department of Consumer Affairs, licenses and regulates Licensed Marriage and Family Therapists, Licensed Clinical Social Workers, Licensed Professional Clinical Counselors and Licensed Educational Psychologists. Additionally, the Board registers Associate Marriage and Family Therapists, Associate Clinical Social Workers, and Associate Professional Clinical Counselors. Associate-level registrants are unlicensed individuals who have completed their educational requirements – such as obtaining a qualifying master's or doctoral degree – and who may use their registrant status to complete the postdegree hours of supervised experience needed to gain full licensure. As of 2021, there were over 120,600 active licenses under the jurisdiction of the Board.

Licensed Professional Clinical Counselors. LPCCs are licensed mental health professional who have received specified education and training and are able to provide counseling interventions and apply psychotherapeutic techniques. LPCCs can identify and address cognitive, mental, and emotional issues, and assist individuals or groups with issues related to personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. In order to obtain a license as a professional clinical counselor, a candidate must first obtain a master's or doctoral degree that is counseling or psychotherapy in content from an accredited or approved institution. The BPC provides specifications on core content areas of studies, ranging from human growth and development, group and multicultural counseling theories and techniques, addiction counseling, principles of the diagnostic process, and more. Upon degree completion, a candidate for licensure generally registers as an Associate Professional Clinical Counselor (APCC) in order to accrue 3,000 postdegree hours of supervised clinical mental health experience. Finally, upon successful passage of a national examination and a state Law and Ethics examination, a candidate may be issued full licensure as an LPCC.

California was the last state to formally recognize the LPCC profession. Established in 2009 through SB 788 (Wyland, Chapter 619, Statutes of 2009), the Legislature established LPCC licensure to open access to additional mental health services and allow California to apply and receive specified federal funding. The legislation also included a provision that prohibits LPCCs from assessing or treating couples and families, unless specific training and education requirements were met. These requirements include three components: (1) completing either six semester units or nine quarter units specifically focused on the theory and application of marriage and family therapy, or earning a qualifying degree with a named specialization in marriage and family therapy; marital and family therapy; marriage, family, and child counseling; or couple and family therapy; (2) completing 500 hours of documented supervised experience working directly with couples, families, or children; and (3) completing six hours of continuing education specific to marriage and family therapy at every license renewal cycle. Currently, an LPCC can submit a request to assess and treat couples and families directly to the Board. Upon verification that the requirements are met – such as the submission of official transcripts and documentation of supervised experience – the Board will issue a letter confirming that the LPCC has met the statutory requirements to assess and treat couples and families.

This bill would eliminate those requirements that LPCCs complete additional education and training in order to assess and treat couples and families. According to the author and sponsor, California is the only state requiring an LPCC to complete additional requirements post-licensure to be able to work with couples and families. In addition, the sponsors explain that LPCCs receive sufficient training as part of their educational requirements to assess and treat couples and families. For example, BPC Section 4999.32 and Section 4999.33 specifies the educational core content areas, required coursework, and supervised practicum for LPCCs. Below are examples of educational components related to working with couples and families found in BPC 4999.33:

- Face-to-face supervised clinical experience counseling individuals, families, or groups.

- Spousal or partner abuse assessment, detection, intervention strategies, and same gender abuse dynamics.

- Contact hours of training or coursework in child abuse assessment and reporting.

Associate Professional Clinical Counselors. Candidates for LPCC licensure who complete their educational requirements can register with the Board as Associate Professional Clinical Counselors (APCCs). APCCs are unlicensed individuals who work in specified settings to gain postdegree hours of supervised experience. As a condition for licensure, APCCs must accrue 3,000 postdegree hours in two years. The BPC provides guidelines on how to allocate those hours: for example, under BPC 4999.46, APCCs may place a minimum of 1,750 hours into direct clinical counseling and a maximum of 1,250 hours into nonclinical practice (e.g. writing clinical reports, progress or process notes, and more). Of note, APCC supervised experience must include not less than 150 hours of clinical experience in a hospital or community mental health setting.

This bill would eliminate the requirement that APCCs complete 150 hours of clinical in a hospital or community mental health setting. According to the sponsor, this requirement has created employment barriers for APCCs, as 150 hours is not enough to qualify for partial employment at a hospital or community mental health setting, necessitating APCCs to volunteer their service in order to obtain licensure. Additionally, the sponsors report that finding a

placement in those settings can be challenging, with hospitals and community agencies preferring to hire licensees instead of pre-licensed associates.

Finally, this bill maintains existing provisions of the law stating that professional clinical counseling does not include the provision of clinical social work services.

Current Related Legislation.

SB 801 (Roth): Healing Arts: Board of Behavioral Sciences: licensees. Sunset review legislation for the Board of Behavioral Sciences.

AB 690 (Arambula): Marriage and family therapists: clinical social workers: professional clinical counselors. Updates the definition of the various settings in which associate-level registrants under the Board of Behavioral Sciences may gain postdegree supervised experience.

AB 723 (Low): Marriage and Family Therapists. Clarifies and updates the scope of practice definition for marriage and family therapists.

Prior Related Legislation.

SB 788 (Wyland, Chapter 619, Statutes of 2009). Created the Licensed Professional Clinical Counselor profession and established the licensure and regulatory requirements of that profession under the Licensed Professional Clinical Counselor Act.

ARGUMENTS IN SUPPORT:

The California Association for Licensed Professional Clinical Counselors writes in support: "When California established the Licensed Professional Clinical Counselor Act (Act) in 2009, it became the 50th state to license clinical counselors. In negotiating SB 788 (Chapter 619, Statutes of 2009) which established the LPCC license, two amendments were made late in the legislative process: (1) Requiring additional education, supervised training, and continuing education for an LPCC to see couples and families. (2) Requiring registered APCCs to obtain 150 hours of clinical experience in a hospital or community mental health setting. Ten years have passed since the enactment of LPCC licensure, and it is time for these artificial requirements to be removed from the law. […] No other state in the nation prohibits licensed counselors from working with couples and families. No other state requires additional education and training in order to assess and treat couples and families. Only California places these additional requirements on LPCCs. [T]he requirements for LPCCs to complete additional education and training to treat couples and families, and for APCCs to complete targeted training in a hospital or mental health clinic places additional hurdles that other equivalent mental health licenses in California do not have to meet. These provisions of law make LPCCs have to do more in order to be equal in California. CALPCC believes that this bill is an important step toward equity and access to mental health services in California."

The County Behavioral Health Directors Association of California writes in support: "AB 462 removes barriers to mental health services by allowing Licensed Professional Clinical Counselors (LPCCs) to treat couples and families without completing coursework and training considered duplicative by the Board of Behavioral Sciences (BBS). […] This bill would remove unnecessary requirements that operate as a barrier for Californians to gain access to care because of the limited number of LPCCs."

The California Association for Health Services at Home writes in support: ". This bill would clarify the definition of "Professional clinical counseling" by excluding the provisions of clinical social work services in the Business and Professions Code. Social workers are a necessary component of home health services. Recently, the Department of Public Health adopted emergency regulations that clarified the specific social services that may be provided by an individual who holds a Master's in Social Work and is unlicensed by the Board of Behavioral Science. The Department reexamined the nature of the social work services provided for specific licensed entities and realized that prior regulatory amendments were overly restrictive and unnecessarily required certain health care entities to employ licensed social workers to perform non-clinical social work services, placing a burden on both the affected entities and the unlicensed social worker community. A significant amount of the social work services provided in these licensed entities are not "clinical" and may be performed by a qualified unlicensed social worker. Thus, AB 462 further clarifies that clinical social work does not fall under the definition of professional clinical counseling."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Association for Licensed Professional Clinical Counselors (Sponsor)
County Behavioral Health Directors Association of California
California Association for Health Services at Home

REGISTERED OPPOSITION:

None of file.

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 691 (Chau) – As Amended April 5, 2021

SUBJECT: Optometry: SARS-CoV-2 vaccinations: SARS-CoV-2 clinical laboratory tests or examinations.

SUMMARY: Expands the authority of a qualified optometrist to administer immunizations to include the administration of the COVID-19 vaccine, and authorizes an optometrist to engage in specified COVID-19 testing.

EXISTING LAW:

1) Establishes the California State Board of Optometry (Board) for the licensure and regulation of optometrists, registered dispensing opticians, contact lens dispensers, spectacle lens dispensers, and nonresident contact lens dispensers. (Business and Professions Code (BPC) § 3000 *et seq.*)

2) Provides that the practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services, and specifically authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to perform various enumerated procedures. (BPC § 3041(a)-(d))

3) Authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to administer immunizations for influenza, herpes zoster virus, and pneumococcus, in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the CDC for persons 18 years of age or older, if they meet all the following requirements:

    a) Completes an immunization training program endorsed by the federal Centers for Disease Control and Prevention (CDC) or the Accreditation Council for Pharmacy Education that, at a minimum, includes hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines, and maintains that training.

    b) Is certified in basic life support.

    c) Complies with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provided and entering information in the appropriate immunization registry designated by the immunization branch of the State Department of Public Health.

    d) Applies for an immunization certificate on a board-approved form.

    (BPC § 3041(g))

4) Includes within the meaning of the term "laboratory director" for purposes of the laws relating to clinical laboratories a duly licensed optometrist serving as the director of a laboratory that only performs clinical laboratory tests authorized in the Optometry Practice Act.

THIS BILL:

1) Adds SARS-CoV-2 (commonly referred to as COVID-19) to the list of immunizations a qualified optometrist is authorized to administer.

2) Codifies the contents of an application form for the certification required for an optometrist to perform immunizations and expands that certificate to include the administration of immunization for COVID-19.

3) Expressly provides that performing a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) necessary to detect the presence of COVID-19 is within the scope of practice of an optometrist.

4) Provides that in order to protect public health and preserve the future health care workforce by ensuring that qualified optometrists can assist to prevent the spread of COVID-19 by administering vaccinations and testing, it is necessary the bill to take effect immediately.

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

COMMENTS:

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

> "The COVID-19 pandemic has dramatically impacted California residents. As of March 2021, there have been 3,566,464 confirmed cases of COVID-19 in California, resulting in 57,788 deaths. The quickest way to get our state back to normal is to administer vaccines to the population. As of March 2021, 29.4% of Californians have received a COVID-19 vaccine, for a total of 17,649,015 administered doses. The Centers for Medicare and Medicaid Services (CMS) recommends that states consider expanding the type of health care providers allowed to administer immunizations to assist in administering COVID-19 vaccines. In an effort to quickly administer COVID-19 vaccines to 40 million Californians, the California Department of Consumer Affairs (DCA) recently authorized a waiver that allows certified optometrists to administer COVID-19 vaccines to persons 16 years of age or older, including epinephrine or diphenhydramine by injection for the treatment of a severe allergic reaction. The waiver is expected to stand during the declared state of emergency, resulting from the COVID-19 pandemic. Legislation is needed to make this authorization permanent. Current law, authorizes immunization certified optometrists to administer three vaccines for those 18 or older, which include influenza, herpes zoster virus, and pneumococcus. Clinical Laboratory Improvement Amendments of 1988 (CLIA) recently waived point-of-care tests for COVID-19. While optometrists are authorized to administer CLIA waived tests, they are restricted to conditions of the eye. AB 691 would ensure that optometrists are authorized to administer CLIA waived COVID-19 tests and COVID-19 vaccines in an effort to help identify and stop the spread of this virus and end the pandemic."

Background.

COVID-19 Pandemic. On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency as a result of the impacts of the COVID-19 public health crisis. On March 30, 2020, the Governor signed an executive order that created a new process for boards and the public to request waivers of requirements related to healing arts professional licensing through the DCA.

Through this waiver process, the DCA has issued multiple waivers of law to authorize various healing arts licensees to order and administer the COVID-19 vaccine. These waivers have extended to pharmacists, pharmacy technicians, dentists, dental hygienists, optometrists, doctors of podiatric medicine, licensed midwives, physician assistants, respiratory care practitioners, veterinarians, medical assistants, healthcare students, and naturopathic doctors.

Vaccinations. Vaccines are regulated and overseen by multiple federal entities responsible for ensuring their safety and efficacy. The FDA is initially responsible for approving new drugs, determining both that they are safe to administer and that their recommended use is clinically supported. During states of emergency, the FDA may expedite their review through the Emergency Use Authorization (EUA) process to hasten the availability of new immunizations or treatments.

Once approved, the federal Advisory Committee on Immunization Practices (ACIP) within the Centers for Disease Control and Prevention (CDC) creates an immunization schedule containing the recommended timing and dosage of the vaccine. These schedules are then published by the CDC as allowable for patients three years of age or older. There are currently fifteen vaccines on the immunization schedule for children and thirteen vaccines for adults. These vaccines include immunizations against chickenpox, polio, mumps, tetanus, and the flu shot.

AB 443 (Salas) of 2017 made a number of changes to the Optometry Practice Act including broadening the scope of practice for optometrists by permitting an optometrist to conduct additional procedures on their patients. This includes an optional certification that allows an optometrist to administer immunizations for influenza, herpes zoster virus (commonly referred to as “shingles”), and pneumococcus. Once a certification has been obtained, optometrists may independently administer these immunizations in compliance with ACIP vaccine recommendations published by the CDC for persons 18 years of age or older.

As the COVID-19 global health pandemic persisted, there was a “race” to develop and bring to market a vaccine. Currently, three vaccines have been approved through the EUA process for the virus. California is now pursuing a considerable public health policy objective to make COVID-19 vaccines as widely available to the general population as possible. These efforts have included using the DCA waiver process to expand the scope of practice authority for numerous health professions to include the COVID-19 vaccine, in alignment with similar authority granted federally under the Public Readiness and Emergency Preparedness (PREP) Act for Medical Countermeasures Against COVID–19.

This bill would codify the current authorization for optometrists to administer vaccines approved by the FDA for COVID-19. The authority would be conditioned on the same training and recordkeeping requirements included in the DCA waivers, as well as existing certification requirements under the Optometry Practice Act. The bill would additionally codify the application form for certification that is currently required to be approved by the Board.

COVID-19 testing by optometrists. Rapid point-of-care tests for COVID-19 are classified as "waived tests," which require federal CLIA Certificate of Waivers. Optometrists are currently eligible to obtain the lab registration needed to perform CLIA-waived tests. However, that authority limits their ability to perform clinical laboratory tests to those authorized within their scope of practice within the Optometry Practice Act.

This bill would specifically expand the statutory scope of practice for optometrists to include performing a clinical laboratory test or examination classified as CLIA-waived that is necessary to detect the presence of COVID-19. This expansion would allow optometrists to utilize their existing authority to perform clinical laboratory tests relating to eye conditions to also engage in CLIA-waived testing for COVID-19. The author contends that this authority is important given that optometrists and their staff are at high risk of infection in the normal course of treatment.

Current Related Legislation. AB 526 (Wood) would authorize both dentists and doctors of podiatric medicine to independently prescribe and administer influenza and COVID-19 vaccines and provide additional authority for dentists to administer rapid point-of-care tests for COVID-19. *This bill is pending in the Assembly Committee on Appropriations.*

AB 1064 (Fong) would authorize a pharmacist to independently initiate and administer any vaccine approved or authorized by the FDA for persons three years of age and older. *This bill is pending in the Assembly Committee on Business and Professions.*

Prior Related Legislation. AB 443 (Salas, Chapter 549, Statutes of 2017) expanded the scope of practice for optometrists to include additional procedures including the administration of specific immunizations for optometrists who meet certain training requirements.

SB 762 (Hernandez, Chapter 330, Statutes of 2018) required the training program to be endorsed by the federal Centers for Disease Control and Prevention or the Accreditation Council for Pharmacy Education

ARGUMENTS IN SUPPORT:

The **California Optometric Association** (COA) is sponsoring this bill. According to the COA, "the Department of Consumer Affairs recently granted a waiver to allow optometrists to administer COVID-19 vaccines. AB 691 is necessary to make that new authority permanent. It makes no sense to require optometrists to undergo 21 hours of vaccine training required by the wavier and then not allow them to administer vaccines when the state of emergency is over. Most experts expect the need for ongoing booster shots. This bill also allows optometrists to perform point-of-care (CLIA Waived) COVID-19 (SARS-CoV-2 antigen) tests. Point-of-care tests provide results within minutes of the test being administered. The federal government has announced it will speed up the production of these tests so that more tests will be available soon. More testing by all health care providers will help slow and stop the spread of the virus."

ARGUMENTS IN OPPOSITION:

The **California Association for Medical Laboratory Technology** (CAMLT) has an "oppose unless amended" position on this bill. CAMLT argues that "ordering of or testing for COVID-19 is not within the scope of optometry. The scope of optometry should remain restricted to tests necessary for the diagnosis of conditions and diseases of the eye or adnexa." CAMLT opposes

this bill unless the provisions allowing for optometrists to perform CLIA-waived tests for COVID-19 are removed.

REGISTERED SUPPORT:

California Optometric Association *(Sponsor)*
Vision Service Plan

REGISTERED OPPOSITION:

California Association for Medical Laboratory Technology

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 501 (Cristina Garcia) – As Amended April 6, 2021

SUBJECT: Reduction of human remains and the disposition of reduced human remains.

SUMMARY: Defines reduction as the process of transforming a human body into soil using the natural decomposition process, accelerated with the addition of organic materials. Establishes the regulatory process for reduction facilities and reduction equipment under the Cemetery and Funeral Bureau and the Department of Public Health, and outlines management and training requirements for licensed reduction facility employees. States the requirements for integrating reduced human remains into the soil. Imposes the same requirements on reduced remains as for cremated and hydrolyzed remains, as specified. Specifies an implementation date of July 1, 2022.

EXISTING LAW:

1) Establishes the Cemetery and Funeral Bureau (Bureau) under the jurisdiction of the Department of Consumer Affairs to license and regulate funeral establishments, funeral directors, embalmers, cemeteries, cemetery managers, cemetery brokers, cemetery salesperson, crematories, crematory managers, cremated remains disposers, and licensed hydrolysis facilities, as specified. (Business and Professions Code (BPC) Section 7600 et seq.)

2) Defines “hydrolysis” as the process of reducing the body of a deceased person to its essential organic components and bone fragments by alkaline hydrolysis and subsequent processing of the remains after removal from a hydrolysis chamber. “Alkaline hydrolysis” is a process using heat or heat and applied pressure, water, and potassium hydroxide or sodium hydroxide in a hydrolysis chamber. (Health and Safety Code (HSC) Section 7010.1)

3) Defines a "cremated remains disposer" as a person who, for his or her own account or for another, disposes of, or offers to dispose of, cremated human remains or hydrolyzed human remains by scattering over or on land or sea. (BPC Section 7611.9)

4) Authorizes the Bureau to inspect the premises in which the business of a funeral establishment, cemetery, or crematory is conducted, where embalming is practiced or, or where human remains are stored. (BPC Section 7607)

5) Authorizes the Bureau to inspect the books, records, and premises of any hydrolysis facility, as specified, and no prior notification of the inspection is required to be given to the licensee, and requires the Bureau to conduct at least one unannounced inspection annually. (BPC Section 7653.35 and Section 7653.36)

6) Prohibits a person from disposing or offering to dispose of any cremated human remains or hydrolyzed remains unless registered as a cremated remains disposer by the Bureau, as specified. (BPC Section 7672)

7) States that a cremated remains disposer who scatters any cremated human remains or hydrolyzed human remains without specific written instructions from the person having the right to control the disposition of the remains or who scatters any remains in a manner not in accordance with those instructions shall be subject to disciplinary action. (BPC Section 7672.4)

8) Requires every cremated remains disposer to do the following:

   a) Dispose of cremated or hydrolyzed remains within 60 days of the receipt of the remains, unless a written reason for the delay is presented to the person with the right to disposition of the remains.

   b) Provide the Bureau with the address and telephone number of any storage facility being used by a registrant to store cremated or hydrolyzed remains.

   c) Store and responsibly maintain cremated or hydrolyzed remains in a place free from exposure to the elements. (BPC Section 7672.6(a))

9) Requires each cremated remains disposer to file and maintain an annual report, as prescribed by the Bureau, containing the names of the deceased persons whose cremated remains or hydrolyzed human remains were disposed of, the dates of receipt of the cremated remains or hydrolyzed human remains, the names and addresses of the persons who authorized disposal of those remains, the dates and locations of disposal of those remains, and the means and manner of disposition. (BPC Section 7672.7)

10) States that any cremated remains disposer who stores cremated remains or hydrolyzed remains in a reckless manner that results in loss of the remains or inability to individually identify the remains is guilty of a public offense punishable by imprisonment and/or a fine. (BPC Section 7673.1)

11) Requires a funeral establishment to obtain from the person with the right to control the disposition of human remains a signed declaration, as prescribed by the Bureau, designating specific instructions with respect to the disposition of cremated remains or hydrolyzed human remains. (BPC Section 7685.2(b))

12) Requires a funeral establishment entering into a contract to furnish cremation or hydrolysis services to provide to the purchaser of cremation or hydrolysis services a notice informing that a person having the right to control disposition of cremated remains or hydrolyzed human remains may remove the remains in a durable container from the place of cremation, hydrolysis, or interment, and that if cremated remains container or hydrolyzed human remains container cannot accommodate all cremated remains or hydrolyzed human remains of the deceased, the crematory or hydrolysis facility shall provide a larger cremated remains container or hydrolyzed human remains container at no additional cost, or place the excess in a second container that cannot easily come apart from the first. (BPC Section 7685.2(c))

13) Defines “inurnment” as means placing cremated remains or hydrolyzed human remains in a cremated remains container or hydrolyzed human remains container suitable for placement, burial, or shipment. (Health and Safety Code (HSC) Section 7011(a))

14) States that no cremated or hydrolyzed remains shall be removed from the place of cremation or hydrolysis nor any charge for the cremation or hydrolysis, unless the cremated remains or hydrolyzed human remains have been processed so that they are suitable for inurnment within a cremated remains container, hydrolyzed human remains container, or an urn, as specified. (HSC Section 7054.1)

15) Prohibits the following:

    a) Removing or possessing dental gold or silver, jewelry, or mementos from human remains without specific written permission of the person or persons having the right to control those remains. (HSC Section 7051.5)

    b) Willfully mutilating, disinterring, removing from the place of interment, or committing an act of sexual penetration on, or has sexual contact with remains known to be human, without authority of law. (HSC Section 7052)

16) Defines "disposition" as the internment of human remains within California, or the shipment outside of California, for lawful internment, or scattering elsewhere, including release of remains. (HSC Section 7025)

17) States that if a certificate of death is properly executed and complete, the local registrar or births and deaths shall issue a permit for the disposition of remains that specifies the following:

    a) The address of the location where the cremated remains or hydrolyzed human remains will be kept, as long as the remains are kept within public sensibilities, applicable laws, and reasonable assurances that the disposition will be carried out in accordance with the prescribed conditions and will not constitute a private or public nuisance.

    b) The address or description of the place where remains shall be buried or scattered. (HSC Section 103055(a)).

18) States that no permit for the disposition of the body shall be issued by the local registrar whenever the death occurred from a disease declared by the state department to be infectious, contagious, or communicable and dangerous to the public health, except under those conditions as may be prescribed by the state department and local health officers. (HSC Section 103055(b))

THIS BILL:

1. Provides the following definitions and clarifications:

    a. "Reduction facility" means a structure, room, or other space in a building or real property where natural, organic reduction of a human body occurs.

    b. "Reduction" means the process of transforming a human body into soil using the natural decomposition process, accelerated with the addition of organic materials through the following steps: (1) the body of a deceased person is mixed together with organic materials and warm air and is periodically turned, eventually resulting in the body's reduction to a soil material; (2) large tanks, containers, or

similar vessels hold human remains together with straw, wood chips, or other natural materials for four to six weeks until the process is complete; (3) The processing of the remains after removal from the reduction chamber.

c. "Reduction chamber" means the enclosed space within which individual human remains are reduced and any other attached, nonenclosed, mechanical components that are necessary for the safe and proper functioning of the equipment. A reduction chamber shall meet or exceed the requirements set by the State Department of Public Health (CDPH) and the federal Centers for Disease Control and Prevention for destruction of human pathogens.

a. "Reduced human remains" means the remains of a human body that have been reduced to soil through a process of reduction. "Reduced human remains" does not includes foreign materials, pacemakers, or prostheses.

b. "Reduced human remains container" means a receptacle into which human remains are placed after reduction.

c. "Integrate into the soil" means the authorized addition and mixing of reduced human remains with existing soil in a defined area within a dedicated cemetery, conservation area, or other area in the state where integration is permitted. The reduced human remains are intended to act as a soil amendment.

d. "Conservation area" means an area of land that is protected and cannot be built on, that is only used for the conservation of nature.

e. "Topsoil" means the outermost layer of soil.

2) Authorizes a corporation, partnership, or natural person to operate, establish, or maintain a reduction facility with a valid reduction facility license issued by the Bureau.

3) Places reduction facilities under the regulatory jurisdiction of the Bureau.

4) Requires an applicant for a reduction facility license to do the following:

a. Submit an application in writing on a form prescribed by the Bureau and filed at the principal office of the Bureau, along with any fees specified by the Bureau.

b. Prove compliance with all applicable laws, rules, regulations, ordinances, and orders until the Bureau determines that the public interest, human health, and environmental quality will be served by the applicant;

c. Present to the Bureau any state or locally required permits for business operations, including, but not limited to, any permits required by the local public health department or other state or locally required permits.

5) Directs the Bureau to do the following:

a. Adopt rules and regulations prescribing standards for applicants for reduction facility licenses. In reviewing an application for a reduction facility license, the bureau may consider acts of the applicant, including acts of the incorporators,

officers, directors, and stockholders of the applicant, that constitute grounds for the denial of a reduction facility license.

b. Establish a fee required to obtain or renew a reduction facility license in amounts that cumulatively do not exceed the reasonable costs of administering the licensing program.

c. Inspect the books, records, and premises of licensed reduction facilities during its regular office hours or the hours the facility in in operation. In making these inspections, the Bureau shall have access to all books and records, the facility, the reduction chamber, and any storage area for human remains before and after the reduction. Prior notification of the inspection is not required to be given to the licensee.

d. Conduct a minimum of one unannounced inspection of each reduction facility.

e. Prepare and deliver to each registered cremated remains disposer a booklet that includes, but is not limited to, the following information: details about the registration and renewal requirements for cremated remains disposers; requirements for obtaining state permits to dispose of cremated, reduced, or hydrolyzed human remains; state storage requirements; statutory duties; and other applicable state laws.

f. Ensure that reduction facility licenses are only granted to applicants that will employ a reduction chamber approved by the CDPH.

g. Deny renewal of a reduction facility license if no proof of annual maintenance of all reduction chambers in use by the facility is provided.

6) Requires every licensee operating a reduction facility to pay an additional charge to be fixed by the Bureau at no more than $8.50 per reduction made in the preceding quarter.

7) Directs CDPH to do the following:

a. Adopt rules and regulations prescribing the standards for reduction chambers to preserve the public health and safety and to ensure the destruction of pathogenic micro-organisms.

b. Establish an application fee for evaluation of a reduction chamber, not to exceed the reasonable regulatory costs of the evaluation, including time that CDPH spends on processing the application.

8) States that a reduction chamber manufacturer may apply with CDPH for approval of a reduction chamber for sale and use in the state.

9) Requires a licensed reduction facility to comply with the following requirements:

a. Make its facility, reduction chambers, storage areas for human remains before and after reduction, as well all books and records available for inspection by the Bureau during regular office hours or the hours the facility is in operations.

b. Conduct annual maintenance of all reduction chambers in use by the facility. The Bureau shall not renew a reduction facility license without proof of annual maintenance of all reduction chambers in use by the facility;

c. Require a reduction facility to report any change in ownership to the Bureau, as defined. Maintain on its premises, or other business location within the state, an accurate record of all reductions performed, including all of the following information: (1) Name of the referring funeral director, if any; (2) Name of the deceased; (3) Date of the reduction (4) Disposition of the reduced human remains; (5) Time and date that the body was inserted into the reduction chamber; (6) Time and date that the body was removed from the reduction chamber; (7) Time and date that final processing of the reduced human remains was complete; (8) Name and address of the authorizing agent; (9) Identification number assigned to the deceased, as specified; (10) A photocopy of the disposition permit filed in connection with the disposition; (11) Any documentation of compliance with appropriate environmental and safety laws; (12) Records of the maintenance performed on the reduction chamber. Such information shall be maintained for at least 10 years after the reduction is performed and shall be subject to inspection by the Bureau;

10) States that failure to comply with an inspection shall be grounds for the suspension or revocation of a reduction facility license or other disciplinary action.

11) A licensed reduction facility shall not conduct reduction of human remains unless all of the following requirements are met:

a. The facility is operated under the supervision of a manager qualified in accordance with rules operated by the bureau. A licensed crematory manager may be designated as a reduction facility manager with appropriate certification upon demonstrating an understanding of the applicable laws, as determined by the Bureau.

b. Reduction chambers have been approved by CDPH.

c. Reduction of remains begins not more than 24 hours after delivery of the remains to the licensee, unless the remains have been preserved in the interim by refrigeration.

d. The licensee has a written contract with the person or persons entitled to custody of the remains clearly stating the location, manner, and time of disposition of the remains, in which the person or persons entitled to custody of the remains agree to pay the licensee's regular fee for reduction, disposition, and other services rendered, and any other contractual provisions required by the Bureau.

e. The contract shall include an estimate of the volume of the reduced human remains that will be received and shall offer the following options:

i. The person entitled to custody of the remains may choose to receive all of the reduced human remains in one or more reduced human remains containers, the number of containers to be specified by the person.

ii. The person entitled to custody of the remains may choose to receive part of the reduced human remains in one or more reduced human remains containers, the amount received to be specified by the person and the balance of the remains to be integrated into the soil by the reduction facility in a conservation area.

iii. The person entitled to custody of the remains may choose to receive none of the reduced human remains and to have the reduction facility integrate the remains into the soil in a conservation area. If the person entitled to custody of the remains chooses not to receive all of the reduced human remains, the reduction facility shall notify the person of the location of the conservation area into which the reduced human remains will be integrated.

f. The licensee has a contractual relationship with a licensed cemetery authority or a conservation area for final disposition of reduced human remains by burial, entombment, or inurnment, or integration into the soil, of remains that are not called for or accepted within 90 days of date of death. The facility may integrate into the soil any reduced human remains that are not called for or accepted into the custody within 90 days of date of death.

12) States that it is a misdemeanor for a person, firm, or corporation to reduce human remains, or to engage in the disposition of reduced human remains, without a valid, unexpired reduction facility license.

13) Requires a licensed reduction facility to maintain an identification system allowing identification of each deceased person beginning from the time the licensed reduction facility accepts delivery of human remains until the point at which it releases the reduced human remains to a third party.

14) Requires a licensed reduction facility to place, after reduction, an identifying disk, tab, or other permanent label with the cremated remains container before the reduced human remains are released from the licensed reduction facility. Each identification disk, tab, or label must contain the license number of the reduction facility and shall have a unique number that shall be recorded on all documents regarding the decedent and in the reduction log. Each licensed reduction facility shall maintain a written procedure for identification of remains.

15) Permits a licensed reduction facility that fails to produce a written procedure for identification of remains upon request by the Bureau, to have 15 working days from the time of the request to produce an identification procedure for review by the Bureau. The license of the reduction facility shall be suspended if no identification procedure is produced for review after 15 working days have elapsed.

16) Requires the reduction facility, within two hours of taking custody of a deceased that has not been embalmed, to refrigerate the body at a temperature not greater than 50 degrees Fahrenheit, unless the reduction process will begin within 24 hours of the time that the facility took custody.

17) Requires the reduction facility licensee, or its authorized representatives, to provide instruction to all facility personnel involved in the reduction process. This instruction shall lead to a demonstrated knowledge on the part of an employee regarding identification procedures used during reduction, operation of the reduction chamber and related equipment, and all laws relevant to the handling of a body and reduced human remains. This instruction shall be outlined in a written plan maintained by the reduction facility licensee for inspection and comment by an inspector of the Bureau.

18) Prohibits a licensed reduction facility employee from operating a reduction chamber or related equipment until the employee has demonstrated to the certified manager of a licensed reduction facility or authorized representative of the licensee that the employee understands the procedures required to ensure that health and safety conditions are maintained at the reduction facility and that reduced human remains are not commingled other than for acceptable residue. The reduction facility licensee shall maintain a record to document that an employee has received such training.

19) Allows a reduction facility that fails to produce a written employee instruction plan or record of employee training upon inspection by the Bureau, to have 15 working days from the time of the request to produce a plan or training record for review by the Bureau. The license of a reduction facility shall be suspended if no plan or training record is produced for review after 15 working days have elapsed.

20) Prohibits a person, except with the express written permission of the person entitled to control the disposition of the remains, to do any of the following:

    a. Reduce the remains of more than one person at the same time and in the same reduction chamber, or introduce the remains of a second person into the reduction chamber until the reduction of preceding remains has been terminated and reasonable efforts have been employed to remove all fragments of preceding remains.

    b. Dispose of reduced human remains in a manner or location that the remains are commingled with those of another person. This does not apply to the disposition of accumulated residue removed from equipment used in the reduction of human remains.

    c. Place reduced human remains or the remains of more than one person in the same container, except for the following:

        i. Members of the same family may be placed in a common contained designed for the reduced remains of more than one person;

        ii. Reduced human remains may be placed in a container that has been previously designated, at the time of sale, as being intended for the remains of more than one person;

        iii. Disposal of the residue removed from equipment used in the reduction of human remains.

21) Prohibits a reduction facility from making or enforcing rules requiring that human remains be placed in a casket before reduction. Prohibits a reduction facility from refusing to accept human remains for reduction for the reason that they are not in a casket.

22) Imposes the same requirements for reduced human remains as cremated human remains or hydrolyzed remains, for registered cremated remains disposers, funeral directors, and funeral establishments, as specified.

23) Requires every registered cremated remains disposer who integrates reduced human remains into the soil to post a copy of the address of the reduced human remains storage area at their place of business.

24) Authorizes reduced human remains to be integrated into the topsoil under the following circumstances:

    a. A reduction facility may integrate reduced human remains into the topsoil of a conservation area if the person having the right to control the disposition of those remains has agreed, in writing, to that disposition.

    b. The reduced human remains may be integrated into the soil in an area where no local prohibition exists, provided that the reduced human remains are not distinguishable to the public, are not in a container, and that the person who has control over disposition of the reduced human remains has obtained written permission of the property owner or governing agency to integrate into soil on the property. A person who integrates into the soil reduced remains shall obtain a permit from the local registrar of births and deaths that includes a description of the final place of disposition sufficient to identify the place of the disposition of the remains, in addition to a signed acknowledgment that the permit gives no right of unrestricted access to property not owned by the person for the purpose of disposing of the remain.

25) Requires a local registrar of births and deaths to issue a permit for disposition of reduced remains that includes a description of the final place of disposition. The permit must have a signed acknowledgment from the person applying that the permit does not give unrestricted access to the property where the remains will be disposed.

26) Requires a person receiving a permit for human remains disposition to sign the permit, endorse upon it the date of final disposition and, within 10 days, return the first copy of the permit so endorsed to the local registrar of the district in which the disposition took place. The third copy of the permit shall be returned to the office of issuance.

27) Specifies that a state or local agency may adopt an ordinance, regulation, or policy, as appropriate, authorizing or specifically prohibiting, the integration into the soil of reduced remains, on lands under the agency's jurisdiction.

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

COMMENTS:

Purpose. This bill is author-sponsored. According to the author: "AB 501 will provide an additional option for California residents that is more environmentally friendly and gives them another choice for burial. With climate change and sea-level rise as very real threats to our environment, this is an alternative method of final disposition that will not contribute emissions into our atmosphere. For each individual who chooses NOR over conventional burial or cremation, the process saves the equivalent of one metric ton of carbon from entering the environment.

As cemeteries fill up and people look for more sustainable death care practices, Recompose hopes to one day offer its service to the California public, so that friends and family can use the soil to plant a tree or memorial garden honoring loved ones. Trees are important carbon breaks for the environment. They are the best filters for air quality and if more people participate in organic reduction and tree planting, we can help with California's carbon footprint."

Background.

Natural Organic Reduction. Natural Organic Reduction (NOR) is a method that transforms human remains into soil using the natural decomposition process, accelerated by the addition of natural materials. Generally, NOR occurs in a contained, aerated steel vessel, where the body is covered with organic material including wood chips, alfalfa, and straw.

Throughout approximately 30 days, microbes that naturally occur in the air and on the organic materials decompose the human body at an accelerated pace. The chamber undergoes mixing at several intervals to continue the aerobic process and ensure that all the entire body – including bones and teeth – is fully broken down and transformed. At the end of the process, non-organic materials, such as metal surgical or dental implants, are removed. The transformation results in soil – defined as "reduced human remains" under this bill – that is dark brown in appearance, and considered safe for disposal. Generally, the preferred method of disposal is integrating the remains as a soil amendment for trees or plants. To date, Washington is the first, and currently only state, to approve natural organic reduction as an alternative to burying or cremating human remains.

Available research on the safety of NOR. While research on human natural organic reduction is limited, a wide range of academic studies are available on animal reduction, which has been used to dispose of deceased animals in agriculture, meat processing and distribution, or environmental management. With the exception of rare cases, the safety of animal composting has become well documented: according to the Department of Crop and Soil Sciences at the Cornell Waste Management Institute, "Composting provides an alternative to traditional carcass disposal as it can be less expensive, is self-sufficient and is biosecure. The temperatures achieved through the composting process may eliminate or greatly reduce pathogens, hindering the spread of disease. Research continues to demonstrate effective destruction of nearly all livestock diseases of concern. Properly composted material is environmentally safe and a useful soil amendment."

In 2018, Recompose, an organization offering NOR services in the state of Washington. sponsored a research project with the Washington State University Soil Science Department to demonstrate that safety and efficacy of the NOR process. Using six human research subjects, the study concluded that the "process of recomposition has been shown to effectively and quickly biologically convert human remains. Final material was obtained that was unrecognizable

visually, chemically, or microbiologically as human remains." Similar to animal composting, human NOR can reach temperatures high enough to destroy almost all harmful pathogens, and transform the body, wood chips, and straw into a final material which is safe for humans and plant life.

Recompose notes that there are two disease types that disqualify a person from being eligible for natural organic reduction: Ebola and prion diseases. Prion diseases are a family of rare neurodegenerative disorders that affect both humans and animals, and existing scientific research has not yet proven that prions are broken down during the NOR process. In human burial or cremation, whenever the death occurred from a disease declared by the state department to be infectious, contagious, or communicable and dangerous to the public health, no permit for the disposition of the body can be issued by the local registrar, except under those conditions as may be prescribed by the state department and local health officers.

Regulatory Function of the Bureau. The Bureau licenses and regulates over 13,000 licensees across various license categories, including funeral establishments, funeral directors, embalmers, cemeteries, cemetery managers, cemetery brokers, cemetery salesperson, crematories, crematory managers, cremated remains disposers. The Bureau does not license or regulate cemeteries operated by religious organizations, cities, counties, cemetery districts, the military, Native American tribal organizations, or other groups. The Bureau has the oversight responsibility for both fiduciary and operational activities of its licensing population and has the statutory authority to enforce the licensing and practice acts in the BPC along with jurisdiction over specified provisions of the HSC dealing specifically with human remains, cemetery, and crematory provisions.

The Bureau may also issue licenses for hydrolysis facilities, in which human remains are hydrolyzed. Approved by the legislature 2017 as another alternative to cremation, alkaline hydrolysis is a process by which human remains are reduced to bone fragments with the utilization of water and a blended alkaline solution, combined with heat and pressure.

This bill aims to model the licensure and regulation of crematories and hydrolysis facilities, and authorizes cremated remains disposers to also dispose of human remains that were reduced through natural organic reduction. Similarly, existing law regarding the proper reporting, handling, and disposal of cremated or hydrolyzed remains are applied to reduced remains. To provide an adequate implementation window, the bill's provisions become effective July 1, 2022

Licensure and regulation of reduction facilities. This bill creates a new license type for reduction facilities, modeled after the licensure process for crematory licenses and hydrolysis facility licenses. The bill enumerates the requirements to apply for such a license, including submitting a written application, pay the applicable fees, demonstrate compliance with all applicable laws, and obtaining any relevant permits. Reduction chambers – the vessels that would be used to conduct natural organic reduction – would be approved by the State Department of Public Health to ensure the destruction of any pathogenic micro-organisms during the reduction process.

Under this bill, any licensed reduction facility must be operated under the supervision of a manager. Alternatively, a licensed crematory manager may be designated as the reduction facility manager, upon determination by the Bureau that such person has an understanding of the applicable laws. The bill also specifies that all employees of a licensed reduction facility receive appropriate training and instruction to ensure appropriate handling of remains, knowledge of the reduction process, and regulatory compliance. Similarly to crematories or hydrolysis facilities,

reduction facilities would be required to maintain accurate records or all reductions performed, and maintain an identification system allowing for the proper identification of human remains throughout the entire reduction process.

This bill places licensed reduction facilities under the jurisdiction of the Bureau. Accordingly, these facilities and associated records would be subject to inspection by the Bureau, with any violation subject to disciplinary action.

Fee and revenue structure. The bill authorizes the Bureau to set a licensing fee, at an amount that would not exceed the reasonable cost of administering the bill's provisions. In addition, the bill authorizes the Bureau to assess a similar regulatory charge, not to exceed $8.50, for each reduction made by a licensed reduction facility. This regulatory charge mirrors existing practice across the industry, as current law specifies an $8.50 regulatory charge for each burial, entombment, inurnment, cremation, or hydrolysis. Revenue generating from licensing fees and regulatory assessments are deposited into the Cemetery and Funeral Fund for the administration of the licensing and enforcement activities of the Bureau.

Disposal of reduced human remains. To preserve vital records and information about deceased individuals, existing law outlines specific rules for the disposition of cremated remains and hydrolyzed remains, including obtaining relevant local permits and registering the location at which the remains were scattered. This bill aligns the requirements for soil integration of reduced human remains with existing requirements for the scattering of cremated or hydrolyzed ashes. Specifically, reduced remains would be integrated in an area where no local prohibition exists, would not be distinguishable to the public, and written permission would be obtained from the property owner or governing agency to integrate into the soil on the property. In addition, a person who integrates into the soil reduced remains must obtain a permit from the local registrar of births and deaths, and sign an acknowledgment that trespass and nuisance laws apply to the disposition of reduced remains and that the permit gives no right of unrestricted access to property not owned by the person for the purpose of disposing of the remains.

Current Related Legislation.

None.

Prior Related Legislation.

AB 967 (Gloria, Chapter 846, Statutes of 2017) – Requires the bureau to license and regulate hydrolysis facilities, as defined, and hydrolysis facility managers, and would enact requirements applicable to hydrolysis facilities substantially similar to those applicable to crematoria.

AB 2592 (Garcia, 2020): Reduction of human remains and the discussion of reduced human remains. This bill contained similar provisions as AB 501, and was held in the Senate Committee on Appropriations.

ARGUMENTS IN SUPPORT:

Recompose writes in support: "Natural organic reduction is safe, sustainable, and informed by nature. This process would provide California's 39 million residents with a respectful option that offers significant savings in carbon emissions and land usage over conventional burial or

cremation. It also empowers California consumers with an additional end-of-life choice and creates business opportunities for funeral homes to expand their offerings."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Recompose
252 individuals

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing:

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 269 (Patterson) – As Introduced January 19, 2021

SUBJECT: Nursing: licensure: renewal fees: reduced fee.

SUMMARY: Authorizes the Board of Registered Nursing (BRN) to reduce the license renewal fee for registered nurses (RNs), but no less than one-half, if they meet specified retirement conditions and only provide services for free or for nominal charges.

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) Provides for the regulation and licensure of various professions and vocations by boards, bureaus, and other entities within the DCA. (BPC §§ 100-144.5)

3) Defines "board," as used in the BPC, as the board in which the administration of the provision is vested, and unless otherwise expressly provided, includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (BPC § 22)

4) Authorizes any of the boards within the DCA to establish a category of retired licenses for licensees who are not actively engaged in the practice of the licensed profession that can be restored to an active license after paying a fee established by state or regulation and meeting other board requirements, such as continuing education. (BPC § 464)

5) Requires a healing arts board within the DCA to issue inactive licenses to licensees who seek to maintain a license but are not actively engaged in the practice of their profession, allowing them to maintain licensure or certification in a non-practicing status. (BPC §§ 700-704)

6) Prohibits the holder of an inactive license from practicing or representing that they have an active license. (BPC § 702)

7) Allows the holder of an inactive license to restore the license to active status, if they 1) pay the normal renewal fee, except that the fee is waived for a physician and surgeon who only provides voluntary, unpaid service to indigent patients in medically underserved or critical-need population areas of the state, as specified, and 2) complete the continuing education requirements for a single renewal period. (BPC § 704)

8) Regulates the practice of medicine through licensure of physicians and surgeons under the Medical Practice Act, which establishes the Medical Board of California (MBC) within the DCA to administer and enforce the act. (BPC §§ 2000-2529.6)

9) Requires physicians and surgeons to renew their licenses biennially and requires the MBC to establish a renewal fee no greater than $790. (BPC § 2435)

10) Requires the MBC to waive the initial license and renewal fees for physician and surgeons who only provide voluntary, unpaid service. (BPC §§ 704(a), 2083, 2442)

11) Regulates the practice of dentistry through licensure of dentists under the Dental Practice Act, which establishes the Dental Board of California (DBC) within the DCA to administer and enforce the act. (BPC §§ 1600-1976)

12) Requires dentists to renew their licenses biennially and requires the DBC to establish a renewal fee no greater than $800. (BPC § 1724(d))

13) Authorizes the DBC to reduce the renewal fee, but no less than one-half the normal renewal fee, for a licensee who has practiced dentistry for 20 years or more in this state, has reached the age of retirement under the federal Social Security Act (42 U.S.C. Sec. 301 et seq.), and customarily provides services free of charge to any person, organization, or agency. If charges are made, they must be nominal and the aggregate amount of the nominal charges in any single calendar year must be lower than an amount that would render the licensee ineligible for full social security benefits. (BPC § 1716.1(a))

14) Regulates and licenses the practice of optometry under the Optometry Practice Act, which establishes the California State Board of Optometry (CSBO) within the DCA to administer and enforce the act. (BPC §§ 3000-3167)

15) Requires optometrists to renew their licenses biennially and requires the CSBO to establish a renewal fee no greater than $500. (BPC § 3152(d))

16) Requires the CSBO to issue, upon payment of a reduced $50 fee and a $50 renewal fee biennially, a license with a retired volunteer service designation to an optometrist who meets specified requirements and certifies on the application that the sole purpose of the license with retired volunteer service designation is to provide voluntary, unpaid optometric services at health fairs, vision screenings, and public service eye programs. (BPC § 3151.1)

17) Regulates and licenses the practice of nursing under the Nursing Practice Act and establishes the BRN within the DCA to administer and enforce the act. (BPC §§ 2700-2838.4)

18) Requires RNs to renew their licenses biennially and requires the BRN to establish a renewal fee between $180 and $750. (BPC § 2815(d))

THIS BILL:

1) Authorizes the BRN to reduce the renewal fee for an RNs, except not an amount less than one-half of the regular renewal fee, if they meet the following qualifications:

    a) Have been licensed to practice under this chapter for 20 years or more in this state.

    b) Have reached the age of retirement under the federal Social Security Act.

    c) Customarily provide their services free of charge to any person, organization, or agency. Any charge made must be nominal, and the aggregate of charges in any single calendar year may not exceed an amount that would render the licensee ineligible for full social security benefits.

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, "The need for nurses is severe throughout the state, even in volunteer capacities. During this ongoing public health crisis, this need has become critical. By reducing the fee for retired registered nurses to renew their professional license, the state will be able to continue utilizing the knowledge, skills, and experience of these nurses at a time when it has never been more needed."

Background. In general, licensing programs serve to protect the consumers of professional services and the public from undue risk of harm. The programs require anyone who wishes to practice in a licensed profession to meet a minimum level of competency and fitness to practice criteria, among other consumer protection requirements.

However, there may be licensees who no longer wish to actively practice but maintain some sort of license for purposes of volunteer work or in case they need to resume work. While existing law provides avenues for most professions to apply for a retired or inactive category of licensure, neither of these options allow for volunteer work. Both options require reinstatement to active licensure, which is often accompanied by fees and continuing education requirements. This reapplication process may take additional time.

This bill would instead allow for the BRN to reduce fees for licensees who retire but wish to maintain their license for purposes of volunteer work. According to the author, there were retired nurses who wished to assist with the COVID-19 pandemic but had lapsed licenses that would have been too difficult to reinstate. The goal of this is to provide for a lower fee so nurses who wish to continue to volunteer after retirement can retain a limited license.

This authorization is identical to the authorization the DBC has. Other boards that have reduced or completely waived fees include the MBC and the CSBO.

Current Related Legislation. AB 1532 (Committee on Business and Professions), which is pending in this Committee, is the bill intended to carry out the statutory changes that result from the sunset review of the BRN and extend its authority to regulate the practice of nursing.

Prior Related Legislation. SB 1261 (Stone), Chapter 239, Statutes of 2016 requires the Medical Board of California to waive the initial license and renewal fees for physician and surgeons who only provide voluntary, unpaid service.

AB 2859 (Low), Chapter 473, Statutes of 2016 authorizes any of the boards within the DCA to establish, by regulation, a system for a retired category of licensure for persons not actively engaged in the practice of their profession, as specified.

AB 750 (Low) of 2015, which was held on suspense in the Assembly Appropriations Committee, would have authorized any of the boards within the DCA to establish, by regulation, a system for a retired category of licensure.

ARGUMENTS IN SUPPORT:

The *California Association for Health Services at Home (CAHSAH)* writes in support, "CAHSAH has had long standing policy to advocate for any legislation that will increase the nursing pool in California. Anything that California can do to reduce the burden for nurses to continue to remain practicing in our state is vital to ensuring that California has enough nurses to care for our increasingly aging population. The cost of education to obtain a nursing degree has increased tremendously in California and it is prudent to reward nurses who have practiced in our state for several years by reducing their annual licensure renewal fees. Ideally, we would like to see this fee reduction expanded to all nurses who have practiced at least 10 years in California."

Community Medical Centers and *The Nursing Leadership Coalition of Central San Joaquin Valley* both write in support, "The need for nurses is severe throughout the state, even in volunteer capacities. During this ongoing public health crisis, the need has become critical. [This bill] would allow the Board of Registered Nursing to offer a discounted fee for retired nurses looking to renew their licenses so that they can offer their services in a volunteer capacity. By reducing the fee for retired registered nurses, the state would be able to continue utilizing the knowledge, skills and experience of these nurses at a time when they are needed the most."

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

California Association for Health Services At Home
Community Medical Centers
Nursing Leadership Coalition of Central San Joaquin Valley

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 492 (Patterson) – As Introduced February 8, 2021

SUBJECT: Cosmetology students: externships.

SUMMARY: Allows cosmetology externships to be paid, allows cosmetology students to begin working as externs after completing 25 percent of their required clock hours, increases the number of hours per week an extern may receive clock hour credit toward graduation, and increases the percentage of total clock hours that may be obtained through externships.

EXISTING LAW:

1) Establishes the State Board of Barbering and Cosmetology (BBC) under the jurisdiction of the Department of Consumer Affairs (DCA) to license and regulate barbers, cosmetologists, electrologists, estheticians, and manicurists pursuant to the Barbering and Cosmetology Act. (Business and Professions Code (BPC) §§ 7301 *et seq.*)

2) Provides that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. (BPC § 7303.1)

3) Defines the practice of cosmetology as all or any combination of the following:

   a) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.

   b) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

   c) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

   d) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

   e) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.

   f) Massaging, cleansing, treating, or beautifying the hands or feet of any person.

   (BPC § 7316(b))

4) Exempts from the definitions of barbering and cosmetology the practices of wig-fitting, natural hair braiding, and threading. (BPC § 7316(d))

5) Makes it unlawful to engage in barbering and cosmetology for compensation without a valid, unexpired license issued by the Board, punishable by an administrative fine or a misdemeanor. (BPC § 7317)

6) Exempts from the licensure requirement for barbering and cosmetology all of the following:

   a) Individuals licensed to practice medicine, surgery, dentistry, pharmacy, osteopathic medicine, chiropractic, naturopathy, podiatry, or nursing and acting within the scope of practice for which they are licensed.

   b) Commissioned officers of the United States Army, Navy, Air Force, Marine Corps, members of the United States Public Health Service, and attendants attached to those services when engaged in the actual performance of their official duties.

   c) Persons employed in the course of and incidental to the business of employers engaged in the theatrical, radio, television, or motion picture production industry.

   d) Persons engaged in any practice without receiving compensation.

   e) Persons engaged in the administration of hair, skin, or nail products for the exclusive purpose of recommending, demonstrating, or selling those products.

   f) Persons who render barbering or cosmetology services in an institutional program during the course of and incidental to the incarceration or confinement of inmates, prisoners, or persons charged with a crime.

   (BPC § 7319)

7) Requires the BBC to allow any person to take the barbering license examination who has submitted an application, paid the fee, is at least 17 years old, has completed the 10th grade, is not otherwise disqualified, and has completed either an approved barbering course, an approved apprenticeship program, or has specified equivalent experience. (BPC § 7321.5.)

8) Requires applicants for licensure by the BBC to complete both a practical demonstration and a written test. (BPC § 7338)

9) Requires the BBC to determine the required subjects of instruction to be completed in all approved courses, including the minimum hours of technical instruction and minimum numbers of practical operations for each subject, and determine how much training is required before a student begins performing services on paying patrons. (BPC § 7362)

10) Requires the BBC to promulgate regulations regarding the creation of a personal service permit (PSP) and issue a PSP to any individual who meets the criteria set forth in the regulations. (BPC § 7402.5)

11) Prohibits persons who are not licensed as barbers or cosmologists in the state from representing themselves as barbers or cosmologists. (BPC § 7320.3, § 7320.4)

12) Requires barbering and cosmetology licensees to display their license in a conspicuous place in their place of business or employment. (BPC § 7397)

13) Allows a student who is enrolled in cosmetology school, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, to work as an unpaid extern in an establishment participating in the educational program of the school, and allows externs to receive clock hour credit toward graduation limited to no more than eight hours per week and no more than 10 percent of the total clock hours required for completion of the course.

THIS BILL:

1) Authorizes a cosmetology student to begin working as an extern upon completion of 25 percent of their required clock hours for graduation.

2) Eliminates the requirement that externships be unpaid.

3) Allows for up to 25 hours of clock hour credit per week.

4) Allows total clock hours received from an externship to comprise up to 25 percent of the total clock hours required for completion of the course.

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:

> "The California Board of Barbering and Cosmetology's externship program is underutilized and we have an opportunity to make it work better for students. AB 492 will provide students a greater incentive to take advantage of the externship program by allowing them to earn while they learn. This bill will also increase the amount of coursework credit applied to the student's education, and increase the number of hours a student is allowed to work in a professional salon setting. By making these improvements to the externship program (while still protecting the jobs of those paid barber sand cosmetologists in a participating salon), students will be able to get much more hands-on experience prior to graduation, making them more likely to find employment afterwards."

Background.

Board of Barbering and Cosmetology. The BBC is responsible for licensing and regulating barbers, cosmetologists, estheticians, electrologists, manicurists, apprentices, and establishments. The BBC is one of the largest boards in the country, with over 615,000 licensees. Annually, BBC issues approximately 261,000 licenses (initial and renewal licenses) and administers approximately 24,000 practical examinations and 28,000 written examinations (initial and retake examinees). Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in areas.

To become a licensed cosmetologist, an applicant must be at least 17 years old, complete tenth grade or the equivalent, and submit proof of completion to the BBC of 1,600 training hours from a BBC-approved school covering all practices of a cosmetologist. The cost of education in the industry can range from $2,500 to $19,000. The average cost of a private college being approximately $15,000 for a 1,600-hour course in cosmetology.

Externships. The BBC externship program allows a student who is enrolled in a cosmetology school to perform services in a licensed salon, for which they are not compensated, under the direct and immediate supervision of a designated licensee. Unlike an apprentice who is paid while working under the guidance and supervision of a licensee in lieu of attending school, an extern works in an establishment while attending a cosmetology but is not paid. A student is eligible to participate in the externship program after completion 60 percent of the hours required for program completion. In order for a cosmetology student to participate in an externship, the cosmetology school they attend must submit a "Notification of Participation in the Cosmetology Externship Program" form to BBC; Title 9, Division 9, 962.1 CCR § states that "it is the responsibility of the each participating school to ensure that the establishments and licensees participating in the cosmetology externship program remain in good standing." The BBC's rules also limit participation to those establishments that employ individuals to provide beautification services, and prohibits establishments that only contract with individuals from having externs.

The goal behind the statutory creation of an externship opportunity was to provide students the opportunity to work in the field prior to graduating and becoming licensed. At the time, the sponsor of SB 1498 (Hughes, Chapter 1142, Statutes of 1994) which established the BBC extern framework, noted that the program would give students a better chance to secure a job after becoming licensed and simultaneously allow schools to track graduates more efficiently to comply with job placement data requirements. While the student earns hours that can be used to fulfill the requirements of their private cosmetology program, only up to 8 hours per week can be earned, and only up to 10 percent of the total hours required to complete a program are eligible to be earned as an extern.

Externships were discussed in the BBC's sunset review oversight background paper, which was discussed in a joint hearing on Friday, April 9, 2021. Issue #11 in the paper discussed both apprenticeships and externships and posed the question: "Are changes necessary to ensure future licensees are provided fair opportunities through these pathways?" Specifically, the paper noted that the Legislature has been asked to evaluate whether externs should be allowed to receive payment for services they provide during training.

The BBC's sunset review background paper discussed how the current externship program allows a current student to work according to strict requirements in a licensed establishment while they are in school. Students are not authorized to receive compensation for beautification services provided while they are being trained and earning hours outside of the legal parameters set forth in the Act for the externship program. The Committees noted that coupled with a potential decrease in the number of hours required for licensure and the ability to work while attending school and receiving compensation as an employee, individuals may be able to benefit and ultimately become successful licensees sooner, having gained on-the-job training and experience.

Prior Related Legislation. AB 2134 (Rubio, Chapter 387, Statutes of 2018) authorized a student who is enrolled in an approved course of instruction in a school of cosmetology approved by the board to work as an extern in an establishment participating in the educational program of the school.

SB 1498 (Hughes, Chapter 1142, Statutes of 1994) established the framework for externships within the BBC's licensing programs.

POLICY ISSUE(S) FOR CONSIDERATION:

Timeliness. The BBC's sunset review is currently underway. The sunset process provides for robust discussion regarding the successes and challenges of licensing programs and facilitates the consideration of proposed changes to laws governing the regulation of professionals. In the BBC's most recent sunset review background paper, the Committees recommended: "The BBC should be continued, to be reviewed again on a future date to be determined; however the Committees should consider making significant modifications to the Act aimed at reducing barriers to entry in the beautification services industry."

Externships have already been specifically raised as an issue in the background paper authored by the Committees. However, a number of arguably more substantial reforms were also identified. For example, while this bill would increase the amount to which externships may count toward an applicant meeting the 1,600-hour prelicensure training requirement, the Committees have indicated that it may be appropriate to revisit whether requiring 1,600 hours is appropriate, which may be considered a more immediate question to resolve than the more modest revisions proposed by this bill.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 287 (Quirk) – As Amended March 25, 2021

SUBJECT: Civil actions: statute of limitations.

SUMMARY: Extends the statute of limitations for an action for civil penalties to be brought against unlicensed cannabis activity from one year to three years.

EXISTING LAW:

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

2) Establishes the Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, previously named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, for purposes of regulating microbusinesses, transportation, storage, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC § 26010)

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

4) Provides the Department of Food and Agriculture with responsibility for regulating cannabis cultivators. (BPC § 26060)

5) Provides the Department of Public Health with responsibility for regulating cannabis manufacturers. (BPC § 26130)

6) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements. (BPC § 26030)

7) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)

8) Provides the following rules regarding the use of civil penalty funds collected from unlicensed activity:

    a) If an action is brought by the Attorney General on behalf of the people, the penalty collected shall be deposited into the General Fund.

b) If the action is brought by a district attorney or county counsel, the penalty shall first be used to reimburse the district attorney or county counsel for the costs of bringing the action for civil penalties, with any remainder to be deposited into the General Fund.

c) If the action is brought by a city attorney or city prosecutor, the penalty collected shall first be used to reimburse the city attorney or city prosecutor for the costs of bringing the action for civil penalties, with the remainder, if any, to be deposited into the General Fund.

(BPC § 26038)

9) Requires that all accusations against licensees operating under the MAUCRSA shall be filed by the Department of Consumer Affairs within five years after the performance of the act or omission alleged to be the grounds for disciplinary action; and clarifies that the cause for disciplinary action in that case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in that case, the accusation shall be filed within five years after that discovery. (BPC § 26034.)

10) Authorizes the Legislature to, by majority vote, enact laws to implement the state's regulatory scheme for cannabis if those laws are consistent with the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64). (BPC § 26000)

11) Provides that civil actions, without exception, can only be commenced within the periods prescribed in statute, after the cause of action has occurred, unless where, in special cases, a different limitation is prescribed by statute. (Code of Civil Procedure (CCP) § 312)

12) Generally requires that civil actions regarding the forfeiture or penalty to the people be filed within one year from the date of the events giving rise to the action. (CCP § 340)

THIS BILL:

1) Provides for a three-year statute of limitations for an action for civil penalties against unlicensed cannabis activity.

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

COMMENTS:

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

"Shutting down the illicit market is critical to the successful implementation of Proposition 64, and imperative for allowing the legal cannabis industry to thrive. This is why Proposition 64 allowed for substantial civil penalties to be levied against bad actors. Portions of Proposition 64 provide for a 5-year statute of limitations while other sections, specifically those pertaining to the authority granted to the Attorney General, district attorneys and county counsel is silent. In this case, the statute of limitations defaults to one-year. Cannabis investigations are complex and

often involve multiple local and state agencies that investigate not only the cultivation or manufacturing aspect of the cannabis industry, but also environmental crimes associated with the grow. Concurrently, a host of consumer protection violations related to the advertisement or ingestion of cannabis products can also be a part of each investigation. By the time each of these agencies have completed their respective investigations, the one-year clock may have already run, preventing cases from being fully prosecuted."

Background.

Early History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Proposition 215 also included findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

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

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

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

A document issued by the United States Attorney General in 2013 known as the "Cole memorandum" indicated that the existence of a strong and effective state regulatory system, and a cannabis operation's compliance with such a system, could allay the threat of federal enforcement interests. Federal prosecutors were urged under the memo to review cannabis cases on a case-by-case basis and consider whether a cannabis operation was in compliance with a

strong and effective state regulatory system prior to prosecution. The memo was followed by Congress's passage of the Rohrabacher-Farr amendment, which prohibits the United States Department of Justice from interceding in state efforts to implement medicinal cannabis.

MCRSA. After several attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA consisted of a package of legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the newly established BCC within the Department of Consumer Affairs, the CDPH, and the CDFA, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

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

- The CDPH to license and regulate manufacturers; and

- The CDFA to license and regulate cultivators.

While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions may also choose to ban cannabis establishments altogether.

AUMA. Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The law retained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that were scheduled to take effect on the same date. The same agencies given authority under MCRSA remained responsible for implementing regulations for adult use.

Under the AUMA, the BCC within the Department of Consumer Affairs continues to serve as the lead regulatory agency for all cannabis, both medicinal and non-medicinal. The AUMA includes 19 different license types compared to the original 17 in MCRSA, and provides the Department of Consumer Affairs (and the BCC) with exclusive authority to license and regulate the transportation of cannabis. The AUMA also authorizes vertical integration models which allows for the holding of multiple license types, as previously prohibited under MCRSA. Additionally,

while MCRSA required both a state and local license to operate, the AUMA only stipulated a state license; however, the state is also directed not to issue a license to an applicant if it would "violate the provisions of any local ordinance or regulation."

The language of the AUMA allows for legislative modifications that "implement" or "give practical effect" to the law by a majority vote. However, what constitutes "implementing" has been interpreted to be limited. Consequently, proposed changes to the voters' intent in the AUMA require a two-thirds vote and of those, some may be deemed to require voter approval.

MAUCRSA. In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

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

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

Statutes of Limitations. Statutes of limitations specify how long a party has to bring legal action by filing a complaint. Currently, civil actions against unlicensed cannabis businesses fall under a general one-year statute of limitations by default for actions regarding the forfeiture or penalty to the people. However, statute enumerates a number of actions that may be commenced within three years. This bill would add civil actions against persons engaging in commercial cannabis activity without a license to that statute, effectively extending the statute of limitations for enforcement against the black market to three years.

Current Related Legislation. AB 1138 (Blanca Rubio) would subject any person who aids and abets unlicensed commercial cannabis activity to civil penalties of up to $30,000 per day. *This bill is pending in the Assembly Committee on Judiciary.*

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

ARGUMENTS IN SUPPORT:

This bill is sponsored by the **California District Attorneys Association** (CDAA). The CDAA explains that "cannabis investigations are complex and often involve multiple local and state agencies that investigate not only the cultivation or manufacturing aspect of the cannabis industry, but also environmental crimes associated with the grow. Furthermore, a host of consumer protection violations related to the advertisement or ingestion of cannabis products are frequently investigated in parallel. By the time each of these agencies have completed their respective investigations, the one-year clock may have already run, which prevents the case from being fully prosecuted."

This bill is also supported by the **California Cannabis Industry Association** (CCIA). According to the CCIA, "the illicit cannabis market in California, which has seen more revenue than ever before in recent years, is our legal industry's biggest competitor and most significant challenge. Illicit operations have no guarantee of age verification, do not pay any state taxes, and sell products without any of the rigorous safety or quality assurance requirements imposed on legal cannabis. Without ensuring regulators have the proper tools to enforce against illicit operations, success of our legal cannabis industry will continue to be stymied and the intent of Proposition 64 cannot fully be met."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California District Attorneys Association *(Sponsor)*
California Cannabis Industry Association

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1015 (Blanca Rubio) – As Introduced February 18, 2021

SUBJECT: Board of Registered Nursing: workforce planning: nursing programs: clinical placements.

SUMMARY: Requires the Board of Registered Nursing (BRN) to incorporate regional forecasts into its biennial analyses of the nursing workforce, develop a plan to address regional areas of shortage identified by its nursing workforce forecast, as specified, and annually collect, analyze, and report information related to the number of clinical placement slots that are available and the location of those clinical placement slots within the state.

EXISTING LAW:

1) Regulates the practice of nursing under the Nursing Practice Act and establishes the Board of Registered Nursing (BRN) to administer and enforce the act. (Business and Professions Code (BPC) §§ 2700-2838.4)

2) Defines "an approved school of nursing" or "an approved nursing program" as one that has been approved by the Board, gives the course of instruction approved by the Board, covering not less than two academic years, is affiliated or conducted in connection with one or more hospitals, and is an institution of higher education. "Institution of higher education" includes, but is not limited to, community colleges offering an associate of arts or associate of science degree and private postsecondary institutions offering an associate of arts, associate of science, or baccalaureate degree or an entry-level master's degree, and is an institution that is not a private postsecondary school. (BPC § 2786(a))

3) Requires the BRN to approve schools of nursing and nursing programs that offer a course of instruction leading to licensure as an RN, and prohibits the operation of a school of nursing unless approved by the board. (BPC §§ 2785-2759, 2798)

4) Requires the board to determine by regulation the required subjects of instruction to be completed in an approved school of nursing for licensure as a registered nurse and shall include the minimum units of theory and clinical experience necessary to achieve essential clinical competency at the entry level of the registered nurse. The board's regulations must be designed to require all schools to provide clinical instruction in all phases of the educational process, except as specified. (BPC § 2786(c))

THIS BILL:

1) Requires the BRN to incorporate regional forecasts into its biennial analyses of the nursing workforce.

2) Requires the BRN to develop a plan to address regional areas of shortage identified by its nursing workforce forecast. The board plan shall identify additional facilities that could offer clinical placement slots.

3) Requires the BRN to annually collect, analyze, and report information related to:

   a) The number of clinical placement slots that are available

   b) The location of those clinical placement slots within the state, including, but not limited to, information concerning the total number of placement slots a clinical facility can accommodate and how many slots the programs that use the facility will need.

4) Requires the BRN to place the annual report on its internet website.

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, "Clinical placement of California nursing students is a fundamental aspect in the education and procurement of our prospective nursing workforce. The California State Auditor noted serious issues with BRN's oversight and approval of clinical nursing placements which has been a continuous point of contention at previous board hearings. In the 2017-2018 academic year alone, more than half of California's nursing programs reported clinical displacement affecting over two-thousand nursing students. As our state grapples with a significant projected state-wide nursing shortage and an even more substantial regional shortage, we must ensure that our process for prelicensure programs is efficient and effective. In codifying recommendations from the State Auditor, this measure will better prepare the state to transition nursing students from the academic to the professional workforce."

Background. In California, applicants for an RN license must complete a BRN-approved RN program and pass the National Council Licensure Examination for RNs (NCLEX-RN). RN prelicensure educational programs must have BRN approval to operate. The statutory purpose of BRN approval is to ensure approved programs include the minimum number of units of theory and clinical experience necessary to achieve essential clinical competency for the entry-level RN. The Nursing Practice Act requires all schools to provide clinical instruction in all phases of the educational process, except as necessary to accommodate military education and experience, and Educational programs are also subject to periodic inspection and review, as determined by the BRN.

As of January 2021, the BRN reported the following educational program approval statistics:

- 146 approved RN programs, including 91 Associate Degree in Nursing (ADN) programs, 43 Bachelor of Science in Nursing (BSN) programs, and 12 Entry-Level Master's (ELM) programs.
- 21 proposed programs undergoing initial approval review.

JLAC Audit. As directed by the Joint Legislative Audit Committee, the State Auditor conducted an audit of the BRN to assess its oversight of prelicensure nursing educational programs. The audit report detailed the determination that the BRN has failed to use sufficient information when considering the number of students new and existing nursing programs propose to enroll. The following summary is drawn from the State Auditor's letter regarding the audit findings.

The BRN makes decisions about the number of students that new and existing nursing programs are allowed to enroll. The State Auditor wrote that two of the key factors that should influence BRN's enrollment decisions are the forecasted supply of nurses that the state will need to fulfill demand and the available number of clinical placement slots—placements at a health care facility for students to gain required clinical experience. The State Auditor found that the BRN's 2017 forecast of the state's future nursing workforce indicated that the statewide nursing supply would meet demand, but it did not identify regional nursing shortages that California is currently experiencing and is expected to encounter in the future.

Another finding was that the BRN lacks critical information about clinical placement slots when making enrollment decisions, which hampers its ability to prevent nursing students from being displaced because other nursing programs took their clinical spots. The State Auditor noted that the BRN does not gather and share with board members information about the total number of placement slots that a clinical facility can accommodate annually or how many slots the programs that use the facility will need each year.

The Auditor specified that, without that key information, the BRN cannot properly gauge the risk of such student displacement— reported to have affected 2,300 students in academic year 2017–18—when its board makes enrollment decisions.

This bill incorporates three out of the four legislative recommendations as a result of those findings:

- Recommendation 10: Require BRN to incorporate regional forecasts into its biennial analyses of the nursing workforce.

- Recommendation 11: require BRN to develop a plan to address regional areas of shortage identified by its nursing workforce forecast. BRN's plan should include identifying additional facilities that might offer clinical placement slots.

- Recommendation 13: to ensure that BRN and stakeholders have an understanding of clinical placement capacity in California, the Legislature should amend state law to require BRN to annually collect, analyze, and report information related to the number of clinical placement slots that are available and the location of those clinical placement slots within the State.

Although out of the scope of this bill, the State Auditor also found that some of BRN's requirements for nursing programs overlap with standards imposed by national nursing program accreditors. The State Auditor recommended, as part of the Legislature's 2021 review of the BRN, it could consider the appropriateness of restructuring the BRN's oversight to leverage portions of the accreditors' review in order to reduce duplication and more efficiently use state resources.

Current Related Legislation. AB 1532 (Committee on Business and Professions), which is pending in this Committee, is the bill intended to carry out the statutory changes that result from the sunset review of the BRN and extend its authority to regulate the practice of nursing.

Prior Related Legislation. AB 1364 (Rubio) of 2019, which was held under submission in the Assembly Committee on Appropriations, would have exempted a nursing school or program that met specified performance metrics from specified BRN regulations regarding school approval,

including fees and approval for changes relating to faculty, enrollments, and clinical simulation hours, and would have prohibited schools and programs from paying for clinical placements.

ARGUMENTS IN SUPPORT:

CaliforniaHealth+ Advocates write in support:

> [Community health centers (CHCs)] proudly offer preventive, primary, behavioral, and oral health services to their patients, but the growing workforce shortage hinders the delivery of care and COVID-19 response. California holds one of the worst nurse-to-population ratios in the country. By 2030, California will have a shortfall of 45,500 nurses - a low estimate considering how the pandemic's negative influence on providers' overall health and interrupted training and educational opportunities1. The nursing shortage limits access to care and is heavily felt by patients of CHCs in rural communities. Nearly a quarter of the health care workers nationwide have considering leaving their job due to burn out from the public health emergency2. Workforce moral is further strained as nurses in hospitals and CHCs must decide between turning away patients or overloading their staff.
>
> As California grapples with the consequences of COVID-19, the Legislature must actively pursue solutions to close the nursing shortage and meet the employment needs of future health care providers. AB 1015 bolsters California's nursing workforce, many of whom are trained and employed at CHCs. The bill also requires the Board of Registered Nursing to analyze licensee data, which captures valuable research and advances efforts to build a more diverse workforce. The Board developing planned improvements for nursing workforce shortage areas empowers CHCs and their staff to care for patients in medically underserved areas.

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

CaliforniaHealth+ Advocates

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1026 (Smith) – As Introduced February 18, 2021

SUBJECT: Business licenses: veterans.

SUMMARY: Requires a regulatory board under the Department of Consumer Affairs 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.

EXISTING LAW:

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

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

3) Defines "board" as also inclusive of "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (BPC Section 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 Section 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 Section 114 and BPC Section 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 Section 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 Section 115.4)

8) Requires a board to shall 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 Section 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 Section 115.6)

THIS BILL:

1) Requires 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.

2) Defines "satisfactory evidence" as 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. "AB 1026 requires every board within the Department of Consumer Affairs to grant a 50 percent reduction for the initial license to an applicant who has served in the Armed Forces. This legislation will help remove financial barriers for veterans looking to enter licensed professions. Easing this barrier will bring skilled labor into California and help chip away at the growing issue of veteran homelessness."

Background.

Licensure under the Department of Consumer Affairs. The Department of Consumer Affairs consists of 37 boards and bureaus that regulate over 3.9 million licensees across 250 professions and occupations, with licenses ranging from acupuncturist, barbers, to nurses and veterinarians. Each regulatory board is responsible for the licensing and enforcement processes of the professions under their respective jurisdiction. For example, the Board of Registered Nursing has regulatory authority over nurses, while the Veterinary Medical Board has jurisdiction over veterinarians and veterinary technicians.

As part of the licensing process, boards are tasked with determining the competency of each applicant seeking licensure. This can be done through reviewing educational transcripts, administering examinations, or facilitating federal background checks. In order to properly administer their regulatory functions, boards often charge various fees as part of their licensing process. Such fees can vary greatly from board to board, and range from application review fees, examination fees, or license issuance fees. Some fees are charged by third-parties and are outside of the board's control. For example, fingerprinting fees for the purposes of background checks are generally conducted by the Department of Justice. Similarly, some boards use third-party national examination services to test, score, and determine a candidate's qualifications. Of note, regulatory boards under the Department do not receive monies from the California general fund, and are generally self-funded through the various fees levied on applicants and licensees. As

such, fees administered by the boards are integral to their revenue streams and their fiscal solvency.

Statutes Related to Active Duty Personnel, Military Spouses, and Veterans. Members of the United States Armed Forces and their spouses who also work under an occupational or professional license can experience unique challenges. Military service often requires frequent or unexpected relocation to another state, which can cause employment barriers if a state license is not recognized or not transferrable to another state. If licensure reciprocity is not available between two states, military personnel or their spouses may face additional financial costs in trying to regain licensure. In addition, veterans – individuals who served in the active military, naval, or air service, and who were honorably discharged or released – may face challenges transitioning back to civilian life if they are unable to obtain professional or occupational licensure.

The BPC recognizes these unique circumstances and includes several provisions to assist with the licensure and renewal process for active duty military personnel, military spouses, and veterans. First, individuals already licensed in California and going on active duty may reinstate their license upon discharge without examination or penalty, and will have all renewal fees, education requirements, and other renewal requirements waived. Second, boards are required to expedite the licensing process for any application received from a veteran. Third, boards are required to expedite the licensure process for military spouses stationed in California, under the condition that the spouse is already licensed outside of the state and is seeking an equivalent license in California. Fourth, specific regulatory boards are required, after appropriate investigation, to issue temporary licenses to military spouses stationed in California who hold an active license in another state and have not faced disciplinary issues. The boards required to issue temporary licenses are the Board of Registered Nursing; the Board of Vocational Nursing and Psychiatric Technicians; the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board; Veterinary Medical Board; the Board for Professional Engineers, Land Surveyors, and Geologists; the Medical Board of California and the Podiatric Medical Board of California.

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 (DMV) 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.

Fee Reduction. This bill requires any board under the jurisdiction of DCA to grant a 50-percent fee reduction for the issuance of an initial license to any applicant who can provide satisfactory evidence that they have served as an active duty member of the United States Armed Forces or the California National Guard and were honorably discharged. The bill further defines satisfactory evidence as a valid driver's license or ID card with the veteran designation described in the section above. According to the author, veterans face numerous challenges when transitioning from active duty to the civilian workforce, and licensing fees can prove burdensome for lower income veterans.

Current Related Legislation.

AB 1386 (Cunningham): License fees: military partners and spouses. Would require regulatory boards under the Department of Consumer Affairs to waive the original licensing fees for military spouses.

AB 107 (Salas): Licensure: veterans and military spouses. Would add ten Department of Consumer Affairs licensing boards to the existing list of boards that are required to issue temporary licenses to the spouses of active-duty members of the U.S. Armed Forces, as specified; requires all other DCA boards to issue permanent licenses to applicants who meet similar requirements; and requires the Department of Veterans Affairs, the DCA, the Commission on Teacher Credentialing, the Department of Real Estate, and the Department of Public Health to include specified licensing information relating to service members, spouses, and veterans on their websites and annually report specified licensing information to the Legislature.

Prior Related Legislation.

SB 1324 (Allen, 2020): Would have required the Department of Consumer Affairs, 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 Department of Consumer Affairs to, in consultation with each other, take appropriate steps to increase awareness regarding professional licensing benefits available to veterans and their spouses, as specified.

AB 186 (Maienschein, Chapter 640, Statutes of 2014): First established the temporary license provisions enacted for the Department of Consumer Affairs.

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

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

ARGUMENTS IN SUPPORT:

The American Legion – Department of California, Amvets – Department of California, and the California State Commanders Veterans Council collectively write in support: "A reduction in initial licensing fees would ease the burden for veterans currently residing in California to apply for licenses. Veterans gain valuable job skills during military service which can be used upon entering the civilian workforce."

The California Board of Accountancy writes in support: "The CBA has taken a Support position on AB 1026, consistent with its continued practice of assisting members of the military

and their families, which includes expediting licensure and providing individual assistance via the CBA's military liaison."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Impact on Fiscal Sustainability. As noted previously, regulatory boards under the Department are special-funded entities that do not receive monies from the California general fund. These boards rely on various fees to cover all costs associated with administering their respective licensing and enforcement programs. As such, licensing fees are central to ensuring that DCA boards can maintain fiscal sustainability and continue their mission to protect the public.

Generally, California statutes set a specified maximum on licensing fees that can be charged by a board. The board can then adjust the actual dollar amount up or down, so long the final figure does not exceed the statutory maximum. In recent years, several regulatory boards experiencing financial deficits have requested legislative authorization to increase their various fees. Several factors have played into these budgetary imbalances, such as increased cost-of-living and personnel costs, or growing licensing populations necessitating additional hiring of licensing and enforcement staff.

As several bills this legislative session are contemplating fee waivers and discounts for veterans and military spouses, this committee should consider the collective, potential effects of such bills on boards with budget deficits. While it is clear that more should and can be done to assist veterans and veterans transitioning into civilian life, it is possible that boards with financial structural imbalances would need to increase fees on the general public in order to comply with fee waiver or discount requirements enacted in statute.

REGISTERED SUPPORT:

American Legion – Department of California
Amvets – Department of California
California State Commanders Veterans Council
California Board of Accountancy

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1034 (Bloom) – As Amended March 4, 2021

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

SUMMARY: Authorizes a local jurisdiction to allow for the preparation or sale of noncannabis food or beverage products by a licensed cannabis retailer or microbusiness in an area where the consumption of cannabis is allowed.

EXISTING LAW:

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

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

3) Establishes the Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, previously named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, for purposes of regulating microbusinesses, transportation, storage, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC § 26010)

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

5) Provides the Department of Food and Agriculture with responsibility for regulating cannabis cultivators. (BPC § 26060)

6) Provides the Department of Public Health with responsibility for regulating cannabis manufacturers. (BPC § 26130)

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

8) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)

9) 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))

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

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

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

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

THIS BILL:

1) Authorizes a local jurisdiction to allow for the preparation or sale of noncannabis food or beverage products by a retailer or microbusiness licensed under this division in the area where the consumption of cannabis is allowed.

2) Requires food and beverages prepared or sold by the retailer or microbusiness to comply with all applicable provisions of the California Retail Food Code.

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

COMMENTS:

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

> "This bill is necessary to allow consumption lounges to operate locally. The City of West Hollywood is the sponsor of this bill and seeks a state licensure category that would allow businesses that have been permitted locally to operate with a state license for consumption lounges."

Background.

Early History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Proposition 215 also included findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

The regulatory scheme for medicinal cannabis was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program (MMP.) Under the MMP, qualified patients were eligible to obtain a voluntary medical marijuana patient card, which could be used to verify that the patient or a caregiver had authorization to cultivate, possess, transport, or use medicinal cannabis. The MPP's identification cards were intended to help law

enforcement officers identify and verify that cardholders were allowed to cultivate, possess, or transport limited amounts of cannabis without being subject to arrest. The MMP also created protections for qualified patients and primary caregivers from prosecution for the formation of collectives and cooperatives for medicinal cannabis cultivation.

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

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

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

MCRSA. After several attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA consisted of a package of legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the newly established BCC within the Department of Consumer Affairs, the CDPH, and the CDFA, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

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

- The CDPH to license and regulate manufacturers; and

- The CDFA to license and regulate cultivators.

While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions may also choose to ban cannabis establishments altogether.

AUMA. Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The law retained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that were scheduled to take effect on the same date. The same agencies given authority under MCRSA remained responsible for implementing regulations for adult use.

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

The language of the AUMA allows for legislative modifications that "implement" or "give practical effect" to the law by a majority vote. However, what constitutes "implementing" has been interpreted to be limited. Consequently, proposed changes to the voters' intent in the AUMA require a two-thirds vote and of those, some may be deemed to require voter approval.

MAUCRSA. In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

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

rules provided a sense of finality to the state's long history in providing for the regulation of lawful cannabis sale and use.

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

Cannabis Consumption. MAUCRSA generally prohibits smoking, vaporizing, or ingesting cannabis or cannabis products in any public place. However, Proposition 64 authorized local jurisdictions to allow for the smoking, vaporizing, and ingesting of cannabis or cannabis products on the premises of a retailer or microbusiness licensed under certain conditions. This language gave cities and counties the option of locally authorizing the establishment of settings like lounges where cannabis use can occur socially.

On November 20, 2017, the West Hollywood City Council adopted a Cannabis Ordinance providing local authorization for a variety of different licensed cannabis businesses. This included two types of consumption lounges: one featuring only edible cannabis products, and the other allowing smoking, vaping, and edibles. Applications for these license types presented the city with hospitality-focused business models, where customers would be able to consume cannabis and cannabis products in a "social lounge" setting.

A recurring element in the consumption lounges proposed within the City of West Hollywood was that cannabis and cannabis products could be consumed alongside non-cannabis products. One proposal described itself as a "full service restaurant" offering meals "featuring local, organic ingredients with farm-to-table preparation." Under the proposal as a consumption lounge, these meals could be optionally enhanced "with CBD and THC infused dressings and sauces, natural agave sweeteners, and wellness shots."

While this locally authorized business model would potentially have been lawful under the BCC's emergency regulations, its final regulations appear to expressly prohibit it. Under § 5407 in the BCC's final rules, "in addition to cannabis goods, a licensed retailer may sell only cannabis accessories and licensee's branded merchandise." In other words, even if a jurisdiction authorized businesses in possession of a state-issued retail license to sell and provide non-cannabis products (potentially featuring local, organic ingredients with farm-to-table preparation), if those products did not contain cannabis, those businesses would be unlawful at the state level. The author states that currently, food must instead be delivered by adjacent or nearby businesses rather than being sold directly by the cannabis retailer.

Rather than advocating for the BCC to reopen its regulations and allow for locally authorized consumption lounges to offer non-cannabis products, the City of West Hollywood is sponsoring this bill to accommodate what that jurisdiction and others are aiming to do through local ordinances. The bill would allow a local government to grant approval to operate to consumption cafes/lounges where adults could consume cannabis and cannabis products, in addition to the existing authorization for consumption in licensed retail settings. While it is anticipated that the BCC would have to promulgate additional regulations to accommodate the new license type, the author's intent is that in the short term, businesses like those authorized in West Hollywood could operate lawfully through a temporary enhancement to their retail licenses.

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

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

ARGUMENTS IN SUPPORT:

The **California Cannabis Industry Association** (CCIA) supports this bill. The CCIA states that "a cornerstone of Proposition 64 was the guarantee of local control, ensuring that local jurisdictions have the final say in determining whether to allow commercial cannabis businesses in their borders, and how and where said commercial cannabis activity may happen. While some areas of California have taken a more restrictive approach, others such as West Hollywood have embraced commercial cannabis activity, going as far as to allow retailers to establish areas for consumers and patients to consume cannabis products." The CCIA argues that this bill "will grant local jurisdictions the freedom to fully allow commercial cannabis activities in ways that work best for their local economy, and will provide new entrepreneurial opportunities for cannabis retailers."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

The author seeks to conform state law to the City of West Hollywood's local ordinance allowing cannabis cafes and lounges to offer combinations of edible cannabis products with noncannabis food and beverage products. However, the bill as drafted could allow prepackaged grocery products to be sold in any licensed retailer or microbusiness, which may go beyond the intent of the bill. The author should consider amending the bill to specify that the sale of noncannabis food or beverage products that were prepared offsite is only for purposes of onsite consumption.

AMENDMENTS:

To clarify that the authority of local jurisdictions to allow for the sale of noncannabis food and beverage products on the premises of a licensed cannabis business is intended to permit the eating and drinking of those products within the consumption area, the following provision should be added:

> *If preparation or sale of noncannabis food or beverage products is allowed pursuant to subparagraph (B) of paragraph (1), customers are prohibited from taking off the premises a noncannabis food or beverage product that was not prepared on the premises*

REGISTERED SUPPORT:

California Cannabis Industry Association
CMG/Caliva
NorCal Cannabis

United Cannabis Business Association

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1222 (Chen) – As Amended March 25, 2021

SUBJECT: Cannabis packaging: beverages.

SUMMARY: Allows cannabis beverages to be packaged in clear or colored glass containers.

EXISTING LAW:

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

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

3) Establishes the Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, previously named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, for purposes of regulating microbusinesses, transportation, storage, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC § 26010)

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

5) Provides the Department of Food and Agriculture with responsibility for regulating cannabis cultivators. (BPC § 26060)

6) Provides the Department of Public Health with responsibility for regulating cannabis manufacturers. (BPC § 26130)

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

8) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)

9) 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))

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

11) Requires all 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)

12) 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))

13) 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)

THIS BILL:

1) Allows cannabis beverages to be packaged in glass containers that are clear or any color.

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 1222 is a simple and necessary measure to allow cannabis beverage containers to be bottled in clear or any color bottle. Under existing regulations, cannabis beverages are required to be bottled in opaque, amber-colored bottles. These bottles may be readily available for beer, but not for cannabis beverage products. When the packaging regulations were adopted, the cannabis products available were essentially smokables and solid edibles. The regulations do not reflect the growing cannabis beverage industry. Because the regulations do not have statutory authority to allow for clear or any color bottle, a bill is necessary to allow it."

Background.

Early History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Proposition 215 also included findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

The regulatory scheme for medicinal cannabis was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program (MMP.) Under the MMP, qualified patients were eligible to obtain a voluntary medical marijuana patient card, which could be used to verify that the patient or a caregiver had authorization to cultivate, possess, transport, or use medicinal cannabis. The MPP's identification cards were intended to help law

enforcement officers identify and verify that cardholders were allowed to cultivate, possess, or transport limited amounts of cannabis without being subject to arrest. The MMP also created protections for qualified patients and primary caregivers from prosecution for the formation of collectives and cooperatives for medicinal cannabis cultivation.

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

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

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

MCRSA. After several attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA consisted of a package of legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the newly established BCC within the Department of Consumer Affairs, the CDPH, and the CDFA, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

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

- The CDPH to license and regulate manufacturers; and

- The CDFA to license and regulate cultivators.

While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions may also choose to ban cannabis establishments altogether.

AUMA. Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The law retained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that were scheduled to take effect on the same date. The same agencies given authority under MCRSA remained responsible for implementing regulations for adult use.

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

The language of the AUMA allows for legislative modifications that "implement" or "give practical effect" to the law by a majority vote. However, what constitutes "implementing" has been interpreted to be limited. Consequently, proposed changes to the voters' intent in the AUMA require a two-thirds vote and of those, some may be deemed to require voter approval.

MAUCRSA. In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

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

rules provided a sense of finality to the state's long history in providing for the regulation of lawful cannabis sale and use.

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

Cannabis and Alcohol. Federal prohibition of cannabis has historically stymied scientific research into issues involving the public health effects of cannabis consumption in certain contexts. However, there have long been concerns the implications of combining cannabis use and alcohol use. The American Association for Clinical Chemistry published a study indicating that any amount of alcohol used in conjunction with cannabis significantly increases the presence of THC in the person's blood. The evolving understanding is that alcohol and cannabis have "multiplier effects" on one another, resulting in higher levels of intoxication when both are ingested simultaneously. As a result, alcoholic beverages infused with cannabis have been consistently banned in state regulatory schemes authorizing cannabis sale and consumption, including under each iteration of California's legal cannabis laws.

Under the original language of MCRSA, cannabis licensees were prohibited from also being retailers licensed by the Department of Alcohol Beverage Control. The AUMA similarly prohibited cannabis licensees from also operating as a retailer of alcoholic beverages and additionally disallowed them from being licensed retailers of tobacco products. When MAUCRSA was passed to combine the two laws, statute was unintentionally changed to only prohibit the sale of alcohol or tobacco at the same location as a licensed cannabis business. Subsequent legislation restored that language to more clearly prohibit either an alcohol retailer or tobacco retailer from also having a cannabis license. Statute also reflects regulations promulgated by the Department of Public Health prohibiting the sale of edible cannabis products in alcoholic beverages. Therefore, by law, "cannabis beverages" are required to be nonalcoholic and they may not be sold on the same premises as alcohol.

Cannabis Beverage Containers. Statute requires that all cannabis and cannabis products be sold by a retailer in opaque packaging. Regulations promulgated by the CDPH specifically require that "if the product is an edible product, the package shall be opaque." CDPH's regulations further provide that "amber bottles shall be considered opaque for purposes of this section."

The author contends that there is no particular policy reason for cannabis beverages to be sold in opaque packaging. In liquid form, there is nothing distinguishing a cannabis beverage from a noncannabis beverage, nor does anything about the bottle color make it especially child friendly. The author reports that for cannabis beverage manufacturers, it is often most cost-effective to import bottles from Europe to comply with the law, as amber bottles are often available from importers (hence their inclusion in the definition of "opaque"). However, more bottle types are available in the United States in green or clear bottles, which would reduce manufacturing costs.

This bill would allow cannabis beverages to be sold in either clear bottles or bottles of any color. This would increase the types of bottles that could obtained and used by manufacturers to bottle cannabis beverages. The author contends that this will alleviate burdens on these businesses without jeopardizing public health or safety.

Current Related Legislation. AB 1014 (Bloom) would authorize a local jurisdiction to allow for the preparation or sale of noncannabis food or beverage products by a licensed cannabis retailer or microbusiness in an area where the consumption of cannabis is allowed. *This bill is pending in the Assembly Committee on Appropriations.*

Prior Related Legislation. AB 2914 (Cooley, Chapter 827, Statues of 2018) recodified language in MAUCRSA that an alcohol or tobacco retailer may not also possess a cannabis license and codified regulations prohibiting the sale of edible cannabis products that are alcoholic beverages.

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

ARGUMENTS IN SUPPORT:

The **Cannabis Beverage Association** (CBA) is sponsoring this bill. The CBA states: "What this bill specifically does is allow cannabis beverages to be bottled in clear or any color container. Existing regulations require that cannabis beverages be in bottled in opaque, amber color bottles. Amber glass, while commonly available for beer bottles, is not readily available in the U.S for most other bottle designs, shapes, and sizes. This has caused additional expenses in producing cannabis beverages by forcing producers to source compliant glass materials, such as importing glass bottles from Europe (rather than work with local California vendors), or having bottles hand-painted to meet the opacity requirement. This opacity requirement is unnecessarily driving up the cost of goods for cannabis beverage producers and driving business to foreign producers without offering any benefits to the California consumers."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Cannabis Beverage Association *(Sponsor)*
BevZero
California Cannabis Industry Association
CANN
CMG/Caliva
K-Zen

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 651 (Gipson) – As Amended April 13, 2021

SUBJECT: Endowment care cemeteries: examination, investigation, and discipline.

SUMMARY: >

EXISTING LAW:

1) Establishes the Cemetery and Funeral Bureau (Bureau) under the Department of Consumer Affairs to license and regulate crematories, cremated remains disposers, cemeteries, cemetery managers, cemetery salespersons, cemetery brokers, funeral establishments, funeral directors and embalmers (Business and Professions Code (BPC) Section 7600 et seq).

2) Provides that a cemetery authority may place its cemetery under endowment care and establish, maintain, and operate an endowment care fund. (Health and Safety Code (HSC) Section 8725)

3) Requires the principal of all funds for endowment care to be invested and the income only to be used for the care, maintenance, and embellishment of the cemetery in accordance with the provisions of law and the resolutions, bylaws, rules, and regulations or other actions or instruments of the cemetery authority and for no other purpose. (HSC Section 8726)

4) Establishes minimum amounts which an endowment care cemetery must deposit into its endowment care fund at the time of, or not later than, completion of the initial sale of internment space in the cemetery. The minimum endowment care contributions are:

   a) Four dollars and fifty cents ($4.50) a square foot for each grave.

   b) Seventy dollars ($70) for each niche.

   c) Two hundred twenty dollars ($220) for each crypt; provided, however, that for companion crypts, there shall be deposited two hundred twenty dollars ($220) for the first crypt and one hundred ten dollars ($110) for each additional crypt.

   d) Seventy dollars ($70) for the cremated remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site. (HSC Section 8738)

5) Requires a cemetery authority to annually file with the Bureau a report detailing, among other items, the amount collected and deposited in endowment care funds and the total amount of endowment care funds invested. (BPC Section 7612.6)

6) Directs the Bureau to examine the endowment care funds of a cemetery authority whenever it deems necessary and at least every five years and whenever the cemetery authority in charge

of endowment care funds fails to file the annual report to be submitted to the Bureau. (BPC Section 7613.1)

7) Required the Bureau to conduct a study to obtain information to determine if the endowment care fund levels of each licensee's cemetery are sufficient to cover the cost of future maintenance, to review the levels of endowment care funds that have previously been reported by licensed cemeteries, and report its findings and recommendations to the Legislature by January 1, 2018. (BPC Section 7612.11)

8) Defines a "cemetery manager" as a person engaged in or conducting, or holding himself or herself out as engaged in those activities involved in, or incidental to, the maintaining, operating, or improving a cemetery, the interring of human remains, and the care, preservation, and embellishment of cemetery property. (BPC Section 7611.4(a))

9) Declares that upon finding by a court that a cemetery manager of a private cemetery has ceased to perform their duties due to a lapse, suspension, surrender, abandonment or revocation of their license, the court shall appoint a temporary manager to manage the cemetery property and service the prepaid internments of the private cemetery. States that the court must appoint a licensed cemetery manager as the temporary manager. (BPC Section 7653.9(a))

10) States that the appointed temporary manager shall have the same powers over the care and maintenance of the private cemetery as a licensed cemetery manager, and that the temporary manager shall serve for a limited term not to exceed six months, or until a new licensed manager has been hired, at which time the court shall terminate the appointment of the temporary manager. (BPC Section 7654.9(b))

11) Authorizes the temporary manager to be compensated from available income from the cemetery. In compensating the temporary manager, the court must give due consideration to the ability of the cemetery income to otherwise pay for care and maintenance of the cemetery. (BPC Section 7653.9)

THIS BILL:

1) Directs the Bureau to promulgate the necessary regulations to adopt the recommendations provided in its 2017 Endowment Care Fund Sufficiency Report.

2) Requires the Bureau to examine the endowment care funds of a cemetery authority whenever the Bureau receives a valid complaint alleging the authority has engaged in financial misconduct or neglect of duties.

3) Requires a county to assume responsibility for the maintenance of a cemetery and requires the county to preserve public access to the cemetery in the event that a cemetery manager of a private cemetery has been deemed to be in severe violation of existing regulations by the Bureau and the cemetery manager has not adopted the necessary improvements within a reasonable timeframe or has refused to perform their duties. States that the county shall assume responsibility until the court can appoint a temporary manager.

4) States that a county shall assume responsibility for the cemetery only if the removal of the cemetery manager is due to surrender, abandonment, neglect, or financial misconduct. Declares that if a county assumes maintenance responsibilities for a cemetery, the county shall be entitled to receive appropriate reimbursement for maintenance services rendered until a temporary care manager is appointed by the court.

5) States that the expiration or suspension of a license by operation of law or by order or decision of the Bureau or a court of law, or the voluntary surrender of a license by a cemetery licensee, does not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against the cemetery licensee and its officers, agents, or employees, or to render a decision suspending or revoking the license.

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

COMMENTS:

Purpose. This bill is sponsored by the **City of Compton**. According to the author: "AB 651 would correct a loophole within current law and create a process to ensure cemetery caretakers are held accountable for neglect, abandonment and financial misconduct, should a private cemetery fall into disrepair like Woodlawn Memorial Park in the City of Compton. Part of the process would be to implement a backstop for instances of severe neglect, where the courts and counties can intervene. This backstop will make sure that families have continued access to their loved ones' graves while the process is ongoing. By raising the mandatory rates paid into the Endowment Care Funds (ECF), this bill will ensure that cemeteries in California will no longer run the risk of insolvency."

Background.

Cemetery and Funeral Bureau. The Cemetery and Funeral Bureau, an entity under the Department of Consumer Affairs, licenses and regulates over 13,000 licensees across various categories, including funeral establishments, funeral directors, embalmers, cemeteries, cemetery managers, cemetery brokers, cemetery salesperson, crematories, crematory managers, and cremated remains disposers. Among its many regulatory responsibilities, the Bureau oversees both the fiduciary and operational activities of its licensees, and has authority to enforce the provisions of the laws governing the death care industry.

Endowment Care Cemeteries. Private cemeteries established on or after 1955 are required by California law to be endowment care cemeteries. Endowment care cemeteries use a funding mechanism in which a portion of the purchase price of a grave, crypt, niche, or scattering of remains are deposited into an endowment care trust fund. California law prohibits spending this principal of the trust fund – instead, the fund must be invested, and the earned income used to cover the costs of general care and maintenance of the cemetery. As cemeteries have limited space to sell burial plots, the use of endowment care funds allows cemeteries to have a steady and sustainable flow of income exclusively dedicated to the long-term care and maintenance of cemetery grounds. Without an endowment care trust fund, cemeteries run the risk of running out of money and go into a state of disrepair.

2017 Bureau Endowment Care Fund Sufficiency Report. California law specifies the dollar amount that must be deposited into an endowment care trust fund, which is based on the various types of internments cemeteries sell. The goal of this minimum is to ensure cemeteries are maintaining adequate levels of investments into their endowment care funds and minimize the risk of not having enough income to care for the cemetery grounds. Those minimum amounts, which were last updated in 2008, are as follow:

- Four dollars and fifty cents ($4.50) a square foot for each grave.
- Seventy dollars ($70) for each niche.
- Two hundred twenty dollars ($220) for each crypt; provided, however, that for companion crypts, there shall be deposited two hundred twenty dollars ($220) for the first crypt and one hundred ten dollars ($110) for each additional crypt.
- Seventy dollars ($70) for the cremated remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site.

AB 180 (Bonilla, Chapter 395, Statutes of 2015) directed the Bureau to conduct a study to determine if the endowment care levels of each cemetery were sufficient to cover the cost of future maintenance, and report its findings to the Legislature by January 1, 2018. Surveying endowment care cemeteries under its jurisdiction, the Bureau determined that "although cemeteries deposit at least the minimum amounts the law requires, statewide, the costs of maintaining California's privately-owed cemeteries exceeds the income generated from the cemeteries' endowment care trusts." Providing specific figures, the Bureau calculated that at the time of the study, the estimated cost to maintain cemetery spaces was $94,007,676 per year. However, the total income earned on endowment care trust investments during 2016 was $41,320,051, leaving an income shortfall of $52,687,625. To address this shortfall, the Bureau provided a recommendation to increase the minimum endowment care deposit rates.

Closed and Abandoned Private Cemetery. This bill aims to respond to public harm caused by a specific private cemetery and its subsequent closure and abandonment. Woodlawn Memorial Park – a private cemetery located in Compton, California – has been subject to several disciplinary actions taken by the Bureau. Between 2013 and 2018, multiple citations were issued for violations that included unprofessional conduct and failure to follow cemetery and maintenance standards. In an accusation filed by the California Attorney General on behalf of the Bureau, investigators "observed that the grounds were in a state of severe neglect and / or being kept in a condition that violated […] written cemetery maintenance standards. For example, the grass was brown, much of the cemetery grounds were covered in weeds, many of the cemetery markers were unreadable due to vegetative overgrowth and dirt, and 15 water spigots on the grounds were inoperable when tested." As part of a stipulated settlement, the cemetery manager admitted the truth of each charge, and surrendered their license and the cemetery's Certificate of Authority. Because no replacement or interim cemetery manager has been found, the cemetery stands without official management, instead relying on a charitable non-profit organization volunteering to take care of the cemetery's maintenance and ensure public access to the cemetery grounds.

While several factors played a role in the closing of the cemetery, official public documents from the Attorney General note that "the Endowment Care Trust Fund […] maintained for Woodlawn Memorial Park is insufficient to cover the current and future maintenance costs on a yearly basis required by California laws."

This bill aims to implement long-term solutions to prevent future similar instances of cemeteries running out of endowment care funds and ensure proper management and oversight of cemetery grounds in the event of a license revocation, suspension or surrender.

First, this bill seeks to implement the Bureau's recommendations outlined in its 2017 Endowment Care Fund Sufficiency Report. Specifically, the Bureau recommended increasing the minimum endowment care deposit rates, established in the Health and Safety Code, to the following levels:

2017 Endowment Care Fund Sufficiency Report: Recommended Increased Minimum Deposits for Endowment Care

Type of Interment Space	Minimum Deposit
Graves	10 percent of net price, or $250, whichever is greater, and the minimum deposit amount of $250 increases (or decreases) annually with the Consumer Price Index, starting January 1, 2020
Crypts	10 percent of net price, or $250, whichever is greater, and the minimum deposit amount of $250 increases (or decreases) annually with the Consumer Price Index, starting January 1, 2020.
Niches	10 percent of net price, or $150, whichever is greater, and the minimum deposit amount of $150 increases (or decreases) annually with the Consumer Price Index, starting January 1, 2020.
Scattering	10 percent of net price, or $150, whichever is greater, and the minimum deposit amount of $150 increases (or decreases) annually with the Consumer Price Index, starting January 1, 2020.

Second, this bill requires the Bureau to examine the endowment care funds of a cemetery authority whenever the Bureau receives a valid complaint alleging that the authority has engaged in financial misconduct or neglect of duties.

Third, AB 651 specifies that a county in which the cemetery is located shall assume responsibility for the maintenance of the cemetery and shall preserve public access to the cemetery in the event that a cemetery manager of a private cemetery has been deemed to be in severe violation of existing regulations by the Bureau and has not adopted the necessary improvements within a reasonable timeframe or has refused to perform their duties. The bill further specifies that if a county assumes maintenance responsibilities for cemetery, the county shall be entitled to receive appropriate reimbursement for maintenance services rendered until a temporary care manager is appointed by the court. According to the author, this intent of this provision is to appoint a last-resort entity – in this case, the county – should a cemetery be left without a cemetery manager and no replacement can be found.

Fourth, and finally, this bill states that the voluntary surrender of a license by a cemetery licensee shall not deprive the Bureau of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against the cemetery licensee and its officers, agents, or employees, or to render a decision suspending or revoking the license. This provision aims to allow the Bureau to continue disciplinary proceedings even if a licensee surrenders their license.

Current Related Legislation. None.

Prior Related Legislation.

AB 180 (Bonilla, 2015): Required the bureau to conduct a study to obtain information to determine if the endowment care fund levels of its licensees' cemeteries are sufficient to cover the cost of future maintenance, as specified, and to report its findings and recommendations to those policy committees by January 1, 2018.

ARGUMENTS IN SUPPORT:

The City of Compton writes in support: "Enactment of AB 651 will benefit the public by imposing stricter standards governing the maintenance and operations of private cemeteries, ensuring public access, and necessarily expanding the authority of the Bureau to increase accountability, thereby deterring would-be offenders. Specifically, AB 651:

- Increases the net price for deposits into the Endowment Care Fund, which will allow for the proper capitalization thereof to ensure the proper maintenance of privately-owned cemeteries in perpetuity.

- Provides for, in the absence of a court appointed temporary manager, public access to and maintenance of cemetery grounds in the event the license issued to the manager of a private cemetery is revoked, suspended or surrendered.

- Authorizes the Bureau to coordinate and assist other law enforcement agencies with their investigations and/or criminal prosecutions of cemetery owners, operators, employees or licensees whose license has been suspended, revoked or surrendered."

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:

1) *Integration of the 2017 Endowment Care Fund Sufficiency Report into the California Health and Safety Code.* Referring to the Bureau's Endowment Care Fund Sufficiency Report, the bill mandates the Bureau to "adopt the recommendations of the study and promulgate the necessary regulations" in order to implement the Bureau's findings. By referring the study without making specified changes to California law, the bill's current language may not give the necessary statutory authority for the Bureau to implement the recommended increase for endowment care deposit rates. It is recommended that specific

provisions of the Health and Safety Code be amended to reflect the study's recommendations.

2) *Role of Counties as Managers-of- Last-Resort.* The bill's current language requires a county to assume responsibility for a cemetery in the event that a cemetery manager has been deemed to be in severe violation of existing regulations, has not adopted the necessary improvements within a reasonable timeframe, or has refused to perform their duties. However, existing law already authorizes a court to appoint a temporary manager in the event that a cemetery manager has ceased to perform their duties due to a lapse, suspension, surrender, abandonment, or revocation of their license. The bill's current language does not specify which entity takes precedence – the court's appointed temporary manager, or the county – in the event that a cemetery manager's responsibilities must be taken over. It is recommended that the county be designated as the entity of last resort, only assuming responsibility if a court has not been able to find a temporary cemetery manager, or if the temporary cemetery manager's term has expired.

3) *Reimbursement Mechanism for Counties.* The bill currently specifies that a county assuming responsibility for a cemetery shall be entitled to receive appropriate reimbursement for maintenance services rendered until a temporary care manager is appointed by the court. The bill does not specify the funding source for the reimbursements. It is recommended that the reimbursements come from the income of the endowment care fund.

4) *Bureau Jurisdiction Beyond License Surrender.* AB 651 currently states that even upon the surrender of a license, the Bureau shall still have authority to proceed with any investigation or disciplinary proceedings against a cemetery licensee. As a regulatory entity, the Bureau may only take action against the license itself, such as issuing a suspension or revocation. Outside of a criminal prosecution brought by the Office of the Attorney General, it is unclear if the Bureau would be able to independently continue disciplinary proceedings against an individual who has already surrendered their license. To that end, it is recommended that the role and jurisdiction of the Bureau be clarified.

AMENDMENTS:

To address the concerns enumerated above, the committee submits the following amendments for consideration:

AMENDMENT 1:

Page 3, strike line 12 through 14.

AMENDMENT 2:

Health and Safety Code Section 8738 is amended, to read:

(a) For the purposes of this section, net price shall be defined as the retail price less any discounts the cemetery provides to consumers for the purchase of an interment space.

(b) An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

~~(a) Four dollars and fifty cents ($4.50) a square foot~~ *(1) 10 percent of net price or $250* for each grave, *whichever is greater*. *The minimum deposit amount of $250 shall increase or decrease annually with the Consumer Price Index, starting January 1, 2022.*

~~(b) Seventy dollars ($70)~~ *(2) 10 percent of net price or $150* for each niche, *whichever is greater. The minimum deposit amount of $150 shall increase or decrease annually with the Consumer Price Index, starting January 1, 2022.*

~~(c) Two hundred twenty dollars ($220)~~ *(3) 10 percent of net price or $250,* for each crypt, *whichever is greater. The minimum deposit amount of $250 shall increase or decrease annually with the Consumer Price Index, starting January 1, 2022.* ~~; provided, however, that for companion crypts, there shall be deposited two hundred twenty dollars ($220) for the first crypt and one hundred ten dollars ($110) for each additional crypt.~~

~~(d) Seventy dollars ($70)~~ *(4) 10 percent of net price or $150, whichever is greater,* for the cremated remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to ~~subdivision (a).~~ (1). *The minimum deposit amount of $150 shall increase or decrease annually with the Consumer Price Index, starting January 1, 2022.*

AMENDMENT 3:

Section 7653.9 of the Business and Professions Code is amended to read:

(d) (1) Notwithstanding any other law, if a cemetery manager of a private cemetery has ~~been deemed to be in severe violation of existing regulations by the bureau and the cemetery manager has not adopted the necessary improvements within a reasonable timeframe or has refused to perform their duties as defined in Section 7611.4~~*, had their license suspended, revoked, or surrendered, and a court has not appointed a temporary manager within six months or the appointment of a temporary manager has expired,* the county in which the cemetery is located shall assume responsibility for the maintenance of the cemetery and shall preserve public access to the cemetery until the court can appoint a temporary manager.

(2) ~~*This subdivision shall only apply if the removal of the cemetery manager is due to surrender, abandonment, neglect, or financial misconduct.*~~ If a county assumes maintenance responsibilities for a cemetery under this subdivision, the county shall be ~~*entitled to receive appropriate reimbursement*~~ *reimbursed from available income from the cemetery* for maintenance services rendered until a temporary care manager is appointed by the court *or a new permanent cemetery manager is found.*

AMENDMENT 4:

Notwithstanding any law, ~~the~~ in the event of expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a cemetery licensee, *cemetery owner, cemetery operator, or holder of a cemetery Certificate of Authority,* ~~shall not deprive~~ the director ~~of jurisdiction to proceed~~ *may coordinate and assist* with any investigation of or action or ~~disciplinary~~ *criminal* proceedings against the cemetery licensee and its officers, agents, or employees as conducted *by another law enforcement entity*. ~~, or to render a decision suspending or revoking the license~~.

REGISTERED SUPPORT:

City of Compton (Sponsor)

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1014 (McCarty) – As Introduced February 18, 2021

SUBJECT: Cannabis: retailers: delivery: vehicles.

SUMMARY: Requires the Bureau of Cannabis Control (BCC) to update its regulations governing cannabis delivery to create a new tiered system wherein minimum security and transportation safety requirements are relative to the maximum value of cannabis goods, based on the type of vehicle used, and increases the amount of cannabis a delivery driver may carry at once from a maximum value of $5,000 to a maximum value of $25,000 for certain vehicles.

EXISTING LAW:

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

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

3) Establishes the Bureau of Cannabis Control (BCC) within the Department of Consumer Affairs, previously named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, for purposes of regulating microbusinesses, transportation, storage, distribution, testing, and sale of cannabis and cannabis products within the state. (BPC § 26010)

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

5) 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) Subjects cannabis businesses operating without a license to civil penalties of up to three times the amount of the license fee for each violation in addition to any criminal penalties. (BPC § 26038)

7) Defines "delivery" as the commercial transfer of cannabis or cannabis products to a customer, including the use by a retailer of any technology platform. (BPC § 26001)

8) Requires the BCC to establish minimum security and transportation safety requirements for the commercial distribution and delivery of cannabis and cannabis products. (BPC § 26070)

9) Allows only a licensed retailer, microbusiness, or nonprofit to engage in cannabis delivery. (BPC § 26090(a))

10) Requires all licensees engaged in delivery to carry a copy of the licensee's current license and a government-issued photo identification, which must be presented upon request to state and local law enforcement or regulators upon request. (BPC § 26090(b))

11) Requires a licensee engaged in delivery as well as a customer requesting a delivery to maintain a copy of the delivery request and make it available upon request of the licensing authority and law enforcement officers. (BPC § 26090(c); § 26090(d))

12) Prohibits a local jurisdiction from preventing delivery of cannabis or cannabis products on public roads by a licensee acting in compliance with state and local law. (BPC § 26090(e))

13) Provides 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))

THIS BILL:

1) Requires that the BCC's regulations regarding the minimum security and transportation safety requirements be updated, on or before January 1, 2023, to include regulations that would allow for different value tiers of cannabis goods to be carried during delivery of those cannabis goods to customers by employees of a licensed retailer based on the type of vehicle used for the delivery.

2) Provides for the following different value tiers based on the following vehicle types and requirements:

    a) For cars, the maximum value of cannabis goods that can be carried during delivery is $15,000; the value of cannabis goods that can be carried for which a delivery order was not received and processed by the licensed retailer prior to the delivery employee departing from the licensed premise may not exceed $10,000.

    b) For cargo vans, the maximum value of cannabis goods that can be carried during delivery is $25,000; the value of cannabis goods that can be carried for which a delivery order was not received and processed by the licensed retailer prior to the delivery employee departing from the licensed premise may not exceed $17,000.

3) Provides that the current retail price of all cannabis goods carried by, or within the delivery vehicle of, the licensed retailer's delivery employee shall be used to determine the value of cannabis goods.

4) Defines "cannabis goods" as cannabis, cannabis products, or both.

5) Defines "licensed retailer" as a licensee that has been issued a retail license pursuant to MAUCRSA, including a retailer, microbusiness, or nonprofit.

6) Requires the BCC to coordinate with the Department of the California Highway Patrol (CHP) to develop transportation safety standards for all the different value tiers of cannabis goods, on or before January 1, 2023.

7) Requires the transportation safety standards developed by the BCC in coordination with the CHP to include the qualifications for persons eligible to operate vehicles, including, but not limited to, minimum age and established employment with a licensed retailer.

8) Authorizes the BCC and CHP to require additional security features including any of the following:

   a) Inventory security, such as lockboxes or compartments.

   b) Security video or surveillance requirements.

   c) Identity verification requirements for customer delivery.

   d) Global Positioning System (GPS) tracking.

   e) Identification requirements for vehicles that connect with a retailer's license.

9) Requires the BCC to develop a standardized inspection and certification process for each delivery vehicle of a licensed retailer based on the transportation safety standards, including the form of the certifications, to be implemented on and after January 1, 2024.

10) Prohibits a delivery employee of a licensed retailer from carrying cannabis goods in a delivery vehicle from more than one licensed retailer at once, and requires the delivery employee to depart and return to the same licensed premises before taking possession of any cannabis goods from another licensee to perform deliveries.

11) Makes various findings and declarations regarding cannabis delivery and its role in combating the illicit market.

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:

> "California's legal cannabis industry continues to struggle against the enduring illicit market. It is estimated that the illicit market's share of cannabis sales comprises 80% of total sales in California. Illicit operators are able to evade important state regulations, cutting corners and putting Californians at risk. This environment creates an unequal playing field for cannabis businesses following the law. AB 1014 would create parity for legal cannabis delivery operators by increasing the amount of cannabis goods they can carry based on vehicle type. This straightforward piece of legislation will both bolster the legal market and ensure the safety of Californians."

Background.

Early History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. The initiative prohibited physicians from being punished or denied any right or privilege for making a medicinal cannabis recommendation to a patient. Proposition 215 also included findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

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

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

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

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

MCRSA. After several attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA consisted of a package of

legislation: AB 243 (Wood); AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, and Wood); and SB 643 (McGuire). MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the newly established BCC within the Department of Consumer Affairs, the CDPH, and the CDFA, with implementation relying on each agency's area of expertise.

MCRSA vested authority for:

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

- The CDPH to license and regulate manufacturers; and

- The CDFA to license and regulate cultivators.

While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions may also choose to ban cannabis establishments altogether.

AUMA. Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The law retained prohibitions against smoking in or operating a vehicle while under the effects of cannabis, possessing cannabis at a school or other child oriented facility while kids are present, growing in an unlocked or public place, and providing cannabis to minors.

The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented. In addition, the AUMA approved by the voters adopted the January 1, 2018 deadline for state implementation of non-medicinal cannabis in addition to the regulations required in MCRSA that were scheduled to take effect on the same date. The same agencies given authority under MCRSA remained responsible for implementing regulations for adult use.

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

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

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

MAUCRSA. In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

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

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

Local Control of Cannabis Delivery. Under the original MCRSA, "delivery" was defined as "the commercial transfer of medical cannabis or medical cannabis products from a dispensary," including use by a dispensary of a technology platform. "Transport" was separately defined as "the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity." This distinction effectively separated out the concept of delivery as a categorical transaction between a dispensary and a consumer or patient from the concept of cannabis exchanging hands between different licensed entities.

MCRSA further outlined how deliveries of cannabis or cannabis products could be carried out. That law explicitly stated that delivery could only occur when "made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance." In other words, MCRSA clearly authorized a local jurisdiction to ban the delivery of cannabis within its borders.

With the passage of the AUMA, many provisions of MCRSA were repealed and replaced through reconciliation efforts in SB 94 (MAUCRSA). The AUMA expressly stated that "a local jurisdiction shall not prevent delivery of cannabis or cannabis products on public roads" by licensees complying with state and local law. This language created a persistent ambiguity as to whether the initiative's prohibition on local jurisdiction actions was intended to prevent bans on "delivery" as originally defined under MCRSA, or if it was intended to prevent bans on what was originally defined as "transport." Under the unifying language of SB 94, the AUMA's

language regarding a local jurisdiction's inability to ban "delivery" was retained – meanwhile, statute no longer contained a separate definition for "transport."

The BCC's emergency regulations, promulgated to effectuate MAUCRSA within the AUMA's timelines while interagency rulemaking established permanent regulations, fully recognized the authority of a local jurisdiction "to adopt and enforce local ordinances to regulate businesses" or "to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction." However, there remained a lack of clarity as to whether the AUMA (and subsequently, MAUCRSA) authorized jurisdictions to apply their local control to ban the delivery of cannabis products from a licensee to a consumer resulted in confusion among stakeholders. Many presumed that absent additional guidance from the BCC, delivery may be prohibited within the boundaries of a local jurisdiction.

Subsequently, the BCC's proposed permanent regulations contained numerous revisions to its prior emergency rules. One consequential addition to the regulations was additional language in § 5416 governing delivery to physical addresses. In a newly added subdivision, the regulations stated that "a delivery employee may deliver to any jurisdiction within the State of California provided that such delivery is conducted in compliance with all delivery provisions of this division." These regulations recognized the statutory ban on a jurisdiction preventing "delivery" as an exception to the statute more broadly granting and preserving local control of cannabis activities. The League of California Cities immediately objected to the language, stating in a letter that it "subverts the intent of the voters who approved Proposition 64 by removing local governments' ability to prohibit cannabis deliveries within its jurisdiction."

Unsure of whether the BCC's proposed interpretation of local jurisdictions' authority to ban delivery would be reflected in final regulations, pro-delivery stakeholders supported SB 1302 (Lara) in 2018 to explicitly amend the sections of law recognizing a local jurisdiction's control to regulate or restrict cannabis activity at the local level. SB 1302 would have provided that "a local jurisdiction shall not adopt or enforce any ordinance that would prohibit a licensee from delivering cannabis within or outside of the jurisdictional boundaries of that local jurisdiction." However, SB 1302 was ultimately pulled from its third reading on the Senate Floor and eventually died on the inactive file.

Later that year, the BCC formally established its permanent regulations. In this final version, the language expressly authorizing cannabis delivery in "any jurisdiction" (through compliance with state law) remained. This effectively confirmed a statewide prohibition on local jurisdictions banning the delivery of cannabis within California. In response, 24 cities sued the BCC on April 5, 2019, arguing that the final regulations contradicted the voter's intent in the AUMA as reflected in ballot materials and public statements by the proponents. The lawsuit sought to clarify that statutory language banning local restrictions on "delivery" were intended to further earlier language banning restrictions on "transport," and that the law's general deference to local control must be preserved by the BCC through its rulemaking.

In November of 2020, a ruling was issued by the Fresno County Superior Court that upheld the BCC's regulations. The court essentially ruled that the BCC's regulations were not in direct conflict with a local ban on delivery, and therefore did not contradict or preempt local ordinances, which was the plaintiffs' argument. The ruling stated:

> "Here, the issue is not ripe for decision because Regulation 5416(d) does not command local jurisdictions to do anything or preclude them from doing anything. Plaintiffs are not subject

> to the regulation. Specifically, it does not command local jurisdictions, including plaintiffs, to permit delivery. Nor does it override their local ordinances prohibiting or regulating delivery."

While this ruling was initially heralded as a win for cannabis retailers engaged in delivery, it did not definitively state that local bans on delivery were either authorized or prohibited. Instead, it simply determined that the BCC's regulations did not expressly override any local control regarding cannabis delivery. Therefore, the question of whether local bans on delivery are lawful under the AUMA and MAUCRSA remains unresolved, and continues to be a point of both contention and uncertainty.

BCC Regulations Regarding Cannabis Delivery. Statute contains relatively few provisions governing cannabis delivery. MAUCRSA defines delivery and provides that deliveries "may only be made by a licensed retailer or microbusiness, or a licensed nonprofit." Delivery employees are required to carry their license and identification and present it upon a request from law enforcement. Further, copies of each delivery request must be kept and made available upon request of both a licensing authority and law enforcement by both licensees and customers.

The majority of requirements relating to cannabis delivery are contained in the BCC's regulations. Section 5415 requires that all deliveries of cannabis goods be performed by a delivery employee who is directly employed by a licensed retailer and who is at least 21 years old. All deliveries of cannabis goods must be made in person—drone deliveries are prohibited.

Regulations provide that the process of delivery begins when the delivery employee leaves the retailer's licensed premises with the cannabis goods for delivery. Delivery ends when the delivery employee returns to the retailer's premises after delivering the cannabis goods, or attempting to deliver cannabis goods, to the customer. Regulations prohibit delivery employees from engaging in any other activities except for necessary rest, fuel, or vehicle repair stops.

Delivery employees are required to carry a copy of the retailer's current license, the employee's government-issued identification, and an identification badge provided by the employer pursuant to section 5043 of this division. Prior to providing cannabis goods to a delivery customer, a delivery employee is required to confirm the identity and age of the delivery customer and ensure that all cannabis goods sold comply with packaging requirements. Each licensed retailer is required to maintain an accurate list of the retailer's delivery employees and shall provide the list to the BC upon request.

The BCC's regulations expressly allow licensed retailers to contract with a service that provides a technology platform to facilitate the sale and delivery of cannabis goods, such as Eaze. The technology platform cannot deliver cannabis itself, or share in the profits of the sale of cannabis goods. The retailer is prohibited from advertising or marketing cannabis goods in conjunction with the technology platform outside of the platform's site or app.

All deliveries must be made to a physical address. Delivery employees may not leave California during a delivery. Cannabis cannot be delivered to a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center.

In regards to delivery vehicle requirements, deliveries can only take place through an enclosed motor vehicle. The vehicle used in the delivery of cannabis goods must be unmarked and cannot bear any indications on the exterior of the vehicle that the delivery employee is carrying cannabis

goods for delivery. Only the licensee or an employee of the retailer licensee for whom delivery is being performed may be in the delivery vehicle.

While carrying cannabis goods for delivery, a licensed retailer's delivery employee must ensure the cannabis goods are not visible to the public. Cannabis goods must be locked in a fully enclosed box, container, or cage that is secured on the inside of the vehicle, which may include the trunk. No portion of the enclosed box, container, or cage shall be comprised of any part of the body of the vehicle or trailer. Motor vehicles must be left locked and equipped with an active vehicle alarm system. Further, a vehicle used for the delivery of cannabis goods shall be outfitted with a dedicated GPS device for identifying the geographic location of the delivery vehicle and recording a history of all locations traveled to by the delivery employee while engaged in delivery.

The maximum value amount of cannabis goods that a delivery employee is allowed to carry at any time is $5,000. Of that, no more than $3,000 can be carried that is not related to a delivery order that was not received and processed by the licensed retailer prior to the delivery employee departing from the licensed premises. The value of cannabis goods is determined using the current retail price of all cannabis goods carried by, or within the delivery vehicle of, the licensed retailer's delivery employee.

A delivery employee may only carry cannabis goods in the delivery vehicle and may only perform deliveries for one licensed retailer at a time. A delivery employee must depart and return to the same licensed premises before taking possession of any cannabis goods from another licensee to perform deliveries. A licensed retailer's delivery employee may not leave the licensed premises with cannabis goods without at least one delivery order that has already been received and processed by the licensed retailer. Prior to leaving, the delivery driver must have a delivery inventory ledger of all cannabis goods they have been provided, and the driver must maintain a log that includes all stops made during the delivery. This log must be provided to the BCC or law enforcement upon request.

If a licensed retailer's delivery driver does not have any delivery requests to be performed for a 30-minute period, the licensed retailer's delivery driver may not make any additional deliveries and must return to the licensed premises. This doesn't include required meal breaks. Upon returning to the licensed premises, all undelivered cannabis goods must be returned to inventory and all necessary inventory and track-and-trace records shall be updated as appropriate that same day.

This bill would require that the BCC promulgate revisions to the above regulations. First, it would require that the BCC create a new tiered system in which larger cargo vans are allowed to carry more cannabis than standard cars. Both tiers would be allowed to carry significantly more than the $5,000 currently authorized—cars could carry up to $15,000, and cargo vans could carry up to $25,000.

Additionally, this bill would require the BCC to provide for distinct security requirements based on the tier of the delivery vehicle. Presumably, cargo vans would be subject to more requirements, including lockboxes, security video, GPS tracking, and other safety precautions. The BCC would be required to develop these requirements in coordination with the BCC. The bill would additionally codify a number of requirements already in regulations.

The intent of this bill is to allow delivery drivers employed by licensed retailers to carry more cannabis with them on deliveries than is currently allowed. Using a cargo van carrying up to $25,000 in cannabis, a retailer could fulfill more orders without having to return to their physical premises to restock. This would likely result in deliveries being taking place over a larger geographic area, as drivers could travel larger distances without having to immediately return.

This bill does not allow deliveries to be carried out by anyone but a retail employee. It also requires drivers to return to a premises if they are going to engage in delivery on behalf of another retailer. Further, the bill continues to limit proportionately the amount of cannabis that a vehicle can have that is not already designated for a delivery, and there must be at least one active delivery before a vehicle may depart. Finally, regulations would likely continue to require that if a driver goes 30 minutes without a new delivery order, they must return to the retailer's premises.

These requirements will continue to ensure that delivery vehicles do not become "mobile dispensaries." While delivery employees would be able to remain outside the premises for a longer time while new orders continue to come in without having to return to restock, they would not be authorized to simply idle or drive around indefinitely until an order was made. Additionally, drivers would only be allowed to fulfill orders made to the retailer and could not sell cannabis directly from the vehicle.

Finally, this bill would require the BCC to adopt specific security requirements for each tier. All vehicles would still need to remain unmarked, meaning they would not be obvious targets for theft or robbery without prior surveillance. The BCC could then require cargo vans authorized to carry larger quantities of cannabis to meet higher security standards, resolving potential concerns that these vehicles would pose a security risk.

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

ARGUMENTS IN SUPPORT:

Eaze Technologies supports this bill. Eaze states: "three years into California's legal adult-use market, no evidence supports the claim that cannabis delivery threatens public safety. To the contrary, data shows delivery to be a safe and consistent mechanism for adult Californians to buy legal cannabis -- a fact reinforced by home delivery's designation as essential under Covid 'stay at home' orders. AB 1014 takes an informed and conscientious approach to supporting the legal industry, while keeping public safety and worker wellbeing at the forefront."

The **California Cannabis Industry Association** (CCIA) also supports this bill. The CCIA points out that "only 32% of cities and counties currently allow for commercial retail cannabis within their jurisdiction. This lack of local access, coupled with the new consumer demands brought on by the ongoing pandemic, has meant that cannabis sales via delivery is a more popular method of consumer purchasing than ever before. Unfortunately, this has also meant that the current cannabis delivery value threshold of $10,000 per delivery is too low for licensees to adequately meet consumer demand."

ARGUMENTS IN OPPOSITION:

The **United Cannabis Business Association** (UCBA) has an "oppose unless amended" position on this bill. The UCBA expresses concerns that "the current language of the bill essentially allows for mobile dispensaries, mimicking the ice cream truck model. We currently have a license type for retail that responsibly allows for safe access where large volumes of inventory can be housed safely, Type 10 Retailer: Storefront. Mobile dispensaries are not allowed by the state." The UCBA requests that language increasing the amount of cannabis that may be carried be struck from the bill.

REGISTERED SUPPORT:

Bay Area Americans for Safe Access
Brownie Mary Democratic Club of San Francisco
California Cannabis Industry Association
California NORML
CannaCraft
CMG/Caliva
Eaze Technologies, Inc.
Jetty Extracts
Kiva Confections
Legal Cannabis for Consumer Safety
PAX Labs, Inc.
San Diego Americans for Safe Access
Veterans Cannabis Coalition
Weed for Warriors Project
Numerous cannabis businesses

REGISTERED OPPOSITION:

United Cannabis Business Association

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

Date of Hearing: April 20, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 471 (Low) – As Amended March 25, 2021

SUBJECT: Bureau of Automotive Repair: administration: citations: safety inspections.

SUMMARY: This bill is a multi-faceted piece of legislation to address consumer protection and transparency within the automotive repair industry.

EXISTING LAW:

1) Regulates the business of automotive repair under the Automotive Repair Act (Act). (BPC §§ 9880-9889.68)

2) Establishes the BAR within the Department of Consumer Affairs (DCA), places the BAR under the supervision and control of the director of the DCA, and vests the duty of enforcing and administering the Act in the BAR's bureau chief. (Business and Professions Code (BPC) § 9882)

3) Defines "automotive repair dealer" (ARD) as a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles.

4) Makes it unlawful for any person to be an ARD unless that person is currently registered with the BAR. (BPC § 9884.6)

5) Authorizes the BAR to deny, suspend, revoke, or place on probation an ARD's registration for specified acts or omissions, including failure to comply with the Act, negligence, and fraudulent conduct. (BPC § 9884.7)

6) Requires all denial, revocation, and enforcement proceedings to comply with specified due process requirements, including the right to a formal hearing. (BPC §§ 9884.12, 9884.22, 9889.1 - 9889.10)

7) Requires the BAR to design and approve a sign that contains specified consumer notices, including the BAR's website, and must be placed in all ARD locations in a place and manner conspicuous to the public. (BPC § 9884.17)

8) Authorizes the BAR to investigate violations of the Act, requires the BAR to establish procedures for accepting complaints from the public, and authorizes the BAR to mediate complaints between consumers and ARDs. (BPC § 9882.5)

9) Makes any person who fails to comply with the provisions of the Act guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment not exceeding six months, or by both that fine and imprisonment, except as specified. (BPC § 9889.21)

10) Authorizes the BAR to file charges with the district attorney or city attorney against an ARD who violates the provisions of the Act or the BAR's regulations. (BPC § 9884.15)

11) Whenever a licensed adjuster in a licensed station upon an inspection or after an adjustment, made in conformity with the instructions of the bureau, determines that the lamps or the brakes upon any vehicle conform with the requirements of the Vehicle Code, the adjuster shall, when requested by the owner or driver of the vehicle, issue a certificate of adjustment on a form prescribed by the director, which certificate shall contain the date of issuance, the make and registration number of the vehicle, the name of the owner of the vehicle, and the official license of the station. (BPC §9889.16)

12) Allows the Bureau of Real Estate (BRE) to access full face photographs of individuals directly from the Department of Motor Vehicles (DMV) for the purposes of enforcing real estate law. (Vehicle Code (VC) § 1808.51)

13) Establishes the Motor Vehicle Inspection Program for the purpose of meeting or exceeding air quality standards set by the federal Clean Air Act in 1990. (Health and Safety Code (HSC) § 44000)

THIS BILL:

1) Authorizes the director to include in the citation system a process for informal review of and recommendation on citations, including the establishment of an informal citation conference, as specified.

2) Requires the director to appoint at least one administrative law judge for each regional office of the bureau to conduct proceedings under the act, and to appoint a chief administrative law judge to organize, coordinate, supervise, and direct the operations of the administrative law judges.

3) Requires the director to employ legal counsel, legal assistants, and other personnel that may be necessary for the administration and enforcement of the act.

4) The bill would require the director to take one of specified actions within 10 days of receiving a proposed decision from an administrative law judge in a contested case.

5) This bill would authorize the director to establish a process for an automotive repair dealer, upon successful completion of a specified remedial training, to prevent disclosure of the citation on the internet, but would preclude the use of remedial training if the violation constitutes fraud. The bill would require the director to establish through regulation a program to certify providers of that training.

6) This bill would specify that the benefit of any lien for labor or materials includes the ability to charge storage fees.

7) This bill would recast and revise those provisions to additionally require the forms to include, among other things, the automotive repair dealer's telephone number, email address, and motor vehicle license plate number if engaged in mobile automotive repairs. By requiring an

automotive repair dealer to provide additional items of information to the director under penalty of perjury, this bill would expand the crime of perjury, thereby imposing a state-mandated local program.

8) This bill would require the director to issue vehicle safety systems inspection licenses to stations and technicians to conduct inspections of, and repairs to, safety systems of vehicles. The bill would require the director to develop inspection criteria and standards for specific safety systems and components of the vehicle in order to promote the safe and uniform installation, maintenance, and servicing of vehicle safety systems and components. The bill would require the director to adopt regulations by January 1, 2023, including, but not limited to, the application process for licensees and the certification process for vehicles, as specified.

9) This bill would provide that the vehicle safety systems inspection license replaces licenses issued pursuant to the existing provisions governing the licensure of lamp and brake adjusting stations and adjusters and would repeal those provisions on the effective date of the new regulations. The bill would also provide that licenses and certificates issued pursuant to those repealed provisions would remain valid for 6 months thereafter. Because a violation of these provisions would be an infraction, the bill would create a state-mandated local program.

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

COMMENTS:

Purpose. This bill is Author sponsored. According to the Author, "Bringing a car into a repair shop for repairs or service can sometimes be an intimidating experience. Often times, the customer knows far less about cars than the technicians and might be worried that the shop will take advantage of the consumer out of hard-earned money. Fortunately, the State of California has put into place a series of automotive repair laws and regulations to protect customers of the automotive repair industry. These car repair laws provide oversight to the industry, as well as rules that give the consumer protection, and more information and control over the repair process. Many of these current consumer protections can be improved upon."

Background. *Bureau of Automotive Repair.* The BAR is the state agency tasked with enforcing the Automotive Repair Act. Both the Automotive Repair Act and the BAR were established by SB 51 (Beilenson), Chapter 1578, Statutes of 1971. The purpose of the Act is to provide an additional layer of consumer protection from unsafe and unethical automotive repair practices and improve consumer confidence.

The Act protects consumers by establishing various notice and technician competency requirements that ARDs must follow. Those who wish to perform automotive repairs for a fee must register with the BAR and comply with the requirements, which include providing various notices and prohibit incompetent, negligent, and fraudulent practices. The Act makes it a crime, usually a misdemeanor, for failing to register or otherwise fail to comply with the requirements if performing repairs as defined by the Act.

The Act authorizes the BAR to mediate complaints, investigate violations, and take disciplinary action against ARDs and technicians that fail to comply with the Act or the BAR's regulations. The BAR can be viewed as a first line of defense against unfair, deceptive, and harmful practices. The BAR's broad investigatory authority includes the ability to perform interviews, inspect premises, and utilize sting operations.

However, the BAR is an administrative and regulatory agency, not a law enforcement agency. The BAR's statutory authority is limited to administrative fines and various actions related to an ARD's registration. Further, as a state agency, it is required to comply with the due process rights of its registrants, and all registrants are entitled to notice and a hearing when being deprived of a registration. Still, operating without a registration when required by the Act is a crime. If the BAR finds an egregious case, it is authorized to refer the case to a district attorney or city attorney for prosecution. In addition, consumers may sue for damages.

Bureau of Automotive Repair (BAR) Cite and Fine Program. BAR currently can issue citation and fines to automotive repair dealers who are licensed smog check stations and those who are performing unlicensed repairs. Under current authority established in Health and Safety Code section 44014.5(d)(2) and Title 16, CA Code of Regulations (CCR) section 3392.6.1 (Star Program) and CCR section 3394.45 (Unlicensed Activity) the BAR has established an informal citation conference (ICC) process to hear appeals. The current process allows for informal appeals but is heard before a single BAR representative. This bill takes the current ICC process and expands it for automotive repair dealers that receive citations and establishes an independent panel to hear these informal appeals. The panel shall consist of three members, with one from the BAR, the public and the automotive repair industry all appointed by the BAR Chief.

Remedial Training/"Traffic School" Model. Current law does not provide the ability for BAR to a have a citation for minor record keeping violation removed from the internet. The bill provides an opportunity for an automotive repair shop that receives a citation for documentation, record keeping or other minor types of violations, not fraud related, to attend remedial training (certified by BAR) and upon successful completion, would prevent the disclosure of the citation on internet, similar to attending traffic school under Vehicle Code section 1808.7. To be eligible, the automotive repair dealer shall not have attended remedial training in the prior 18-month period.

Training/Educational Certifications. Current law limits the amount of information that can be collected by the BAR from automotive repair dealers. The bill allows BAR to collect information from automotive repair dealer application, including email addresses and educational and training certifications that are nationally recognized and generally accepted by the auto repair industry (e.g., ASE, I-CAR, etc.) or any BAR-approved educational certificates. This information would be collected voluntarily from the automotive repair dealers. After this information is collected, BAR would be able to provide to consumers through the BAR *Auto Shop Locator* Program, a new mobile-friendly search tool that allows consumers to perform location-based searches for automotive repair dealers.

BAR Discipline Case Overview. Based on the DCA Annual Report FY 2019/20, it took an average 721 days to impose discipline from the initiation of investigation to decision effect date.

Some disciplinary cases took over three (3) years to conclude. See DCA Annual Report pp. 27-30. https://www.dca.ca.gov/publications/2020_annrpt.pdf.

The BAR discipline case process involves many steps, including the initiation of the investigation by the BAR field office to determine if a violation of the Automotive Repair Act occurred; evidence gathering detailing violations resulting in a report which is reviewed by BAR headquarters. Once the report is finalized, it is submitted to the Attorney General Office licensing section, which is reviewed, and an Accusation and other legal documents are prepared for BAR to review and approve. The Accusation is served upon the Respondent. If the Respondent wishes to defend the action, then a hearing is scheduled and the parties present evidence before the Administrative Law Judge (ALJ). The ALJ submits a proposed decision to the DCA for adoption, modification or rejection.

The bill allows BAR to hire legal assistants (who would be overseen by a supervising attorney) that would draft the Accusation after the internal BAR investigation and review process is completed. This could result in earlier service of process to the automotive repair dealer and earlier public notification via web-posting of the Accusation. The supervising attorney would also oversee the service of the pleading documents, handle default decisions, and prepare stipulated settlement agreements possibly resulting in faster resolution of cases.

The bill also allows ALJs to be appointed and preassigned to conduct and hear cases at BAR regional offices and render proposed decisions that would be reviewed and adopted by DCA. The Office of Administrative Hearings (OAH) has six offices throughout the State in which hearings are conducted by the ALJ. BAR has 12 regional offices throughout the State, all of which have a conference rooms that could possibly be used for hearings. This bill would allow BAR control over scheduling hearings instead of waiting on OAH for a hearing date and conference room availability, resulting in earlier adjudication of the disciplinary matter. The additional location options could possibly expedite the process and make hearings more convenient for all parties.

Currently, the DCA timeframe to adopt/non-adopt/modify a ALJs decision or approve a stipulated settlement agreement or default decision is 100 days. This bill will shorten the time frame to 10 business days which will expedite the final disposition of the case.

Other state agencies that have similar models such as: Alcohol and Beverage Control (ABC), California Air Resources Board (CARB), California Department of Insurance (DOI), California Public Utilities Commission (PUC) and Department of Real Estate (DRE).

Salvage Vehicle Safety Inspection. Generally, when a consumer's vehicle is involved in accident, it is repaired by a licensed repair shop in a good and workmanlike manner which meets all safety requirements of the original equipment manufacturer. Basically, it's brought back to pre-accident condition. However, if it is determined that the vehicle is not economically feasible to repair due to extensive damage, it is declared a "total loss" and towed to the auction to be sold as "junk" and gets a "salvage" certificate.

Most of these salvage vehicles are purchased for parts and are dismantled. Some of these vehicles are purchased by "rebuilders" who repair the car as cheap as possible and then sell these vehicles via Craigslist, etc. In order to legally revive the salvage for use on public roads, they

must simply pass brake and lamp inspection, smog check, and obtain a California Highway Patrol inspection to make sure there are no stolen parts. Unfortunately, many of these revived total loss salvage vehicles could have safety issues such as cracked windshield, illuminated air bag light, no seat belts yet still pass inspection and are sold to unsuspecting consumers who think they're buying a safe vehicle.

The Bureau of Automotive Repair has recognized this as a consumer safety issue. This bill combines the current brake and lamp program and re-names it the "vehicle safety inspection program" and provides BAR the authority to develop additional inspection criteria standards for safety systems through regulations and allows for electronic transmittal of the brake and lamp certificates to DMV.

Current Related Legislation. AB 294 (Santiago) Vehicle Tow and Storage Act. Would establish the Vehicle Towing and Storage Board in the Department of Consumer Affairs and would empower the board to, among other things, regulate and resolve disputes involving vehicle towing businesses. *This bill is currently in the Assembly Business and Professions Committee and not yet set for a hearing*.

Prior Related Legislation. AB 3141 (Low) Chapter 503, Statutes of 2018, extends the Bureau until January 1, 2023.

SB 1242 (Lieu) Chapter 255, Statutes of 2014, extended the Bureau until January 1, 2019.

ARGUMENTS IN SUPPORT:

The registered support is represented by a coalition, which states, “[This bill] is multi-faceted legislation that would, among other things, enhance the Bureau of Automotive Repair (“BAR”) programs for consumers, protect consumers from unsafe salvage vehicle repairs, improve the current citation and fine regulatory program and allow for a more efficient and expedited disciplinary process.

Enhance BAR Auto Shop Locator Program: Last year, AB 2454 (Low) was introduced but stalled in order to allow BAR to address the Trusted Dealer Certification portion of that bill. The BAR has successfully developed the Auto Shop Locator, a new mobile-friendly search tool that allows consumers to perform location-based searches for automotive repair dealers, filter results by the type of services needed and quickly verify if a licensee is subject of a disciplinary action. The bill enhances the Auto Shop Locator program by helping consumers to also easily identify automotive repair dealers that have proper training and certification credentials.

Protect Consumers who Purchase Revived Salvage Vehicles: This bill will protect consumers from unsafe, revived, total loss salvage vehicles (e.g. vehicles damaged and not economically feasible to repair) by establishing a vehicle safety inspection program and allowing BAR to develop the safety inspection criteria standards. Currently to revive a total loss salvage vehicle for use on public roads only requires a brake and lamp inspection, smog check and a CHP inspection to make sure there are no stolen parts – nothing else.

Improve BAR Citation and Fine Program: The legislation will improve the current BAR citation and fine regulatory program by creating an independent citation panel to review citations;

provide opportunity for automotive repair shops to attend compliance and remedial training for minor record keeping and documentation citation violations, similar to traffic school and allows BAR to certify the training providers.

Expedite BAR Disciplinary and Hearing Process: Allows BAR to hire in-house legal assistants to prepare complaint accusations and pre-assigns administrative law judges to hear BAR cases which will allow for more efficient and expedited disciplinary process while preserving the automotive repair dealers right to due process."

REGISTERED SUPPORT:
Auto Care Association
Automotive Oil Change Association
Automotive Service Councils of America
Automotive Service Councils of California
California Autobody Association
California Automotive Business Coalition
Coalition for Automotive Repair Equality
California Automotive Wholesalers' Association
Independent Automotive Professionals Association
Motor & Equipment Manufacturers

REGISTERED OPPOSITION:

None on file.

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