California State Assembly

BUSINESS AND PROFESSIONS

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AGENDA

Tuesday, April 26, 2022
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

1.	AB 1662	Gipson	Licensing boards: disqualification from licensure: criminal conviction.
2.	AB 1781	Blanca Rubio	Safe transportation of dogs and cats.
3.	AB 1881	Santiago	Animal welfare: Dog and Cat Bill of Rights.
4.	AB 1894	Luz Rivas	Integrated cannabis vaporizer: packaging, labeling, advertisement, and marketing.
5.	AB 2102	Jones-Sawyer	Cannabis: facilities used for unlawful purposes.
6.	AB 2150	Lackey	Cannabis research.
7.	AB 2210	Quirk	Cannabis: state temporary event licenses: venues licensed by the Department of Alcoholic Beverage Control: unsold inventory.
8.	AB 2224	McCarty	Real estate: transactions: iBuyers.
9.	AB 2322	Wood	California building standards: fire resistance: occupancy risk categories.
10.	AB 2374	Bauer-Kahan	Crimes against public health and safety: illegal dumping.
11.	AB 2568	Cooley	Cannabis: insurance providers.
12.	AB 2606	Carrillo	Cats: declawing procedures: prohibition.
13.	AB 2671	Business and Professions	California Board of Occupational Therapy: legislative review.
14.	AB 2684	Business and Professions	Board of Registered Nurses: removal of member.
15.	AB 2685	Business and Professions	Naturopathic Doctors Act: Naturopathic Medicine Committee.
16.	AB 2686	Business and Professions	Speech-Language Pathology Audiology and Hearing Aid Dispensers Board.
17.	AB 2687	Business and Professions	California Massage Therapy Council.
18.	AB 2691	Wood	Cannabis: temporary cultivator event retail license.
19.	AB 2754	Bauer-Kahan	Psychology: supervising psychologists: qualifications.

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1662 (Gipson) – As Introduced January 18, 2022

SUBJECT: Licensing boards: disqualification from licensure: criminal conviction.

SUMMARY: Requires boards under the Department of Consumer Affairs (DCA) to allow for prospective applicants who have been convicted of a crime to request a preapplication determination as to whether that crime would disqualify the prospective applicant from licensure.

EXISTING LAW:

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

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

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

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

5) Provides that the withdrawal of a license application after it has been filed with a board shall not, unless the board has consented in writing to such withdrawal, prevent the board from instituting or continuing a proceeding against the applicant for the denial. (BPC § 118)

6) Authorizes certain boards within the DCA to require an applicant to provide fingerprints for purposes of conducting criminal history record checks through the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI). (BPC § 144)

7) Prohibits boards under the DCA from denying a license on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits. (BPC § 475)

8) Defines "license" as also inclusive of any certificate, registration or other means to engage in a business or profession regulated by the Business and Professions Code. (BPC § 477)

9) Authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline under either of the following conditions:

a) The applicant has been convicted of a crime within the preceding seven years that is substantially related to the qualifications, functions, or duties of the licensed profession for which the application is made; after seven years, serious, violent, and sexual offenses are still eligible for consideration, and some boards may still consider financial crimes.

b) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made.

(BPC § 480(a))

10) Prohibits a board from denying a license to a person on the basis that the person has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if that person has obtained a certificate of rehabilitation, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation. (BPC § 480(b))

11) Prohibits a person from being denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed or expunged. (BPC § 480(c))

12) Prohibits a board from denying a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication. (BPC § 480(d))

13) Allows a board to deny a license on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license; however, a board may not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed. (BPC § 480(e))

14) Prohibits any board that requires fingerprint background checks from requiring an applicant to disclose any information regarding their criminal history; however, a board may request mitigating information from an applicant for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure. (BPC § 480(f)(2))

15) Requires a board that decides to deny an application based solely or in part on the applicant's conviction history to notify the applicant in writing of all of the following:

a) The denial or disqualification of licensure.

b) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

c) That the applicant has the right to appeal the board's decision.

d) The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record.

(BPC § 480(f)(3))

16) Requires boards under the DCA to retain and report data relating to license applicants, applications, and denials for prior criminal convictions or formal discipline. (BPC § 480(g))

17) Requires each board to develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates, which must include all the following:

    a) The nature and gravity of the offense.

    b) The number of years elapsed since the date of the offense.

    c) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

    (BPC § 481)

18) Requires each board to develop criteria to evaluate the rehabilitation of a person when considering the denial of a license based on prior misconduct. (BPC § 482)

19) Provides that no person applying for licensure under a DCA board shall be required to submit any attestation by other persons to their good moral character. (BPC § 484)

20) Upon denial of a license, requires a board to inform the applicant of the earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, unless the board prescribes an earlier date or a later date is prescribed by another statute, and that all competent evidence of rehabilitation presented will be considered upon a reapplication. (BPC § 486)

21) Authorizes a board to grant a license, grant a probationary license, deny a license, or take other appropriate action following a hearing requested by an applicant whose license was previously denied. (BPC § 488)

THIS BILL:

1) Allows for an applicant who has been convicted of a crime to submit to a board, by mail or email, and at any time, including before obtaining any training or education required for licensure by that board or before paying any application fee, a request for a preapplication determination that includes information provided by the prospective applicant regarding their criminal conviction.

2) Requires a board that has received a request for a preapplication determination to determine if the prospective applicant may be disqualified from licensure based on the information submitted with the request, and deliver the determination by mail or email to the prospective applicant within a reasonable time.

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

COMMENTS:

Purpose. This bill is sponsored by the **Council of State Governments Justice Center**. According to the author:

> "AB 1662 is focused on getting people back to work, improving access to licensed professions, and eliminating barriers that keep individuals who are going through the re-entry process from obtaining an occupational license. We are talking about an untapped pool of job talent who are ready to work and contribute to society but have historically faced the most barriers at a very basic level.
>
> "This is about opportunity and hope for those that have been held accountable and paid their dues and deserve a second chance. One of the main barriers that folks face when trying to apply for a licensed profession is the expensive tuition that comes with training and courses one needs to take just to find out that they were denied due to their criminal record. This bill would provide notice on whether their record might disqualify them from receiving an occupational license in the future, prior to financial and educational investment toward any program."

Background.

Overview of Licensure in California. California has provided for the licensure of regulated professionals since the early days of statehood. In 1876, the Legislature enacted the original Medical Practice Act, which was revised two years later to delegate licensing authority to the first three regulatory boards: the Medical Board, Eclectic Board, and Homeopathic Board. By the end of the 1920s, seven additional boards had been established to regulate pharmacists, dentists, optometrists, veterinarians, barbers, accountants, and embalmers. These boards were placed under the oversight of a Department of Vocational and Professional Standards, which would become the Department of Consumer Affairs in 1965. Today, the DCA oversees 36 boards, bureaus, and other regulatory bodies.

As a department within an agency of the state government, the DCA is led by a director appointed by the Governor. While the regulatory boards under the DCA's oversight are considered semi-autonomous, the Director of Consumer Affairs does wield considerable influence over board policymaking. For example, the director has the power to review and disapprove formal rulemaking, may conduct audits and reviews of board activities, and approves budget change proposals prior to their submission to the Department of Finance. The powers of the director are then further subject to the authority of the Secretary of the Business, Consumer Services, and Housing Agency and, ultimately, the Governor.

The practice act for each profession licensed by a regulatory board under the DCA typically includes sunset provisions providing for regular review by the Legislature. At staggered intervals averaging four years, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development jointly prepare a comprehensive background paper for each entity, hold public hearings, recalculate the balance of consumer protection and regulatory burden, and make recommendations to enact any necessary reforms. In rare instances, entities are abolished, reduced, or consolidated when inefficiencies are identified or when public benefit is deemed insufficient to justify regulation.

Board Discretion to Deny Applications for Licensure. Due to the unique nature of each individual profession licensed and regulated by entities under the DCA, the various professional practice acts contain their own standards and enforcement criteria for individuals applying for or in receipt of special occupational privileges from the state. However, there are some umbrella statutes that preemptively govern the discretion of these regulatory bodies generally. Specifically, BPC § 480 governs the authority of regulatory boards to deny license applications based on an applicant's prior criminal conviction or formal discipline.

Historically boards and bureaus under the DCA were criticized for how they used their previously broad discretion to deny licensure to applicants with criminal histories. In its report *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, the National Employment Law Project (NELP) discussed the draconian nature of barriers to occupational entry based on criminal history. NELP's report referred to "a lack of transparency and predictability in the licensure decision-making process and confusion caused by a labyrinth of different restrictions" in regulatory schemes across the country.

During its 2017 sunset review, the Assembly Committee on Business and Professions discussed barriers to licensure generally in its background paper for the DCA. Specifically, the committee considered how criminal convictions eligible for license disqualification in California were limited in the sense that they must be "substantially related" to the profession into which the license allows entry. Concern was expressed that there was a "serious lack of clarity for applicants as to what 'substantially related' means and this determination is often left to the discretion of individual boards." The Committee's was for the DCA to take steps to improve transparency and consistency in the use of applicants' criminal histories by boards and bureaus.

Assembly Bill 2138 (Chiu/Low, Chapter 995, Statutes of 2018), the Fair Chance Licensing Act, was subsequently introduced and signed into law, going into effect on July 1, 2020. The bill made substantial reforms to the application process under BPC § 480 for individuals with criminal records seeking licensure from a board under the DCA. Under AB 2138, an application may only be denied on the basis of prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. The bill further prohibited boards that already require fingerprint background checks from requiring self-disclosure of prior misconduct from the applicant.

One of the key reforms made by AB 2138 was language providing for a seven-year "washout" for prior misconduct. Under the bill, a criminal conviction or formal disciplinary action may only be cause for denial if it occurred within seven years prior to the application. This provision does have several exceptions—for example, all serious and violent felonies can be cause for an application denial with no limitations. Certain boards are authorized to deny an application for specified financial crimes regardless of age. Finally, criminal convictions for which the applicant was required to register as a sex offender were exempted from the washout; however, this exemption does not include Tier 3 sex offenses, which are the collection of offenders who may be required to register but who present the lowest risk to the public.

AB 2138 also requires the collection of data related to applications and denials for applicants with prior criminal histories. Each board is required to report the number of applications requiring inquiries regarding criminal history as well as the number of applicants who were denied and appealed or provided evidence of mitigation or rehabilitation, and the final disposition and voluntarily provided demographic information, including race and gender.

The intention of this bill is to allow applicants with criminal histories to find out in advance whether their record would be cause for denial of a license under BPC § 480 and the requirements of AB 2138. The author believes that this would be valuable for those who do not wish to invest considerable time and money in meeting other prerequisites for licensure (such as education, training, and examination requirements) if there remains a chance they'd nevertheless be denied following a background check. By requiring boards to make a preapplication determination as to an applicant's criminal history, the author believes more individuals with prior convictions will seek economic opportunity through licensure, which is meaningful both as a means of reducing recidivism and as a public policy viewed through an equity lens.

Current Related Legislation. AB 1636 (Weber) would allow a board to deny an application for licensure based on prior formal discipline that occurred earlier than seven years for an act of sexual abuse, misconduct, or relations with a patient. *This bill is pending in the Assembly Committee on Appropriations*.

Prior Related Legislation. AB 2138 (Chiu/Low, Chapter 995, Statutes of 2018) limited the authority of boards to deny a license application for prior misconduct and required the collection and reporting of data relating to license denials.

ARGUMENTS IN SUPPORT:

This bill is sponsored by the **Council of State Governments Justice Center** (CSG). CSG references the passage of AB 2138 calls "a model state for many other states looking to eliminate various barriers to employment for formerly incarcerated individuals." CSG writes that this bill would build upon that law by "authorizing pre-application eligibility determinations for prospective applicants to know whether their record is disqualifying before investing in the training and education required for a license." CSG argues that "as a fair chance licensing front-runner, California has demonstrated that thoughtful targeted policies can significantly expand economic mobility without jeopardizing public safety."

The **Institute for Justice** also supports this bill, writing: "Building on California's 2018 'Fair Chance Licensing' law would help to further eliminate the deterrent effect of licensing barriers on workers who are unsure if their conviction will be disqualifying, reduce recidivism by opening additional stable employment opportunities, provide businesses with qualified workers and save taxpayer incarceration and public benefits costs. Currently, 20 states have enacted such policy in recent years: Arizona, Arkansas, Idaho, Iowa, Indiana, Kansas, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Nevada, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, West Virginia and Wisconsin. "

ARGUMENTS IN OPPOSITION:

The **Board for Professional Engineers, Land Surveyors, and Geologists** opposes this bill unless amended, arguing that the bill "does not provide sufficient clarity that any preapplication determination by the Board about the effect a conviction may have on a person's ability to obtain a license must necessarily be an initial, non-binding determination." The Board writes that "while the Board understands the intent in helping people with convictions determine whether to continue on their chosen career path, the Board believes it is important to make it clear that any preapplication determination is non-binding and could change to the applicant's detriment or benefit over time."

The **Dental Hygiene Board of California** also opposes this bill, writing: "The Board understands the time and expense a prospective applicant may incur during training in a prospective licensing field. However, the bill would lead to an increased workload and cost for the Board to pre-review possible applicants without compensation for Board resources. The time and resources used for the pre-application review would be about the same as someone who applied without a conviction. In addition, if the Board must pre-review or approve an applicant without compensation and an additional conviction were to occur prior to licensing, it is possible the pre-approval would be rescinded, and licensure denied depending on vetting the new conviction."

POLICY ISSUE(S) FOR CONSIDERATION:

Potential for Unreliable Determinations. Currently, this bill requires a board to respond to a request from a prospective applicant for a preapplication determination as to whether they *may* be disqualified from licensure based on "information provided by the prospective applicant regarding their criminal conviction." The bill allows this information to be submitted by mail or email. This presumably means that any prior criminal or disciplinary history would be narratively disclosed directly by the potential applicant to the board.

This form of self-disclosure was generally prohibited by AB 2138 for boards that require applicants to undergo a fingerprint background check. This was in part due to concern over instances where applicants underestimate the inclusivity of what crimes or acts would disqualify them and fail to voluntarily disclose that information. This lack of disclosure could itself be grounds to deny the application for licensure. The practice of requiring self-disclosure by applicants and then denying an application based on an applicant's inadequate self-incrimination is frequently regarded as the "candor trap."

Another issue with self-disclosure of criminal history by an applicant to a board is that the applicant's recollection or characterization of a prior offense may not conform to how the offense would be represented on a rap sheet. This could lead to a disclosed conviction being either understated, leading to a false negative on its potential for disqualification, or exaggerated, leading to a false positive. While self-disclosure is still the practice for the small number of boards that do not require fingerprint background checks, for those that do, the author may wish to instead require that criminal history be disclosed through the same manner that it will be as part of a completed application.

Additionally, it should be made clear to applicants who are notified that an offense they disclosed as part of a preapplication determination would potentially lead to a denial are not necessarily doomed. Boards are required under AB 2138 to offer an appeals process for all denials, and there are various options for demonstrating rehabilitation or having a prior conviction dismissed or expunged. Boards should provide this information to applicants as part of their response.

IMPLEMENTATION ISSUES:

Currently, this bill does not allow boards to charge a fee to cover workload costs associated with offering preapplication determinations. Because all boards are special funded, this could lead to cost pressures distributed across other fees currently being charged. The author may wish to allow boards to charge up to a certain amount in fees to cover the costs of implementing the bill.

AMENDMENTS:

1) To improve statutory clarity, relocate the bill's provisions to a newly established section of the Business and Professions Code.

2) To enhance the reliability of determinations made by boards that will ultimately require fingerprint background checks when reviewing a completed application, allow for those boards to require a prospective applicant to furnish a full set of fingerprints as part of their request for a preapplication determination.

3) To ensure a preapplication determination does not preclude an applicant from submitting a completed application, add language clarifying that an adverse response from a board regarding an offense disclosed as part of a preapplication determination does not constitute a denial for purposes of any law prohibiting reapplication when in a specified time frame.

4) To ensure potential applicants informed about options available to them in the event that their preapplication determination reveals the potential for a denial based on a prior offense, require a board to provide the potential applicant with the following information in writing:

    a. A summary of the criteria used by the board to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates.

    b. The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record.

    c. Any existing procedure the board has for the prospective applicant would have to challenge the decision or to request reconsideration following the denial of a completed application, including a copy of the criteria relating to rehabilitation.

    d. That the applicant would have the right to appeal the board's decision.

5) To clarify that a preapplication determination is not intended to be required of applicants under any circumstance, include language expressly stating that a preapplication determination shall not be a requirement for licensure or participation in any education or training program.

6) To increase awareness of the availability for potential applicants to receive a preapplication determination, require boards to place information regarding the process on their websites.

7) To allow boards to recover costs directly associated with implementing the bill, authorize the assessment of a fee in an amount up to no more than $50, not to exceed the reasonable cost of implementing the bill.

REGISTERED SUPPORT:

Council of State Governments Justice Center *(Sponsor)*
Institute for Justice
Little Hoover Commission

REGISTERED OPPOSITION:

Board for Professional Engineers, Land Surveyors, and Geologists
Dental Hygiene Board of California
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1781 (Blanca Rubio) – As Amended April 5, 2022

SUBJECT: Safe transportation of dogs and cats.

SUMMARY: Requires a mobile or traveling housing facility for dogs or cats to not endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, lack of food and water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

EXISTING LAW:

1) Establishes the Lockyer-Polanco-Farr Pet Protection Act (Pet Protection Act) which governs the retail sale of dogs and cats by pet dealers, as defined, and requires every pet dealer of dogs and cats to do all of the following:

    a) Maintain sanitary facilities for dogs.

    b) Provide dogs with adequate nutrition and potable water.

    c) Provide adequate space appropriate to that dog.

    d) Provide dogs housed on wire flooring with a rest board, floormat, or similar device that can be maintained in a sanitary condition.

    e) Provide dogs with adequate socialization and exercise; defined as physical contact with other dogs or with human beings.

    f) Maintain either a fire alarm system that is connected to a central reporting station that alerts the local fire department in case of fire, or a fire suppression sprinkler system.

    g) Provide veterinary care, without delay, when necessary.

    h) Not be in possession of a dog that is less than eight weeks old.

(Health and Safety Code (HSC) §§ 122125, *et seq.*)

2) Establishes the Pet Store Animal Care Act and specifies procedures for the care and maintenance of animals in the custody of a pet store and details the responsibilities of the pet shop, the standards for enclosures, animal care requirements, record keeping, standards for keeping the animals healthy including veterinary care, euthanasia standards, and disclosures that must be made to a person who purchases a pet. Provides for a "notice to correct" and monetary misdemeanor penalties for specified violations of this Act. (HSC) §§ 122350 *et seq.*)

3) Establishes procedures for the care and maintenance of pets boarded at a pet boarding facility, including, but not limited to, sanitation, provision of enrichment for the pet, health of the pet, its safety and to ensure the comfort and well-being of the pet by providing heating,

cooling, lighting, ventilation, shade, and protection from the elements, including, but not limited to, the sun, wind, rain, and snow. (HSC §§ 122380 *et seq.*)

4) Provides that no person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. (Penal Code (PC) § 597.7)

5) Provides that every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. (PC § 597.1)

6) Specifies that no person shall leave an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. (PC § 597.7 (a))

7) Provides that a person may take reasonable steps that are necessary to remove an animal from a motor vehicle if the person holds a reasonable belief that the animal's safety is in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal, and to take other steps as specified. (PC § 597.7 (b))

8) Provides that a peace officer, humane officer, or animal control officer is authorized to take all steps that are reasonably necessary for the removal of an animal from a motor vehicle. (PC § 597.7 (d))

9) Provides that whoever carries or causes to be carried in or upon any vehicle or otherwise any domestic animal in a cruel or inhumane manner, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering, or cruelty of any kind, is guilty of a misdemeanor. (PC § 597a)

10) Requires pet shops, as defined, to do all of the following:

    a) Maintain sanitary pet housing facilities.

    b) Provide proper heating and ventilation for housing facilities.

    c) Provide adequate nutrition and humane care and treatment of pet animals.

    d) Take reasonable care to release for sale, trade, or adoption only those pet animals that are free of disease or injuries.

    e) Provide adequate space appropriate to the size, weight, and species of pet animals.

    f) Provides that any person who violates a) through e) is guilty of a misdemeanor and a fine not exceeding $1,000, or by imprisonment in county jail not exceeding 90 days, or by both a fine and imprisonment.

    g) Provide buyers of pet animals with general written recommendations for the generally accepted care of the class of pet animal sold in a form determined by the pet shop, and

provides that a violation of this provision will be dismissed if adequate proof of compliance is provided but that a subsequent violation is an infraction punishable by a fine not to exceed $250.

(PC § 597l (a))

11) Specifies the conditions under which equines shall be transported in a vehicle to slaughter including sufficient clearance in the vehicle, adequate ventilation, smooth materials provided within the vehicle so there are no protrusions or sharp objects, under what conditions they shall not be transported such as either diseased, sick or dying, and requires an inspection of the vehicle by a human officer 72 hours before loading the equine. (PC § 597o)

THIS BILL:

1) Names this measure "The Safe Transportation of Dogs and Cats Act."

2) Ensures animals being transported are protected from the elements and adverse weather with the goal of preventing unnecessary suffering of the animal.

3) Defines "mobile or traveling housing facility" as a transporting vehicle, including, but not limited to, a car, truck, trailer, bus, or recreational vehicle used to transport animals by any animal control agency or shelter, society for the prevention of cruelty of animals shelter, humane society shelter, or rescue group.

4) Clarifies the bill would apply specifically to vehicles for animal transportation engaged in a cooperative agreement with at least one private or public shelter pursuant to the Food and Agriculture Code § 31108, 31752, or 31753.

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

COMMENTS:

Purpose.

This bill is sponsored by **Social Compassion in Legislation** (SCIL). According to the author: "California has taken great strides to ensure that animals, pet companions, are protected from mistreatment and careless actions that can lead to injury or death. However, there are currently no uniform standards on safe temperatures during mobile transportation of animals. AB 1781 establishes statewide expectation for mobile transportation of dogs and cats to keep them safe from extreme temperatures and other circumstances that would reasonably be expected to cause harm. This bill will help reduce animal stress, weather-related traumatic experiences, negative long-term health effects, while promoting humane statewide animal care."

Background.

This bill establishes a new set of standards specifically for dogs and cats in mobile or traveling housing facilities. These standards will apply to government operated animal shelters, humane society shelters, and public or private for-profit entities that transport pets. These entities would be required to maintain a well ventilated, temperature controlled, and well-lit environment for cats and dogs being transported or housed in a mobile unit. Currently, there are not any statutory requirements that specifically apply to the transportation of pets in a mobile housing unit.

Dogs and Cats in vehicles. Current law prohibits a person from leaving or confining an animal in any unattended motor vehicle under conditions that endanger the health or wellbeing of an animal. These standards include temperature, lack of ventilation, lack of food or water, and other circumstances that could be harmful to the animal. Violation of these standards could result in a fine, imprisonment not exceeding six months, or both.

In 2017, AB 797 (Steinorth, Chapter 554, Statutes of 2016), added protections for "Good Samaritans" that take "reasonable steps" to remove an animal from a motor vehicle if the person holds a belief that the animal is in immediate danger due to heat, cold, lack of ventilation, lack of food or water, or other circumstances. Previously these protections only applied to law enforcement that may intervene to rescue an animal.

Though existing law prevents leaving an animal unattended in a motor vehicle when their health could be at risk, this standard does not apply to dogs and cats that are in mobile housing or transport cages, but may still have a driver operating the vehicle. This bill will establish requirements that must be applied at all times, even when the vehicle is not parked and unattended.

While this bill appears to be a reasonable, humane effort to ensure all animals avoid unnecessary harm or death, it is unclear how many animals ultimately suffered or died from the specific scenario addressed by the bill. What is known is that as recently as June 2017, a tragic incident involving a dog in the care of Visalia animal control increased attention to this issue and potential risk for other animals across the state. Essentially the dog had to be euthanized after contracting heat stroke while in the care of animal control staff. Coverage of the aforementioned case in Visalia mentions the truck the dog contracted heatstroke in had functioning ventilation.

Current Related Legislation. AB 1881 (Santiago): Will enact the Dog and Cat Bill of Rights and require every public animal control agency or shelter, society for the prevention of cruelty to animal shelter, humane society shelter, or rescue group to post a copy of the Dog and Cat Bill of Rights, subject to a civil penalty. *This bill is pending in this committee.*

AB 2606 (Carrillo): Prohibits any person, including a veterinarian, from performing a declawing procedure or a tendonectomy on any cat, or otherwise altering a cat's toes, claws, or paws in a way that prevents or impairs their normal function, unless there is a therapeutic purpose. *This bill is pending in this committee.*

Prior Related Legislation. AB 2362 (Rubio, 2017-18): Nearly identical to the bill being considered by this committee: AB 1781 (Rubio, 2021-22); Would have required that a mobile or traveling housing facility, as defined, for any public control agency or shelter, humane society or rescue group be sufficiently heated, cooled and ventilated when necessary in order to protect the dogs and cats from temperature or humidity extremes and specifies temperatures to be maintained and other methods to be used under certain circumstances and climatic conditions so as to provide for their health and well-being. *The bill was ultimately vetoed by Governor Jerry Brown on September 28, 2018 with the following veto message: "Creating standards to ensure that animals are safely transported is a noble goal. This bill, however, as currently drafted, contains terms that are too vague. I urge the author to come back with clear guidance next year."*

SB 985 (Monning, Chapter 364, Statutes of 2016): Establishes procedures for the care and maintenance of pets boarded at a pet boarding facility.

AB 797 (Steinorth, Chapter 554, Statutes of 2016): Exempted a person from civil or criminal liability if damage occurred while a person was rescuing a confined animal from a motor vehicle under specified conditions.

AB 1806 (Figueroa, Chapter 431, Statutes of 2006): Prohibited leaving or confining an animal in an unattended motor vehicle in conditions that would endanger the health or wellbeing of the animal. Included provisions related to temperature, ventilation, food and water, and other circumstances.

ARGUMENTS IN SUPPORT:

Social Compassion in Legislation (the bill's sponsor) writes in support: "[AB 1781] requires mobile or traveling housing facilities, such as animal control vehicles, to transport dogs and cats in such a manner that conditions do not endanger the health or well-being of the animal due to extreme temperatures or lack of food or water. With 2021 being the hottest year on record and temperatures in California ranging from below freezing to well over 100 degrees, animals being transported inside animal control or other mobile housing facility vehicles can be at risk of severe injury or death. Yet, currently, there are no minimum standards in California for climatic conditions while transporting dogs and cats in these vehicles. This bill closes the gap. Animals can sustain brain damage or even death from heatstroke in just 15 minutes. Beating the heat is particularly difficult for dogs because they can only cool themselves by panting and sweating through their paw pads. This bill aims to prevent such suffering for all animals in transport.

San Diego Humane Society writes in support: "San Diego Humane Society has been serving San Diego County since 1880, and operates campuses in San Diego, El Cajon, Escondido, Oceanside and Ramona. We offer San Diegans a wide range of programs and services that strengthen the human-animal bond, prevent cruelty/neglect, provide medical care, educate the community on the humane treatment of animals and provide safety net services for all pet families needing assistance with keeping their pets. Ensuring the safety and well-being of animals in our care is not only an industry best-practice, but a requirement under Penal Code Section 597. As climate extremes continue to become the norm rather than the exception in California, making certain that animals are well-protected from the elements is a critically important responsibility. Reaffirming these expectations around the transport of pets for all groups transporting animals throughout California is appreciated."

Multiple Animal Shelters & Rescue Groups collectively write in support: "AB 1781 was drafted after consultation with several animal control directors, local county veterinarian, animal control associations, and input from a forum of over 45 representatives of shelter directors, managers, volunteers, and the rescue community that met in Southern California in December 2017, to discuss legislation that could better shape how animal control agencies care for animals."

ARGUMENTS IN OPPOSITION:

None on File.

REGISTERED SUPPORT:

A Passion for Paws
Animal Legal Defense Fund

Ashley & Hobie Animal Welfare
California Animal Welfare Association (CalAnimals)
Castillo Animal Veterinary
Compassionate Bay
Direct Action Everywhere
Lockwood Animal Rescue Center
Los Angeles Alliance for Animals
Our Honor
Plant-Based Advocates
Poison Free Malibu
Project Counterglow
Recycled Love DoG Rescue
San Diego Humane Society
St. John Creative
Starfish Animal Rescue
Start Rescue
Take Me Home
The Fix Project
Women United for Animal Welfare (WUFAW)
386 Individuals

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1881 (Santiago) – As Introduced February 8, 2022

SUBJECT: Animal welfare: Dog and Cat Bill of Rights.

SUMMARY: Requires every public animal control agency, shelter, or rescue group to conspicuously post or provide a copy of a Dog and Cat Bill of Rights, as provided.

EXISTING LAW:

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

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

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

4) Provides that very person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is guilty of a crime. (PEN. § 597(b))

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

6) Requires every person who keeps an animal confined in an enclosed area to provide it with an adequate exercise area. (PEN. § 597t)

7) Defines the words the words “torment,” “torture,” and “cruelty” as including every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted against an animal. (PEN. § 599b)

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

THIS BILL:

1) Requires each public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group to provide a copy of a Dog and Cat Bill of Rights to new owners, or to post a copy of the rights in a conspicuous place accessible to public view.

2) Provides that the Dog and Cat Bill of Rights shall read as follows:

   "Dogs and cats have the right to be free from exploitation, cruelty, neglect, and abuse.

   Dogs and cats have the right to a life of comfort, free of fear and anxiety.

   Dogs and cats have the right to daily mental stimulation and appropriate exercise considering the age and energy level of the dog or cat.

   Dogs and cats have the right to nutritious food, sanitary water, and shelter in an appropriate and safe environment.

   Dogs and cats have the right to regular and appropriate veterinary care.

   Dogs and cats have the right to be properly identified through tags, microchips, or other humane means.

   Dogs and cats have the right to be spayed and neutered to prevent unwanted litters."

3) Subjects each subsequent violation of the above requirement after sixty days of a first offense to a fine not exceeding $250.

4) States that the bill does not create a private right of action for a violation of its requirements and that it is the intent of the Legislature that the Dog and Cat Bill of Rights is solely to inform potential owners of the standards for basic physical care and emotional well-being of dogs and cats, and clarifies that the bill does not create a crime or a penalty other than the penalty provided regarding posting requirements for educational purposes.

5) Makes various additional findings and declarations in support of the bill.

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

COMMENTS:

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

> "One in five American households adopted a dog or a cat since the start of the COVID-19 pandemic, in part because of the social and emotional companionship dogs and cats can provide. Now that the state is relaxing some of its COVID-19 restrictions and owners are returning to normal life, we must ensure that our dogs and cats are still receiving the love and attention they need. That's why AB 1881 will inform potential adopters of the rights of dogs and cats that go beyond just food, water, and shelter, so that all of our dogs and cats may live long, healthy lives after all pandemic restrictions have lifted."

Background.

Animal Welfare Laws. In 1966, the United States Congress enacted the Animal Welfare Act (AWA) to provide standards on the humane handling, care, and treatment of animals. Enforced by the United States Department of Agriculture (USDA), the AWA regulates animal rights in various settings, including scientific research, public exhibitions, or transportation. California is home to a number of additional animal protection laws intended to safeguard the wellbeing and life of animals in various settings. These include the Polanco-Lockyer Pet Breeder Warranty Act, which outlines requirements for dog breeders to raise dogs and puppies in humane conditions, and provides purchasers with refund or reimbursement remedies should an animal be sick or ill due to improper breeding practices. Similarly, laws like the Lockyer-Polanco-Farr Pet Protection Act establishes animal welfare and consumer protection requirements on pet dealers and the animals they sell.

In terms of laws intended to protect animals from being harmed or discomforted by their owners, only certain categories of severe neglect or mistreatment are expressly unlawful. The malicious and intentional maiming, mutilation, torture, or wounding of any living animal is a crime under the Penal Code. Similarly, anyone who overdrives, overloads, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal is guilty of a crime. There are also provisions in the Penal Code that provide punishment for those who severely neglect an animal and allows those animals to be seized and treated.

However, there are not many other requirements for what type of care pet owners provide to their dogs and cats beyond the criminalization of serious abuse or exploitation. This is in part because pets are legally considered property of their owners. While cruelty or extreme neglect are not permitted, owners are otherwise generally free to treat their pets in whatever manner they desire.

The author and sponsor of this bill are concerned that many new owners of dogs and cats will adopt those animals without fully appreciating the amount of care and attention that is required to provide a loving, comfortable home to an animal. In particular, the author cites the ongoing COVID-19 pandemic as potentially having resulted in a rush to adopt animal companions that will stop receiving as much attention as restrictions are lifted. The author intends for this bill to be "educational," essentially confronting potential adopters with a list of expectations for the quality of life the dog or cat they are bringing home deserves.

While this bill refers to these expectations as a "bill of rights," it does not actually intend for any of those rights to be legally enforceable. Instead, pet shelters and other adoption sites would be required to simply post or provide the language to potential new owners. The language of the bill expressly clarifies that no other crime or penalty would be created by the bill besides the fine that could be assessed for violations of that requirement.

Current Related Legislation. AB 1781 (Blanca Rubio) would set standards for the safe transportation of dogs and cats. *This bill is pending in this committee*.

AB 1606 (Carrillo) would ban the practice of cat declawing. *This bill is pending in this committee*.

AB 1901 (Nazarian) would require dog trainers to provide certain disclosures to their customers. *This bill is pending in the Assembly Committee on Judiciary*.

AB 2723 (Holden) would establish additional requirements on various types of public animal shelters related to microchip registration and the release of dogs and cats. *This bill is pending in the Assembly Committee on Appropriations.*

Prior Related Legislation. AB 702 (Santiago) of 2021 as amended was substantially similar to this bill. *This bill died in this committee.*

ARGUMENTS IN SUPPORT:

This bill is sponsored by **Social Compassion in Legislation** (SCIL). SCIL writes: "Animal companionship was very appealing during the isolation of the pandemic. With the state potentially re-opening, some adopters are returning their pets because they cannot care for them as they could during the height of the pandemic. Animal shelters and adoption agencies are not currently required to inform the potential adopter of the standards of care dogs and cats deserve. To ensure dogs and cats are treated appropriately, potential owners must understand that dogs and cats deserve certain standards of treatment prior to making a commitment to adoption."

ARGUMENTS IN OPPOSITION:

The **California Animal Welfare Association** (CalAnimals) opposes this bill. According to CalAnimals: "Generally speaking, aspirational language should be presented as such and not presented as rights. The language provided in this bill is both subjective and nebulous and will result in confusion for the public as to what can and will be enforced, saddling our animal services agencies with unrealistic expectations. For example, how will a California resident interpret their dog or cat's right to be fear free or free of exploitation? If a pet owner cannot afford a $3,000 treatment for cancer for their pet, are they violating that animal's rights? Should they not be allowed to own a pet? As an organization that values inclusivity and equity and works diligently to preserve the human-animal bond, we are very careful to evaluate potential legislation through this lens to ensure we are not penalizing those with fewer resources or different cultural values."

POLICY ISSUE(S) FOR CONSIDERATION:

Rights versus Aspirations. This bill would enact a new division within the Food and Agricultural Code titled "the Dog and Cat Bill of Rights." The phraseology "bill of rights," inspired by the title of the first ten amendments to the United States Constitution and predecessors like the Magna Carta, has been used prolifically in legislation enacted to establish new protections, obligations, and guarantees under the law. However, this bill does not actually purport to create any new requirements for pet owners that would be enforceable in any way.

Instead, "Dog and Cat Bill of Rights" is essentially the statutorily dictated title of a poster or flyer that would be provided to potential new pet owners. The text of that notice then also refers to a series of protections, comforts, luxuries, and freedoms that dogs and cats "have the right to." However, neither the author nor the bill's supporters have claimed that any of these provisions are, in fact, *legal* rights—instead, they are arguably *natural* rights, which animals may be considered morally entitled to as "sentient beings that experience complex feelings" (as described in the bill's findings and declarations), but are not necessarily derived from any legally enforceable statute or regulation.

Some of the specified rights are at least partially enforceable through existing law. For example, the Penal Code does specifically criminalize forms of "exploitation, cruelty, neglect, and abuse"—the first of the enumerated rights. However, there is no similar citation available for the second right, which is "to a life of comfort, free of fear and anxiety." (There is also no legally enforceable right under the law for human beings to experience such a life.) While various rights enumerated in the bill could be loosely corresponded to provisions of law, it is undeniable that the majority of the language in the list of rights is purely aspirational.

This is the author's intent, and the author has made it clear that the goal is not to imply that there would be any direct repercussion to pet owners who fail to live up to the language in the bill. Instead, the goal is to "educate" potential dog and cat adopters about the standard they should hold themselves to when it comes to the quality of home they intend to provide. However, this could understandably still be very confusing for some members of the public. Language like the statement that "dogs and cats have the right to nutritious food" might appear to be tied to an actual enforceable law, and could potentially lead to fewer adoptions by potential owners concerned that they could be liable for failing to meet a vague requirement.

What the author essentially wants to do is make a declarative statement on behalf of the State of California regarding the quality of life that adopted dogs and cats deserve in a home. The author then wants that statement communicated to pet owners in a format that will remind them of their moral responsibilities without threatening them with any legal liability. The author may wish to reconsider whether the current language of the bill appropriately addresses that goal or if other means of conveying that message would be better suited to their intent.

AMENDMENTS:

To clarify that the notice required by the bill does not actually enumerate any enforceable rights or obligations, amend the proposed Section 31802 to replace each use of the phrase "*dogs and cats have the right to*" with "*dogs and cats deserve*," and make corresponding changes.

REGISTERED SUPPORT:

Social Compassion in Legislation *(Sponsor)*
A Passion for Paws – Akita Rescue
Ashley and Hobie Animal Welfare Inc.
Castillo Animal Veterinary Corp.
Compassionate Bay
Direct Action Everywhere
Los Angeles Alliance for Animals
Our Honor
The Paw Project
Plant-based Advocates – Los Gatos
Poison Free Malibu
Project Counterglow
Recycled Love Dog Rescue
Starfish Animal Rescue
Start Rescue
Take Me Home
Women United for Animal Welfare
Numerous individuals

REGISTERED OPPOSITION:

Animal Health Institute
American Kennel Club
California Animal Welfare Association
California Veterinary Medical Association
Hangtown Kennel Club of Placerville, CA, Inc.
National Animal Interest Alliance
San Diego Humane Society and SPCA
Numerous individuals

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1894 (Luz Rivas) – As Amended April 6, 2022

SUBJECT: Integrated cannabis vaporizer: packaging, labeling, advertisement, and marketing.

SUMMARY: Places additional requirements and restrictions for the packages and labels of integrated cannabis vaporizers, as well as for the advertisement and marketing of those products.

EXISTING LAW:

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

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

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

4) Prohibits cannabis and cannabis product packages and labels from being made to be attractive to children and requires specified language to be prominently displayed in a clear and legible fashion, including a warning that cannabis is a Schedule I controlled substance and various other information depending on the type of product. (BPC § 26120)

5) Requires a cannabis cartridge or integrated cannabis vaporizer to bear a universal symbol and defines "integrated cannabis vaporizer" as a singular device that contains both cannabis oil and an integrated electronic device that creates an aerosol or vapor. (BPC § 26122)

6) Defines "advertisement" as any written or verbal statement, illustration, or depiction which is calculated to induce sales of cannabis or cannabis products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media; except that such term shall not include product label or news publications. (BPC § 26150(b))

7) Defines "advertising sign" as any sign, poster, display, billboard, or any other stationary or permanently affixed advertisement promoting the sale of cannabis or cannabis products which are not cultivated, manufactured, distributed, or sold on the same lot. (BPC § 26150(c))

8) Defines “market” or “marketing” as any act or process of promoting or selling cannabis or cannabis products, including, but not limited to, sponsorship of sporting events, point-of-sale advertising, and development of products specifically designed to appeal to certain demographics. (BPC § 26150(e))

9) Requires that all advertisements and marketing accurately and legibly identify the licensee responsible for its content, by adding, at a minimum, the licensee’s license number, and prohibits an outdoor advertising company from displaying an advertisement by a licensee unless the advertisement displays the license number. (BPC § 26151)

10) Prohibits a cannabis licensee from doing any of the following:

    a) Advertising or marketing in a manner that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.

    b) Publishing or disseminating advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on its labeling.

    c) Publishing or disseminating advertising or marketing containing any statement, design, device, or representation which tends to create the impression that the cannabis originated in a particular place or region, unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement.

    d) Advertising or marketing on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border.

    e) Advertising or marketing cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products.

    f) Publishing or disseminating advertising or marketing that is attractive to children.

    g) Advertising or marketing cannabis or cannabis products on an advertising sign within 1,000 feet of a day care center, school providing instruction in kindergarten or any grades 1 to 12, inclusive, playground, or youth center.

    h) Publishing or disseminating advertising or marketing while the licensee’s license is suspended.

    (BPC § 26152)

11) Prohibits a cannabis licensee from including on the label of any cannabis or cannabis product or publishing or disseminating advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of cannabis consumption. (BPC § 26154)

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

THIS BILL:

1) Requires the package and label of an integrated cannabis vaporizer to prominently display in a clear and legible fashion: "Properly dispose of as household hazardous waste."

2) Prohibits the package and label of an integrated cannabis vaporizer from indicating that it is disposable or implying that it may be thrown in the trash or recycling streams.

3) Requires all advertisement and marketing of an integrated cannabis vaporizer to prominently provide in a clear and legible fashion: "An integrated cannabis vaporizer shall be properly disposed of as household hazardous waste."

4) Prohibits the advertisement and marketing of an integrated cannabis vaporizer from indicating that an integrated cannabis vaporizer is disposable or implying that it may be thrown in the trash or recycling streams.

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

COMMENTS:

Purpose. This bill is sponsored by the **National Stewardship Action Council**. According to the author:

> "To distinguish from the various electronic cigarette products (vapes) on the market, vapes in AB 1894 are defined as a one-time-use, cannabis-oil-filled device with an attached Lithium-ion battery (battery and cartridge in one). The major components of vapes pens are the battery, atomizer, e-liquid, cartridge, and aerosol. While vapes are made largely with recyclable materials, they contain elements of both universal waste including the electronic and the battery, and cannabis which is "special regulated waste." Therefore, these vapes needs to be stored, handled, transported, processed and tracked in ways that comply with state regulations. The wastes from vaping components creates significant environmental issues. Yet, there is no traditional recycling system to collect and properly manage cannabis vapes. While vapes are being marketed as disposable, they are not legally disposable. In order to educate consumers and prevent these vapes from going in the trash, we must stop the marketing of these products in any way that implies they can be disposed of in trash or recycling systems, and are clearly labeled to ensure the consumer is aware they must be disposed of as hazardous waste."

Background.

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

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

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

Integrated Cannabis Vaporizers. The type of product sought to be further regulated by this bill can be simply described as single-use vape pens. According to a report published by Arcview Market Research and Greentank, yearly revenue from the sales of cannabis vaping products has exceeded $1 billion, with the market growing as vaping continues to be a popular way to consume cannabis products. The majority of cannabis vaping products are cartridges that are inserted into reusable vaporizers or vape pens. However, approximately 10 percent of vaping products are vaporizers that combine both the cannabis product and a built-in electronic device that creates the aerosol or vapor, essentially constituting a single-use, all-in-one product.

The issue this bill seeks to address is that the single-use nature of these integrated cannabis vaporizer products creates an implication that the products are "disposable." While they are not easily refilled or reused, these integrated devices contain batteries, and are therefore considered "hazardous waste." According to the California Department of Resources Recycling and Recovery (CalRecycle), batteries are considered hazardous waste when they are discarded because of the metals and other toxic or corrosive materials they contain.

Further exacerbating the issue of consumers inappropriately disposing integrated cannabis vaporizers containing batteries is the fact that some major manufacturers have been found to expressly state that the products are "disposable." The largest manufacturer of these products, which currently sells about 25 percent of vape products in California, sells its integrated vaping products with "DISPOSABLE THC PEN" prominently displayed on the packaging. The author believes that this misleading and potentially hazardous labeling and advertising practice should be prohibited and that consumers should be better informed about how these products should be properly disposed.

Current Related Legislation. AB 1646 (Chen) would allow cannabis beverages to be packaged in containers made of any material. *This bill is pending in the Assembly Committee on Appropriations.*

Prior Related Legislation. AB 1529 (Low, Chapter 830, Statutes of 2019) reduced the minimum size of the universal cannabis symbol required on integrated cannabis vaporizers.

ARGUMENTS IN SUPPORT:

The **National Stewardship Action Council** (NSAC) is sponsoring this bill. According to the NSAC: "Vaping devices have become an increasingly popular method of consuming cannabis. Powered by a battery, these electronics are considered hazardous waste in California and banned from disposal in the trash or recycling. However, many brands instruct consumers to simply throw them away, which results in vapes being improperly disposed of in our materials management system where they have the potential to cause explosions and fires that can endanger people, expensive infrastructure, and the environment. These fires have become more commonplace in the industry, and operators are at risk of losing their insurance coverage."

ARGUMENTS IN OPPOSITION:

The Parent Company opposes this bill unless amended. The Parent Company argues that while they "agree that the message about properly disposing of vaporizers is an important one," they are concerned that "the method for delivering this message is very troubling in the context of other contemporary efforts to crowd more messaging onto the current densely packed cannabis warning labels. The effect of these other efforts cumulatively is to pile on massive amounts of information on products that are small, in most cases not much bigger than 2 by 3 inches."

AMENDMENTS:

1) To allow the cannabis industry time to update its packaging and marketing materials, delay implementation of the bill's requirements until July 1, 2024.

2) To clarify that "household hazardous waste" is not a well-defined term, strike the word "household" and instead provide that the required statements should simply read "hazardous waste."

REGISTERED SUPPORT:

National Stewardship Action Council *(Sponsor)*
California NORML
STIIIZY

REGISTERED OPPOSITION:

The Parent Company

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2102 (Jones-Sawyer) – As Amended March 30, 2022

NOTE: This bill is double referred and previously passed the Assembly Committee on Judiciary with amendments on March 26, 2022, with a 10-0-0 vote.

SUBJECT: Cannabis: facilities used for unlawful purposes.

SUMMARY: Establishes a civil penalty of up to $30,000 per violation for knowingly renting, leasing, or making available a building, room, space, or enclosure for the purpose of unlawfully manufacturing, distributing, or selling cannabis, in addition to the criminal penalty, and authorizes injunctive relief, as specified.

EXISTING LAW:

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

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

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

4) Makes it punishable by imprisonment in county jail up to one year or more, as specified, for any person who has under their management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution. (HSC § 11366.5)

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

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

7) Establishes grounds for disciplinary action against cannabis licensees, including failures to comply with state licensing requirements and 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 relevant license fee for each violation and specifies that each day of operation is a separate violation. (BPC § 26038)

9) Subjects a person aiding and abetting unlicensed commercial cannabis activity to civil penalties of up to $30,000 for each violation and specifies that each day that a person is found to have aided and abetted constitutes a separate violation. (BPC § 26038(a)(2))

THIS BILL:

1) Establishes a civil penalty of up to $30,000 for a person who has management or control of a property, building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the property, building, room, space, or enclosure for the purpose of unlawfully cultivating, manufacturing, selling, storing, or distributing cannabis.

2) Specifies that each day in violation constitutes a separate violation.

3) Authorizes a court to issue an injunction or appoint a receiver to prevent the violation.

4) Authorizes an action under this bill to be brought by the DCC, the office of the Attorney General, or a local jurisdiction.

5) Specifies that, if an action pursuant to this bill is brought by a local jurisdiction, the action may be brought by a county, by a city attorney of a city having a population in excess of 750,000, by a county counsel of a county within which a city has a population in excess of 750,000, by a city attorney in a city and county, or by a city attorney in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.

6) Specifies that the action for civil penalties must be commenced within three years from the date of the first discovery of the violation.

7) Specifies that, if the cause of action is brought by the Attorney General or a state licensing entity, a civil penalty imposed under this bill will be deposited in the Cannabis Fines and Penalties Account, except as follows:

    a) If the cause of action is brought by a local jurisdiction, the civil penalty collected will be paid one-half to the prosecuting entity and one-half to the General Fund.

    b) If the cause of action is brought by the office of the Attorney General or a local jurisdiction, to the extent that their costs have not been recovered under one-half of the penalty, their costs will be deducted from the civil penalty.

8) In addition to the $30,000 penalty, the entity bringing the action may recover the actual costs of investigation, expert witness fees, and reasonable attorney's fees.

9) If the cause of action is brought by the DCC, the recovered costs will be deposited in the Cannabis Control Fund.

10) Provides that a civil penalty imposed under this bill is in addition to any other civil or criminal penalty.

11) Provides that this bill does not limit, preempt, or otherwise affect any other state or local law, rule, regulation, or ordinance applicable to the conduct described in this bill, to a state or

local law, rule, regulation, or ordinance otherwise relating to commercial cannabis activity, or to enforcement under the Unfair Competition Law (BPC §§ 17200-17210).

12) Provides that the remedies or penalties provided in this bill are cumulative to the remedies or penalties available under all other state or local laws.

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, "Existing efforts to curb the illegal cannabis market have been largely unsuccessful. By increasing fines on those who knowingly provide space for illegal businesses to operate, this bill provides another tool in propping up the legal industry and shutting down illegal operations that threaten public health and safety."

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

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

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

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

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

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

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

This bill seeks to increase enforcement against unlawful cannabis businesses by similarly imposing a civil penalty of $30,000 against a person who has management or control of a property who knowingly makes the property available for unlawfully cultivating, manufacturing, selling, storing, or distributing cannabis. It also authorizes a court to issue an order halting the activity (an injunction) or appoint a receiver (the neutral party who takes possession of the property) to prevent the activity. The bill also mirrors some of the procedural mechanisms under MAUCRSA.

Current Related Legislation. AB 2728 (Smith), which is pending in the Assembly, would increase the penalty for unlicensed activity to four times the amount of the required license type, as specified.

Prior Related Legislation. AB 1138 (Rubio), Chapter 530, Statutes of 2021, established the $30,000 penalties for a person who aids and abets unlicensed commercial cannabis activity and associated conditions and mechanisms.

AB 2094 (Jones-Sawyer) of 2020 would have similarly imposed a $30,000 civil penalty on a person who makes property available for unlawful cannabis activity, except that it would not have required that the person do so knowingly.

IMPLEMENTATION ISSUES:

1) *Lack of Clarity in the Distribution of the Collected Penalties*. Due to the way the provisions are structured, and, according to a local jurisdiction, a typo, the cost recovery provisions under the bill allow for duplicative cost recovery methods and are otherwise unclear. If this bill passes this committee, the author may wish to amend that provision for clarity, for example:

> (c)~~(1)~~ *In addition to the penalty provided in subdivision (a), the entity bringing the action may recover the actual costs of investigation, expert witness fees, and reasonable attorney's fees.*
>
> *(d)(1) If the cause of action is brought by the department, the recovered costs shall be deposited in the Cannabis Control Fund.*
>
> (2) If the cause of action is brought by the Attorney General or a state licensing entity, a civil penalty imposed pursuant to this section shall be deposited in the

Cannabis Fines and Penalties *Account, except as follows:* ~~Account and distributed pursuant to subdivision (d) of Section 26210, except as specified in paragraph (2), (3), or (5).~~

~~(2)~~ *(A)* If the cause of action is brought by a local jurisdiction, one-half of the civil penalty collected shall be paid ~~one-half~~ to the prosecuting entity. ~~entity and one-half pursuant to paragraph (1)~~

~~(3) In addition to the penalty provided in subdivision (a), the entity bringing the action may recover the actual costs of investigation, expert witness fees, and reasonable attorney's fees.~~

~~(4) If the cause of action is brought by the department, the recovered costs shall be deposited in the Cannabis Control Fund, established in Section 26210.~~

~~(5)~~ *(B)* If the cause of action is brought by the office of the Attorney General or a local jurisdiction, to the extent that their costs have not been fully recovered pursuant to paragraph (2), ~~their costs shall be deducted from the civil penalty.~~ *civil penalties collected from the defendant shall first be used to pay the outstanding costs, with the remainder of the collected funds used to satisfy the penalty portion of the judgment or settlement.*

2) *Typo*. In subdivision (e), the bill, it states "This section dos not limit…." If this bill passes this committee, the author may wish to amend the bill to change "dos" to "does."

ARGUMENTS IN SUPPORT:

The *Parent Company/Caliva* writes in support:

> Since the onset of the legal cannabis industry, the most persistent and pernicious problem has been the thriving black market, which has kept the legal market from realizing its potential, forced many legal businesses into financial tailspins and reduced the cannabis taxes flowing to youth drug prevention and other services.
>
> Reports indicate upwards of 70% of the ongoing cannabis market is illicit. Businesses operating illegally have a major advantage over licensed businesses because they do not comply with state regulations, do not pay state or local taxes and offer their untested products at a substantially lower price. Those who are caught often conclude that the consequences of acting as an unlicensed entity are simply a cost of doing business; this has made enforcement challenging, forcing state and local enforcers to play whack a mole with illegal operators who shut down today and reopen somewhere else tomorrow. We do not believe that landlords will have a similar cavalier attitude about the "cost of doing business."
>
> [This bill] seeks to constrain illegal operators by directly penalizing those who provide space for conducting illicit operations. The effect of the measure would be to punish those who are supporting an illegal business and discourage others from providing space to an illegal operator, thus helping to freeze out unlicensed cannabis businesses.

ARGUMENTS IN OPPOSITION:

None on file

AMENDMENTS:

No amendments are being proposed, but if this bill passes this Committee, the author may wish to continue to work with stakeholders on the suggested amendments under the implementation issues.

REGISTERED SUPPORT:

California Narcotic Officers' Association
The Parent Company/Caliva

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2224 (McCarty) – As Amended March 24, 2022

SUBJECT: Real estate: transactions: iBuyers.

SUMMARY: Requires online real estate platforms, known as iBuyers, to work with a local real estate agent when selling real property in California.

EXISTING LAW:

1) Provides that it is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement. (Business and Professions Code (BPC) § 10130)

2) Defines a real estate broker as a person who, for a compensation or in expectation of a compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

    a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or buyers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of real property or a business opportunity.

    b) Leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase, or exchanges of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities.

    c) Assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government.

    d) Solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

    e) Sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

(BPC § 10131)

3) Specifies that acts described in Section 10131 are not acts for which a real estate license is required if performed by:

    a) A regular officer of a corporation or a general partner of a partnership with respect to real property owned or leased by the corporation or partnership, respectively, or in connection

with the proposed purchase or leasing of real property by the corporation or partnership, respectively, if the acts are not performed by the officer or partner in expectation of special compensation.

b) A person holding a duly executed power of attorney from the owner of the real property with respect to which the acts are performed.

c) An attorney at law in rendering legal services to a client.

d) A receiver, trustee in bankruptcy or other person acting under order of a court of competent jurisdiction.

e) A trustee for the beneficiary of a deed of trust when selling under authority of that deed of trust.

f) The exemptions in subdivision (a) are not applicable to a person who uses or attempts to use them for the purpose of evading the provisions of this part.

(BPC § 10133)

THIS BILL:

1) Defines "iBuyer" as an online real estate platform that uses algorithms or other technology to buy and sell real property directly from and to private sellers and buyers.

2) Defines "local real estate agent" as a real estate licensee under this division whose place of business or practice is located in the county in which the real property to be sold is located.

3) Requires an iBuyer work with a local real estate agent when selling and completing a sale of real property located in California.

4) Exempts from this requirement the initial sale of real property containing new construction.

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

COMMENTS:

Purpose. This is an author-sponsored bill. According to the author, "In recent years, iBuyers have increased their activity in the real estate market, with their home purchases outpacing sales. These companies are holding onto an increasing number of properties, with some becoming vacant and inviting illicit activity into our neighborhoods. AB 2224 would require an iBuyer to work with a local real estate agent when selling property in California, ensuring proper oversight of these homes when they are in the process of being sold."

Background. The traditional method of how residential properties are bought and sold is changing. Traditionally, when an individual decides to sell or purchase a piece of real property, the seller or buyer would hire a licensed real estate agent to represent them in a transaction. Under existing law, real estate agents are licensed by the state to conduct various licensed activity, including negotiating sales agreements and managing documentation associated with closing the transaction. An "iBuyer," or instant buyer, is typically an online-based company that uses algorithms and technology to purchase and resell residential property. Real estate

transactions involving an iBuyer are typically streamlined, when compared to traditional methods of completing a sale, and often occur entirely online.

In instances in which an owner of real property decides to sell their property to an iBuyer, the individual typically provides the property's address and information of the property through the completion of a questionnaire provided by the iBuyer. In turn, the iBuyer uses the information provided via the questionnaire, along with other data and an algorithm, to determine the home's value. Once that determination has been made, the iBuyer will provide an offer – sometimes an all-cash offer – to the owner of the property, typically within the next 24 hours. If the owner accepts the offer, the transaction can close in a couple of days.

Purchasing property from an iBuyer is typically streamlined when compared to the traditional process, largely because the property is owned in whole by the iBuyer. Similar to the traditional process, individuals may enter the purchasing process with an all cash offer, get preapproved for a mortgage through a lending provider, or securing financing through an iBuyer's lending division. Individuals have the option to make an offer through a real estate agent, or can make an offer directly to the iBuyer.

Current Related Legislation. AB 1837 (Bonta, 2022) would strengthen an existing process related to the acquisition of homes in foreclosure proceedings by prospective owner-occupants, tenants, nonprofit organizations and public entities (also known as the "SB 1079 process") to prevent fraud and requires the trustee in any foreclosure home sale to report information to the Department of Justice (DOJ) about the winning bidder. This bill would allow the DOJ, city attorney, district attorney or county counsel to bring action to enforce the SB 1079 bidding process. *This bill is pending in Assembly Appropriations Committee.*

AB 2170 (Grayson, 2022) This bill would mirror the federal First Look program in state law. The bill would require that for the first thirty days a foreclosed property is listed for sale, that only offers from eligible bidders be considered. Eligible bidders would be a prospective owner-occupant, a California based 501(c)(3) non-profit, a California based community land trust or a limited-equity housing cooperative. *This bill is pending in Assembly Judiciary Committee.*

AB 2710 (Kalra, 2022) This bill would enact the Stable Homes Act which requires an owner of residential real property to notice each tenant of that property and qualified organizations, as defined, of their intent to sell. If any of the notified parties express interest in purchasing the property themselves, then the owner must provide them with a disclosure package and the interested party would have sixty days to submit an official offer. While the owner may reject an offer from qualified entities in favor of an offer from a non-qualified entity, the owner must notify the qualified entities to allow them to invoke its right of first refusal to match the offer. *This bill is pending in Assembly Housing and Community Development Committee.*

Prior Related Legislation. SB 1079 (Skinner, Chapter 202, Statutes of 2020) until January 1, 2026, requires the notice of sale also contain a specified notice to a tenant regarding the tenant's potential right to purchase a property containing from 1 to 4 single-family residences pursuant to a process the bill would prescribe. The bill allows residents of a foreclosed property or non-profit organizations a window to match the bid of investors at foreclosure auctions.

POLICY ISSUE(S) FOR CONSIDERATION:

The bill's definition of an "iBuyer" is broad and lacks clarity for various situations involving residential sales. The term "online real estate platform" also lacks clarity and could unintentionally be applied to other platforms used by a diverse population of homebuyers and renters. This bill does not address specific platforms that should be subject to the proposed requirements. Due to the vagueness of the current definition, it could be interpreted to include any person across the country, including individuals and entities that has a website, social media site or account, etc. to buy or sell their own property. This could also include any person that is also already licensed as a real estate broker in California.

AMENDMENTS:

To address the policy issues raised above, the author should amend the bill with the following language:

1290. (a) An iBuyer shall work with a local real estate ~~agent~~ ***broker*** when selling and completing a sale of real property located in California.

(b) The requirement in subdivision (a) does not apply to the initial sale of real property containing new construction.

(c) ~~For purposes of this section, "iBuyer" means an online real estate platform that uses algorithms or other technology to buy and sell real property directly from and to private sellers and buyers.~~ ***For purposes of this section, "iBuyer" means an online real estate company that utilizes an automated valuation model to identify and then purchase a residential or commercial property.***

For the purpose of this section, "automated valuation model" means a computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that produces an estimate of the value of a residential or commercial property.

(d) For purposes of this section, "local real estate ~~agent~~ ***broker***" means a real estate licensee under this division whose place of business or practice is located in the county in which the real property to be sold is located.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2374 (Bauer-Kahan) – As Amended April 7, 2022

NOTE: This bill is double referred and passed out of the Assembly Public Safety Committee on April 5, 2022, by a vote of 7-0-0.

SUBJECT: Crimes against public health and safety: illegal dumping.

SUMMARY: Increases the maximum fines for illegal dumping for persons employing more than 10 full-time employees, and requires any person convicted of illegal dumping to remove or pay the cost of removing the waste matter they were convicted of illegally dumping.

EXISTING LAW:

1) States that it is unlawful to dump or cause to be dumped waste matter in or upon a public or private highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or upon private property without the consent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property. (Penal Code (PEN) § 374.3(a))

2) Provides it is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, rocks, concrete, asphalt, or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or private property, without the consent of the owner or a contractor under contract with the owner for the materials, or in or upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. (PEN § 374.3(b))

3) States that a person violating dumping provisions is guilty of an infraction. Each day that waste is placed, deposited, or dumped in violation the law is a separate violation. (PEN § 374.3(c))

4) Provides that illegal dumping prohibitions do not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies. (PEN § 374.3(d))

5) Punishes a person convicted of dumping shall by a mandatory fine of not less than $250 nor more than $1,000 upon a first conviction, by a mandatory fine of not less than $500 nor more than $1,500 upon a second conviction, and by a mandatory fine of not less than $750 nor more than $3,000 upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled. (PEN § 374.3(e))

6) Provides that the court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation the probationer remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property. (PEN § 374.3(f))

7) States that except when the court requires the convicted person to remove waste matter for which he or she is responsible for dumping as a condition of probation, the court may require the probation to pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours. (PEN § 374.3(g))

8) States that a person who illegally dumps waste matter in commercial quantities is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than $1,000 nor more than $3,000 upon a first conviction, not less than $3,000 nor more than $6,000 upon a second conviction, and not less than $6,000 nor more than $10,000 upon a third or subsequent conviction. (PEN § 374.3(h)(1))

9) Defines "commercial quantities" as an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. (PEN § 374.3(h)(2))

10) Defines "person" to mean an individual, trust, firm, partnership, joint stock company, joint venture, or corporation. (PEN § 374.3(i))

11) Specifies that except in unusual cases where the interests of justice would be best served by waiving or reducing a fine, the minimum fines shall not be waived or reduced. (PEN § 374.3(j))

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

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

14) Specifies that willful or deliberate disregard and violation of Penal Code Section 374.3 or any substantially similar law or ordinance that is promulgated by a local government agency as defined in Section 82041 of the Government Code, constitutes a cause for disciplinary action against a licensee. (BPC § 7110)

15) Requires a licensee to report to the registrar in writing the occurrence of any of the following within 90 days after the licensee obtains knowledge of the event:

    a) The conviction of the licensee for any felony.

    b) The conviction of the licensee for any other crime that is substantially related to the qualifications, functions, and duties of a licensed contractor.

    (BPC § 7071.18)

16) States that a conviction of a crime substantially related to the qualifications, functions and duties of a contractor constitutes a cause for disciplinary action. (BPC § 7123)

17) Requires the Registrar to make available to the public the date, nature, and disposition of all legal actions, subject to the following:

    i) Limits the disclosure of legal actions for citations from the date of issuance for five years after the date of compliance if no additional disciplinary actions have been taken against the licensee during that period;

    ii) Limits the disclosure of accusations that result in suspension, stayed suspension, or stayed revocation of the contractor's license from the date accusation is filed for seven years if no additional disciplinary actions have been taken against the licensee during that period; and

    iii) All revocations that are not stayed shall be disclosed indefinitely from the effective date of the revocation.

    (BPC § 7124.6(d)-(e))

18) Defines "waste matter" to mean discarded, used, or leftover substance including, but not limited to, a lighted or nonlighted cigarette, cigar, match, or any flaming or glowing material, or any garbage, trash, refuse, paper, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard. (PEN § 374)

THIS BILL:

1) Increases the maximum mandatory fine for illegally placing, depositing, dumping, or causing to be placed, deposited or dumped, waste matter in commercial quantities by a person employing more than 10 full-time employees, as follows:

    a) From not more than $1,000 for the first offense to not more than $5,000;

    b) From not more than $3,000 for the second conviction to not more than $10,000; and,

    c) From not more than $6,000 for a third or subsequent conviction to not more than $20,000.

2) Requires the court to order the person convicted of illegal dumping, as specified, to remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped on public or private property.

3) Requires the court, if that person holds a license or permit to conduct business that is substantially related to the conviction, to notify the applicable licensing or permitting entity, if any, that a licensee or permittee had been convicted of illegal dumping.

4) Requires the licensing or permitting entity to record and post the conviction on the public profile of the licensee or permittee on the entity's website.

5) Provides that when setting fines, the court shall consider the person's ability to pay, including but not limited to, consideration of:

   a) The defendant's present financial position;

   b) The defendant's reasonably discernible future financial position, as specified;

   c) The likelihood that the defendant will be able to obtain employment within one year from the date of the hearing; and

   d) Any other factor that may bear upon the defendant's financial capability to pay the fine.

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

COMMENTS:

Purpose. This bill is sponsored by *Contra Costa County*. According to the author, "[This bill] raises fines on illegal dumping of commercial quantities up to $5,000 upon first conviction, up to $10,000 on a second conviction, and up to $20,000 on third or subsequent conviction. Additionally, the bill will give judges discretion to require the convicted to pay for the removal of their illegal dumping…and allow for that person's name and name of the business to be publicly displayed as convicted of illegal dumping. By upping the fines and providing tools for the courts to publicly hold violators accountable for committing these acts, we disincentivize actors and create public knowledge on who not to work with. The illegal dumping of trash, furniture, mattresses, appliances, and toxic materials is out of control in both our rural and urban areas – it isn't just unsightly, it is putting the health of our communities and environment at risk. Illegal dumping also contributes to a loss of community pride, discourages investment and development, decreases property values, and increases a community's vulnerability to crime. Every Californian deserves the right to live in clean, garbage-free neighborhoods and it is time we take action."

Background.

Illegal Dumping. Illegal dumping is the disposal of waste matter, commonly mattresses, tires, appliances, and construction debris, at an unpermitted location. Often done out of convenience or for economic gain, illegal dumping causes significant social, environmental, and economic costs statewide. Local government spends tens of millions of dollars each year to remove illegally disposed materials, and private property owners also incur significant costs for the removal of dumped waste matter. If left undealt with, a single act of illegal dumping can often lead to more widely used illegal solid waste disposal sites.

Illegal dumping is subject to investigation, cleanup, and enforcement by CalRecycle and local code enforcement departments. No state or local entity is solely responsible for combatting and responding to illegal dumping, resulting in a wide variety of responses across the state from law enforcement, public works, and code enforcement.

In 2006, the California Integrated Waste Management Board (now CalRecycle) established an illegal dumping enforcement task force to evaluate the problem of illegal dumping and to consider potential abatement strategies. Now a technical advisory committee comprised of

voluntary members, the Illegal Dumping Technical Advisory Committee continues to assess the scope of illegal dumping in California and share its findings and best practices.

The Contractors State License Board (CSLB). This bill would require the court to notify the applicable licensing or permitting entity of a licensee or permittee's conviction related to illegal dumping and require the licensing or permitting entity to record and post the conviction on its website. Although this bill applies broadly to all professions and licensing entities, it largely pertains to CSLB, which is currently authorized to discipline the license of a contractor who unlawfully dumped construction debris. Under existing law, contractors are required to notify CLSB of a conviction within 90 days, and a conviction of a construction-related crime is a cause of disciplinary action, subject to public disclosure.

Current Related Legislation.

AB 2447 (Quirk) of 2022 would prohibit the disposal of produced wastewater into unlined ponds and the construction of new unlined ponds, except as conducted pursuant to a permit or other authorization lawfully issued before that date, and would also prohibit the issuance or renewal of a permit or other authorization for those activities. AB 2247 is currently pending in the Assembly Committee on Natural Resources.

SB 995 (Nielsen) of 2022 would make it a misdemeanor to place, deposit, or dump hazardous, medical, or human waste in or upon the navigable waters of this state, or to place, deposit, or load it upon a vessel, with intent that it be dumped or deposited in or upon the navigable waters of this state or at any point in the ocean within 20 miles of the coastline. SB 995 is currently pending in the Senate Committee on Environmental Quality.

Prior Related Legislation.

AB 246 (Quirk) Chapter 46, Statutes of 2021, made a licensed contractor's unlawful dumping of debris a cause for disciplinary action against the contractor.

AB 215 (Mathis) of 2019 would have made a fourth violation of illegal dumping on private property a misdemeanor punishable by up to 30 days in county jail or a fine of not less than $750 nor more than $3,000. AB 215 was held in the Assembly Appropriations Committee.

AB 1216 (Bauer-Kahan) of 2019 would have created a pilot program to employ a single law enforcement officer in both Alameda and Contra Costa counties to enforce laws prohibiting dumping. AB 1216 was held in the Assembly Appropriations Committee.

SB 409 (Wilk) of 2019 would have increased the fines for dumping of waste in non-commercial quantities and made it unlawful for a property owner to receive waste matter if a permit or license is required from a state or local agency and was not obtained prior to receiving the waste matter. SB 409 was held in the Assembly Appropriations Committee.

AB 144 (Mathis) of 2015 would have made a fourth violation of illegal dumping on private property a misdemeanor punishable by up to 30 days in the county jail. AB 144 was vetoed by the Governor.

AB 1992 (Canciamilla), Chapter 416, Statutes of 2006, imposed graduated penalties and increased fines for second and third violations of illegal dumping offenses.

ARGUMENTS IN SUPPORT:

As the sponsor of this bill, *Contra Costa County* writes, "Illegal dumping has been a serious problem in Contra Costa County—and throughout California—for many years. Illegal dumping occurs when solid wastes are discarded or caused to be dumped or placed on any property, either public or private, without proper authorization or legitimate purpose. Illegal dumping is a crime of convenience, usually done for economic gain, and often by repeat offenders. Illegal dumping is an increasing problem that poses significant health, social, environmental, and economic impacts to communities. Specifically, illegal dumping contributes to a loss of community pride, discourages investment and development, decreases property values, and increases a community's vulnerability to crime. Unfortunately, existing penalties do not serve as an adequate deterrent and prosecuting these cases is challenging for a variety of reasons."

The *California Police Chiefs Association* writes in support, "Illegal dumping continues to be a growing problem for our communities. In addition the negative environmental impacts, research has tied illegal dumping to quality of life issues and social disorganization. Increasing accountability to address these deleterious consequences will help hold those responsible accountable for their actions, and improve our efforts to combat this ongoing problem."

The *East Bay Municipal Utility District* writes in support, "Illegal dumping is a problem throughout California. EBMUD manages approximately 50,000 acres in the East Bay and the Mokelumne River watersheds and recognizes that illegal dumping has the potential to impact EBMUD watersheds and water quality. AB 2374 provides additional enforcement tools that will disincentivize illegal dumping and could aid property owners, such as EBMUD, by reducing the costs of cleaning up illegally dumped waste."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association
Central Contra Costa Sanitary District
Contra Costa County
Contractors State License Board
East Bay Municipal Utility District
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force
Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2568 (Cooley) – As Introduced February 18, 2022

NOTE: This bill is double referred and previously passed the Assembly Committee on Insurance on an 11-0-3 vote.

SUBJECT: Cannabis: insurance providers.

SUMMARY: Expressly provides that licensees of the California Department of Insurance (CDI) are not committing a crime under California law solely for providing insurance or related services to persons licensed to engage in commercial cannabis activity.

EXISTING LAW:

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

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

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

4) 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)

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

6) Establishes the Insurance Code, which contains a comprehensive regulatory program for the insurance industry, including insurance agents and brokers, administered by an elected Insurance Commissioner (Commissioner) as head of the CDI. (Insurance Code (INS.) §§ 1 *et seq.*)

7) Provides for the licensing and regulation of insurance agents and brokers, either as individuals or as a business organization, by CDI. (INS. §§ 1631 *et seq.*)

THIS BILL:

1) Provides that an individual or firm licensed by the CDI does not commit a crime under California law solely for providing insurance or related services to persons licensed to engage in commercial cannabis activity pursuant to MAUCRSA.

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

COMMENTS:

Purpose. This bill is sponsored by **Insurance Commissioner Ricardo Lara**. According to the author:

> "For over 25 years, California has permitted the use of cannabis. As the commercial market has grown, so has the need for insurance for cultivators, testing labs, and retail. Currently only one admitted insurer provides insurance for cannabis in California. While there are many surplus line insurers that provide insurance, their policies only cover the retail market. Cultivation and testing coverage, which requires the cooperation of admitted insurers to provide a product, is not covered. As a result, there is a shortage of providers and coverage in the California cannabis marketplace.
>
> "The hesitancy of insurance providers to provide insurance for commercial cannabis is attributed to risk, since cannabis is classified as a Schedule I substance under the Federal Controlled Substances Act. Therefore, much of the insurance available in California is from surplus lines. This does not align with the federal government's longstanding determination that it is in the public's interest for states to regulate their own insurance marketplaces. Further, the argument has been refuted in federal case law brought about in Green Earth Wellness Center v. Attain Specialty Insurance Company (2016), which established that federal classification of cannabis is not relevant in an insurance provider's determination to write an insurance policy.
>
> "It is important that commercial cannabis businesses have multiple options for insurance as they pursue licensure. AB 2568 clarifies that writing insurance for commercial cannabis does not constitute a crime, since cannabis is part of a legal, regulated market in California. This clarity will provide assurances to admitted insurers that they will not be in violation of any regulations and encourage them to provide an insurance product."

Background.

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

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

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

Federal Illegality. While California has allowed for some form of lawful cannabis consumption since 1996 when the voters approved Proposition 215, or the Compassionate Use Act, cannabis cultivation, sale, and consumption continues to be illegal federally under the Controlled Substances Act (CSA). The CSA classifies cannabis as a Schedule I drug ineligible for prescription. The potential for by the federal government has historically created apprehension among California's cannabis community, even as the state's legal industry has grown in recent years.

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.

Insurance Providers. Issues related to cannabis's federal Schedule I status have arisen in specific regard to the provision of insurance, which is to a large extent also federally regulated. The surplus line insurance market is available to provide insurance that is not available in the admitted market. In the surplus line market, brokers are licensed by CDI, but insurance companies are not. Prior to placing insurance coverage with a surplus line insurer, brokers must ensure that insurance is not generally available from admitted insurers qualified to write that type of insurance. The availability of surplus line insurance fills a market gap for purchasers, the majority of which are commercial entities. Surplus line insurance can provide, for instance, coverage for liability, earthquake, and errors and omissions, among other risks.

Currently, insurance for retail cannabis in California is primarily provided by the surplus line insurance market. According to the CDI cannabis insurance list, there is currently only one admitted insurer providing insurance for cannabis businesses. While there are many surplus line insurers, these policies only cover the retail market and do not cover cultivation or testing, which would require the cooperation of admitted insurers to provide a product. As a result, there is a shortage in the marketplace of providers available to cannabis businesses, especially those primarily engaged in cultivation or testing.

This bill is intended reassure admitted insurers that they do not violate California law if they provide insurance products to cannabis businesses. The author believes doing so will help address the shortage of insurance options for the lawful cannabis industry.

Prior Related Legislation. AB 1525 (Jones-Sawyer, Chapter 270, Statutes of 2020) clarified that no state law prohibits a financial institution from providing financial services to a licensed cannabis business.

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:

Insurance Commissioner Ricardo Lara supports this bill, writing: "This bill would create a "safe harbor" that clarifies, under California law, it is not a crime solely for individuals and insurance companies licensed by the California Department of Insurance to provide insurance or related services to persons licensed to engage in commercial cannabis activity in California." The Insurance Commissioner further argues that "the clarity in law being pursued in AB 2568 should provide assurances to admitted insurance carriers that they will not be in violation of California law solely for providing insurance or related services to a commercial cannabis business."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Insurance Commissioner Ricardo Lara *(Sponsor)*
Origins Council

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2606 (Carrillo) – As Introduced February 18, 2022

SUBJECT: Cats: declawing procedures: prohibition.

SUMMARY: Prohibits any person, including a veterinarian, from performing a declawing procedure or a tendonectomy on any cat, or otherwise altering a cat's toes, claws, or paws in a way that prevents or impairs their normal function, except when there is a therapeutic purpose.

EXISTING LAW:

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

2) Prohibits an individual from performing, or arranging for the performance of, surgical claw removal, declawing, onychectomy, or tendonectomy on any cat that is a member of an exotic or native wild cat species, with the exception of procedures performed solely for a therapeutic purpose. (PEN. § 597.6)

3) Establishes the Veterinary Medicine Practice Act for the regulation and oversight of licensed veterinarians by the Veterinary Medical Board of California (Board). (Business and Professions Code (BPC) §§ 4800 *et seq.*)

4) States that a person practices veterinary medicine whenever they perform a surgical or dental operation upon an animal. (BPC § 4826)

5) Prohibits a local government from prohibiting a licensed healing arts professional from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee. (BPC § 460)

6) Prohibits property managers from refusing to rent real property to an individual who refuses to declaw or devocalize an animal. (Civil Code § 1942.7)

7) Provides for the general regulation of cats, with specific requirements and prohibitions placed on public animal control agencies, shelters, and rescue groups. (Food and Agricultural Code §§ 31751 *et seq.*)

THIS BILL:

1) Defines "cat" as an animal of the taxonomic family felidae, except an animal that is a member of an exotic or native wild cat species.

2) Defines "declawing" as an onychectomy or any other surgical procedure to amputate or modify a portion of a cat's paw in order to remove the cat's claws.

3) Excludes from the definition of "declawing" the trimming of nonviable claw husk or placing nonpermanent nail caps.

4) Defines "tendonectomy" as a procedure in which the tendons to a cat's limbs, paws, or toes are cut or modified so that the normal functioning of the claws is impaired.

5) Defines "therapeutic purpose" as a medically necessary procedure to address an existing or recurring infection, disease, injury, or abnormal condition in the claw that jeopardizes the cat's health.

6) Excludes from the definition of "therapeutic purpose" a procedure performed for a cosmetic or aesthetic purpose or to make the cat more convenient to keep or handle.

7) Prohibits any person from performing surgical claw removal, declawing, or a tendonectomy on any cat, or otherwise altering a cat's toes, claws, or paws to prevent or impair the normal function of the cat's toes, claws, or paws.

8) Exempts from the prohibition against declawing or tendonectomy procedures a procedure performed solely for a therapeutic purpose.

9) Provides that violations of the bill's prohibitions shall be subject to a civil penalty of $500 for the first violation, $1,000 for the second violation, and $2,500 for the third and any subsequent violation.

10) Declares that the bill does not preempt any local ordinance adopted before January 1, 2022 prohibiting surgical claw removal, declawing, or a tendonectomy on any cat, or otherwise prohibiting the altering of a cat's toes, claws, or paws to prevent the normal function of the cat's toes, claws, or paws, or imposing a more severe penalty for performing such an action.

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

COMMENTS:

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

> "Elective declawing is a cruel and painful series of amputations, with absolutely no benefit to the animal. Declawing can lead to unwanted behaviors like litter box avoidance, and biting. These unintended consequences can cause cats to lose their homes and can destroy the human-animal bond. This bill aims to protect animals from the risk of pain and life-long complications."

Background.

Cat Declawing. Speaking generally, "declawing" refers to any procedure intended to prevent an animal from using its claws, through removal of either the claws or the animal's ability to use them. Onychectomy involves removing an animal's claws through a surgery that may include the amputation of bone through nail trimmers, scalpels, or lasers. Tendonectomy is a procedure performed for a similar purpose in which a cat's tendons are severed to prevent a cat from extend its claws.

According to data provided by the author, an estimated 20-24% of cats in the United States have been declawed. Declawing is performed on domesticated cats to prevent the animal from scratching humans or other animals, as well as furniture and other possessions within a home. Studies indicate that many individuals who declaw their cats would likely give up their pets if the

scratching were allowed to continue, and surveys have demonstrated that pet owners believe their relationships with their cats improve following declawing. However, the author has provided data suggesting the relinquishing of cats has decreased in cities that banned declawing.

Notwithstanding the asserted benefits of declawing domesticated cats, there have long been criticisms that declawing is inherently inhumane toward cats when done purely for the convenience of an owner. There is an assumption that declawing is a painful or uncomfortable procedure for cats, though the extent to which this is true remains to be a matter of medical consensus. The author believes that the procedure is "analogous to cutting off each finger or toe at the last joint." Complications can also arise as a result of the procedure, as with any other invasive surgery performed on an animal.

In January of 2020, the American Veterinary Medical Association (AVMA) revised its formal policy regarding the declawing of domestic cats. Previously, the AVMA focused on encouraging client education prior to consideration of declawing procedures, citing scientific data indicating that cats that have destructive scratching behavior are more likely to be euthanatized or abandoned. The new policy continues to defer to a veterinarian's professional judgment, while more strongly discouraging elective declawing. The full text of the statement is as follow:

> "The AVMA discourages the declawing (onychectomy) of cats as an elective procedure and supports non-surgical alternatives to the procedure. The AVMA respects the veterinarian's right to use professional judgment when deciding how to best protect their individual patients' health and welfare. Therefore, it is incumbent upon the veterinarian to counsel the owner about the natural scratching behavior of cats, the alternatives to surgery, as well as the details of the procedure itself and subsequent potential complications. Onychectomy is a surgical amputation and if performed, multi-modal perioperative pain management must be utilized."

Historically, the overall lack of scientific consensus as to what constitutes an appropriate clinical context for claw removal, as well as a lack of moral consensus about whether the procedure should be generally prohibited on a humanitarian basis, has led to active debates in various local jurisdictions, as well as within foreign governments. Australia, Austria, Brazil, Croatia, Germany, Ireland, New Zealand, Norway, Sweden, Switzerland, and the United Kingdom have all banned declawing in some way. Meanwhile, Los Angeles, San Francisco, Berkeley, Burbank, Culver City, West Hollywood, Santa Monica, and Beverly Hills have all banned declawing.

However, in 2008, legislation was introduced in California in response to concerns about local governments enacting their own local ordinances to carve away portions of licensed scope of practice authorized at the state level. Following litigation by the California Veterinary Medical Association (CVMA) against the City of West Hollywood over its local ban on declawing, the CVMA sponsored AB 2427 (Eng) of 2008 to expressly state that it is unlawful for a locality to prevent a healing arts licensee from engaging within the licensed scope of their practice. Supported by a broad range of healing arts professional associations beyond veterinary medicine, this bill effectively stopped the trend of local governments banning declawing within their jurisdictions.

Existing law within the Veterinary Medicine Practice Act already prohibits any non-veterinarian from performing surgical procedures, including declaw procedures. The measure before this committee would prohibit any person, regardless of whether they are a licensed veterinarian, from performing an onychetomy, tendonectomy, or similarly disruptive procedures on any

animal. Violations would be subject to specified civil penalties. Only a "therapeutic purpose," as defined, would allow a licensed veterinarian to perform the procedures, and only an animal's physical medical condition would provide that justification. The veterinarian would not be allowed to consider the health of the cat's owner or any other factors in determining whether a procedure should be performed.

Prior Related Legislation. SB 585 (Stern) of 2021 would have prohibited an individual from declawing a cat except for a therapeutic purpose and imposed a penalty for a violation. *This bill died in the Senate Committee on Business, Professions, and Economic Development.*

AB 1230 (Quirk) of 2019 would have prohibited a veterinarian from performing a declawing on any cat or any other animal except for a therapeutic purpose. *This bill failed passage in this committee.*

SB 1441 (Stern) of 2018 would have prohibited a person from performing the surgical declawing of a domestic cat. *Failed passage in the Senate Public Safety Committee*.

SB 1229 (Pavley, Chapter 596, Statutes of 2012) prohibits a landlord, that allows a tenant to have an animal on the premises, from advertising or establishing rental policies in a manner that requires a tenant or a potential tenant with an animal to have that animal declawed or devocalized as a condition of occupancy.

ARGUMENTS IN SUPPORT:

The **Paw Project** is sponsoring this bill. The Paw Project writes: "Elective declawing is a cruel and painful series of amputations, with absolutely no benefit to the animal. Unlike human nails, which grow from skin, cat claws grow from bone. Therefore, amputation of the last bone in each toe is necessary to remove the claws. Declawing can lead to unwanted behaviors like litter box avoidance (because it hurts the cat's amputated toe stumps to dig in the sand), and biting (because the cat has no other way to defend itself). These unintended consequences can cause cats to lose their homes and can destroy the human-animal bond. Removing toe bones often leads to permanent health problems including chronic pain, lameness, nerve damage, infection, back pain, and inflammation."

ARGUMENTS IN OPPOSITION:

The **California Veterinary Medical Association** (CVMA) opposes this bill. The CVMA argues that the bill "would effectively embed into the Veterinary Medicine Practice Act the tenet that clinical decision-making is no longer safeguarded to licensed veterinarians in accordance with their knowledge, expertise, and medical judgment." The CVMA believes that this bill "ignores situations such as those involving cat-owning individuals (or family members of those individuals) taking blood thinners, receiving immunosuppression drugs, or other persons whose health would be endangered by a severe scratch." The CVMA also argues that the bill is "fundamentally unnecessary inasmuch as the veterinary medical profession has appropriately regulated itself regarding this procedure over the years, and continues to do so in a thoughtful and compassionate manner."

POLICY ISSUE(S) FOR CONSIDERATION:

Interference with Professional Judgement. This bill's opposition points out that legislation specifically prohibiting a healing arts licensee from engaging in a procedure that the licensee is trained to perform is exceptionally rare. While many procedures are frequently discouraged or reserved for only certain situations, statute generally provides licensees with the discretion to determine whether the procedure is appropriate based on the specifics of the situation. This tendency to avoid "legislating the practice of medicine" is rooted in the common denominator for most healing arts regulation, in which practitioners are not expected to follow step-by-step directions outlined in statute when engaged in clinical practice, but are instead entrusted with freedom to exercise their judgement, as guided by extensive education and training. However, this bill does leave it up to each individual veterinarian to determine whether there is a therapeutic purpose for declawing from the perspective of the animal patient, which arguably retains the appropriate level of deference to professional judgment.

Disciplinary Consequences. The bill makes any person who violates the bill subject to a civil penalty. However, under the Veterinary Medicine Practice Act, it is already unlawful for anyone who is not a licensed veterinarian to perform a surgical procedure. As a result, this bill would be providing for new unlawful conduct by a veterinarian, subject to a civil penalty instead of discipline by the Board. There does not appear to be a cogent reason for this form of penalty being used to discipline professionals already subject to oversight by their licensing board.

REGISTERED SUPPORT:

The Paw Project *(Sponsor)*
Actors and Others for Animals
Alley Cat Allies
Animal Health Care Center
Animals in Need Rescue Network, Inc.
Anivive Lifesciences
California Animal Welfare Association
Cassie's CATS
Cat Connection
Cat Town
City of Los Angeles Councilmember Paul Koretz
City of West Hollywood
Crooked Tails Senior Rescue
Democrats for The Protection of Animals
Dining4Animals
Feline Minds Cat Behavior Consulting
Feral Cat Caretakers Coalition
Fix Nation
Humane America Animal Foundation
Humane Society of The United States
Humane Society Veterinary Medical Association
In Defense of Animals
Island Cat Resources and Adoption
Jameson Humane
Kindred Spirits Care Farm

Kitt Crusaders
Kitten Rescue
Latino Alliance for Animal Care Coalition
Nine Lives Foundation
North Laurel Animal Hospital
Our Honor
Palo Alto Humane Society
Patricia H. Ladew Foundation, Inc.
Paws Up Rehabilitation
Performing Animal Welfare Society
Peter Zippi Memorial Fund Inc.
Precious Purrs Feline Rescue
San Diego Humane Society and SPCA
Save a Kitty INC.
SNAP CATS
Spay Neuter Project of Los Angeles
Social Compassion in Legislation
Society for the Prevention of Cruelty to Animals
Stevenson Ranch Veterinary Center
Stray Cat Alliance
The Rescue Train
The Volunteers of The Burbank Animal Shelter
VCA Canada
Veterinary Medical Center
West Radiologic Services
Numerous individuals and cats

REGISTERED OPPOSITION:

California Veterinary Medical Association

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2671 (Committee on Business and Professions) – As Introduced February 18, 2022

SUBJECT: California Board of Occupational Therapy: legislative review.

SUMMARY: Makes a technical change relating to the legislative review of the California Board of Occupational Therapy (CBOT).

EXISTING LAW:

1) Regulates the practice of occupational therapy under the Occupational Therapy Practice Act. (Business and Professions Code (BPC) §§ 2570-2571)

2) Establishes CBOT, until January 1, 2023, to administer and enforce the act. (BPC § 2570.19)

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

COMMENTS:

Purpose. Each year, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development hold joint sunset review oversight hearings to review the licensing boards under the Department of Consumer Affairs (DCA). The DCA boards are responsible for protecting consumers and the public and regulating the professionals they license. The sunset review process provides an opportunity for the Legislature, DCA, boards, and interested parties and stakeholders to discuss the performance of the boards and make recommendations for improvements.

Each board subject to review has an enacting statute that has a repeal date, which means each board requires an extension before the repeal date. This bill is one of the "sunset" bills that are intended to extend the repeal date of the boards undergoing sunset review, as well as include the recommendations from the sunset review oversight hearings.

This year, there are five sunset review bills authored by the Assembly Committee on Business and Professions and the five sunset review bills authored by the Chair of the Senate Business, Professions and Economic Development Committee.

Background. The California Board of Occupational Therapy (CBOT) is a licensing entity within the Department of Consumer Affairs (DCA). CBOT is responsible for administering and enforcing the Occupational Therapy Practice Act. The act contains the laws that establish CBOT and outline the licensure program, a regulatory framework for the practice, licensing, education, and discipline of licensed occupational therapists (OTs) and licensed occupational therapy assistants (OTAs). CBOT also regulates unlicensed occupational therapy aides that provide support services to OTs and OTAs.

Occupational therapy is the use of goal-directed activities (occupations) to support client participation, performance, and function at home, school, the workplace, and in other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness for clients with disability- and non-disability-related needs or to those who

have, or are at risk of developing, health conditions that limit activity or cause participation restrictions. Common situations include helping children with disabilities to participate fully in school and develop social skills, helping people recovering from injury to regain function through retraining or adaptations, and providing support for older adults experiencing physical and cognitive changes.

At the end of the 2020-21 Fiscal Year (FY), CBOT reported a total of 18,862 active licensees, including 15,135 OTs and 3,727 OTAs.

CBOT's mission is:

> To protect California consumers of occupational therapy services through effective regulation, licensing, and enforcement.

Scope of Practice. OT services include assessment, treatment, education, and consultation. Specific techniques involve teaching activities of daily living (excluding speech-language skills), designing or fabricating orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices (excluding gait training).

In addition to providing the services above, OTs with additional training may seek CBOT approval to perform specified advanced practices. These include hand therapy; physical agent modalities; use of topical medications; and swallowing assessment, evaluation, or intervention.

OTs also supervise OTAs and unlicensed aids. OTAs may provide any services that a supervising OT deems appropriate given the patient/client and the OTA's competence, except that the supervising OT cannot delegate the following:

- Interpretation of referrals or prescriptions for occupational therapy services.
- Interpretation and analysis for evaluation purposes.
- Development, interpretation, implementation, and modifications of the treatment plan and the discharge plan.

While OTAs may practice without the supervising OT physically present, the supervising OT is ultimately responsible for any care provided and must perform weekly reviews, document the supervision, be readily available for consultation, and periodically perform onsite reviews. OTAs may also supervise certain students and aids.

Unlicensed aides may perform routine tasks related to occupational therapy services. Non-client-related tasks include clerical, secretarial, and administrative activities; transportation of patients or clients; preparation or maintenance of treatment equipment and work area; taking care of patient or client personal needs during treatments; and assisting in the construction of adaptive equipment and splints.

Aides may also perform limited client-related tasks. The tasks must be routine and predictable and require no decision-making by the aide.

Current Related Legislation. AB 2684 (Assembly Business and Professions Committee), which is pending in this Committee, is the sunset bill for the Board of Registered Nursing.

AB 2685 (Assembly Business and Professions Committee), which is pending in this Committee, is the sunset bill for the Naturopathic Medicine Committee.

AB 2686 (Assembly Business and Professions Committee), which is pending in this Committee, is the sunset bill for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board.

AB 2687 (Assembly Business and Professions Committee), which is pending in this Committee, is the sunset bill for The California Massage Therapy Council.

SB 1433 (Roth), which is pending in the Senate, is the sunset bill for the Bureau of Private Post Secondary Education.

SB 1434 (Roth), which is pending in the Senate, is the sunset bill for the State Board of Chiropractic Examiners.

SB 1436 (Roth), which is pending in the Senate, is the sunset bill for the Respiratory Care Board.

SB 1437 (Roth), which is pending in the Senate, is the sunset bill for the California Council for Interior Design Certification.

SB 1438 (Roth), which is pending in the Senate, is the sunset bill for the Physical Therapy Board of California.

Prior Related Legislation. AB 1706 (Committee on Business and Professions), Chapter 454, Statutes of 2017, was the previous sunset bill for the State Board of Chiropractic Examiners, Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board, CBOT, and Physical Therapy Board of California.

ARGUMENTS IN SUPPORT:

The *Occupational Therapy Association of California* writes in support of authorizing OTs to form professional corporations writes:

> Currently, 18 different categories of healthcare providers are authorized to own their own professional corporations in California under the Moscone-Knox Act, including physicians, psychologists, speech-language pathologists, physical therapists, and midwives. OT practitioners are unfortunately not authorized to own professional corporations of their own, nor are they authorized to be shareholders of medical corporations. They are only authorized to be shareholders under physical therapists (PTs).
>
> Amending the Monroe-Knox Act to include authorization for OT practitioners to own corporations of their own would remove an unnecessary barrier to OT practitioners who want to obtain ownership of their own practice or be majority shareholders. OT practitioners should have the choice of owning their own professional corporation, as well as being employed by a medical corporation. For these reasons, OTAC supports clarifying the law to add OT practitioners as owners of professional corporations, as well as adding OTs to the list of licensees authorized to be professional employees of a medical corporation.

ARGUMENTS IN OPPOSITION:

None on file

SUNSET ISSUES FOR CONSIDERATION:

In preparation for the sunset hearings, committee staff public background papers that identify outstanding issues relating to the entity being reviewed. The background paper is available on the Committee's website: https://abp.assembly.ca.gov/jointsunsethearings. While all of the issues identified in the background paper remain available for discussion, the following are currently being addressed in the amendments to this bill or otherwise actively discussed:

1) *Sunset Issue #1: Fund Condition*. What is needed to address CBOT's structural budget deficit?

   As discussed on page 6 of the background paper, and under Issue #1 from the prior sunset review, CBOT has intentionally operated with less revenue than its expenses to reduce its reserve levels in compliance with statutory requirements. However, unless CBOT can increase its revenue, or further reduce its expenditures, it is projected to become insolvent by FY 2023-24.

   While CBOT reports it is doing what it can to reduce expenditures, many cost pressures are out of its control. For example, each FY CBOT pays a DCA pro rata cost, which is intended to reimburse the DCA for services rendered to CBOT (and some services are unavoidable, such as teleconferencing and mail). However, it is a complex calculation that is difficult to budget for and can fluctuate widely year-to-year for any board. In FY 2020-21, CBOT's pro rata costs increased by approximately $256,000, a 7% increase from the prior FY, making up 31% of CBOT's overall expenditures.

   In addition, in July of 2019, the California Department of Justice announced that it was utilizing language included in the Governor's Budget authorizing it to increase the amount it billed to client agencies for legal services. The change was substantial: the attorney rate increased by nearly 30% from $170 to $220, the paralegal rate increased over 70% from $120 to $205, and the analyst rate increased 97% from $99 to $195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred almost immediately and without any meaningful notice to any client agencies.

   CBOT also reports a large increase in expenditures on court reporters. The Office of Administrative Hearings contracts with court reporters to provide transcription services during a hearing. Recent contract amendments, changing from hourly to flat all day or one-half day rates (without regard to hearing length), as well as rates varying by geographical area, are attributed to the rising costs.

   Other cost pressures out of CBOT's control include steady increases in state worker pay and benefits, rent, and general costs due to inflation. In addition, the overall workload increases as the licensee population also steadily increases.

   As a result, it is unlikely that CBOT will be able to address its budget deficit through expenditure reduction. Therefore, it is currently considering increasing its fees but has not decided on any specific proposal. At the CBOT's recent February 15, 2022, board meeting,

staff discussed the budget issue and presented several proposals and budget scenarios. CBOT has several options, including a straight fee increase across all fees, seeking statutory changes to untether the initial license fee from the renewal fee, and creating new fees for certain services it provides for free, among other things. New fees could include minor services such as printing pocket cards or more major services such as approving advanced practice education providers.

CBOT did not make a decision at that meeting and created an ad hoc committee to review its budget and make recommendations on an appropriate proposal.

Staff Recommendation: CBOT should update the Committees on its progress in reviewing the proposals, and if a proposal is decided upon, complete the Committees' Fee Bill Questionnaire.

CBOT's Response:

> As mentioned in the Board's 2016 Sunset report, there has been a historical disparity between revenue earned and the Board's expenditures. With prudent fiscal management and targeted expenditure reductions, for many years the Board's fund condition continued to support the fact that annual expenditures exceeded revenue earned.
>
> Recognizing that this approach was insufficient to ensure long-term solvency, the Board adopted regulations establishing a two-step increase in renewal fees. This process resulted in modest fee effective July 1, 2017; the occupational therapist (OT) renewal fee increased from $150 to $220, and the occupational therapy assistant (OTA) renewal fee increased from $150 to $180. That increase was followed by another in January 2021, where the OT renewal fee increased from $220 to $270, and the OTA renewal fee increased from $180 to $220.
>
> (Note: The renewal fees are currently the basis for the delinquent renewal fees and the initial license fees. Thus, the renewal fee increases in 2017 and 2021 also resulted in increases to the delinquent renewal fee and initial license fee revenue categories.)
>
> Despite the recent fee increases and careful management, the disparity in annual revenue and expenditures continues to cause an on-going reduction in the number of months of operating reserves, putting the long-term health of the Board's fund at risk.
>
> Thus, after considering various scenarios at several meetings, at its meeting on February 15, 2022, the Board tasked an adhoc budget committee of two Board Members to work with the Board's Executive Officer to review revenue/expenditure information and different scenarios, including various fee increases and proposed new fees, to provide a recommendation to the full Board at its May 19-20 meeting. The ad hoc committee's held meetings to discuss the impact of varied fee increases on March 16th and March 23rd; another ad hoc committee meeting is scheduled for April 22nd.

Despite underspending its annual budget authority for the past 10+ years, the imbalance of revenue earned relative to its expenditures cannot continue. Most fees are at the statutory maximum and the few fees that can be raised in regulation are insufficient to ensure solvency. Thus, statutory authority to increase current fees and establish new fees is necessary.

The Board looks forward to developing a comprehensive fee package, including a variety of fee increases and the establishment of new fees, to ensure fiscal solvency. Once done, the Board will complete the Committee's Fee Bill questionnaire and work with the Senate and Assembly B&P Committees toward an acceptable solution.

2) *Sunset Issue #3: Occupational Therapy Corporations*. Should the Moscone-Knox Professional Corporation Act be amended to allow OTs to form professional corporations?

The Moscone-Knox Professional Corporation Act authorizes the formation of various healing arts professional corporations and establishes which healing arts licensees who are not of the same license type as the corporation may be shareholders, officers, and directors of that corporation. Any person licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed by these professional corporations. Current law specifies that OTs may serve as a non-controlling director, shareholder, officer, or employee of a physical therapy corporation, but does not authorize OTs to form OT corporations.

There is no clear policy reason for the limitation—the act went into law with a handful of corporation types and has been amended on a case-by-case basis over time. That said, if OTs are added, there may be additional changes for CBOT to consider on the regulatory and licensing side once new business and care delivery models are formed.

Staff Recommendation: The Committees may wish to amend the Moscone-Knox Professional Corporation Act to allow OTs to form professional corporations and consider whether additional licensing or regulatory requirements are needed if so.

CBOT Response:

The Board appreciates the Committee raising the issue of adding occupational therapy professional corporations to the Moscone Knox Act. Since the issue of adding OT corporations didn't appear to be a consumer protection issue, it not been discussed by the Board since AB 1000 allowed "any person licensed under Division 2" to be employed by any professional corporation listed in the Corporations Act.

Given the prevalence of occupational therapy private practices, occupational therapy corporations being absent from the Moscone Knox Act is not in alignment with on-going OT business models. The Board looks forward to discussing the addition of OT corporations at a future meeting and working with the associations to work toward the best possible outcome.

3) *Sunset Issue #4: Independent Contractors*. Does the new test for determining employment status, as prescribed in the court decision Dynamex Operations West Inc. v. Superior Court, have any unresolved implications for CBOT licensees working as independent contractors?

In the Spring of 2018, the California Supreme Court issued a decision in Dynamex Operations West, Inc. v. Superior Court (4 Cal.5th 903) that significantly changed the factors that determine whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test comprised of three elements:

A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;

B. That the worker performs work that is outside the usual course of the hiring entity's business; and

C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

The test, commonly referred to as the "ABC test," potentially reaches into numerous fields and industries utilizing workers previously believed to be independent contractors, including occupations regulated by entities under the DCA. In the following year, AB 5 (Gonzalez), Chapter 296, Statutes of 2019, codified the Dynamex ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors. As a result, the new ABC test must be applied and interpreted for all non-exempted licensed professionals.

Staff Recommendation: CBOT should inform the committees of any discussions it has had about the Dynamex decision and AB 5, and whether there is potential to impact the current landscape of the profession unless an exemption is provided.

CBOT Response: "The issue of AB 5 and the impact to the profession has not been discussed by the Board as the employee/employer relationship or contractor issue didn't appear to be a practice or a consumer protection issue. However, the prevalence of OTs who are independent contractors suggests the value of the Board discussing an exemption to the Labor Code for contracting OTs at a future Board meeting. If it is determined that an exemption from the Labor Code for contracting OTs is the direction the Board wants to go, the Board will work with stakeholders and notify the Committees before submitting any legislative proposals."

4) *Sunset Issue #10: Technical Edits*. Are there technical changes to the Practice Act that may improve CBOT's operations?

CBOT has suggested some technical changes to the Occupational Therapy Act in its report that may enhance or clarify the act or assist with consumer protection, including:

- A conforming change to the ability for OTs to supervise up to three OTAs at one time.

- An amendment acknowledging entry-level doctoral capstone experiences concerning supervised clinical practice.

- Other technical or conforming changes.

Staff Recommendation: CBOT should continue to work with the Committees on potential changes.

CBOT Response: "Given the Board's fiscal situation, the Board hopes the Committee would be supportive of establishing a Probation Monitoring fee to help offset the Board's costs associated with monitoring licensees placed on probation. This would reduce the costs passed onto the licensing population as a whole."

5) *Sunset Issue #11: Sunset Extension*. Should the current CBOT be continued and continue regulating the practice of occupational therapy?

A review of the issues raised since the last review demonstrates that CBOT continues to protect the public and that it works towards improving its operations. However, there are still issues that need to be addressed, including its current budget deficit, its enforcement timelines and high prevalence of ethical and other non-practice-related violations, and the question of its advanced practice certificate requirements.

Staff Recommendation: CBOT's current regulation of occupational therapy should be continued and reviewed again on a future date to be determined.

CBOT Response:

> The California Board of Occupational Therapy is privileged to regulate the profession of occupational therapy by serving and protecting California's consumers of OT services through effective regulation, licensure, and enforcement. We will continue to do so in hopes supporting, educating, and protecting all stakeholders of our services.
>
> The Board appreciates the Committee staff suggestions and the recognition of the Board's role in protecting the public.

AMENDMENTS:

1) *OT Corporations*. As noted under Sunset Issue #3, there is currently no policy reason for OTs to be unable to form their own corporations or serve as shareholders of a medical corporation. Therefore, the bill should be amended to create parity with other healing arts professions as follows:

> Section 13401.5 of the Corporations Code is amended to read:
>
> **13401.5.** Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating

the designated professional corporation. This section does not limit employment by a professional corporation designated in this section to only those licensed professionals listed under each subdivision. Any person duly licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed to render professional services by a professional corporation designated in this section.

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

[paragraphs (2)-(14) omitted]

(15) Licensed occupational therapists

[subdivisions (b)-(r) omitted]

(s) Occupational therapy corporation

(1) Licensed physicians and surgeons

(2) Licensed doctors of podiatric medicine

(3) Licensed acupuncturists

(4) Naturopathic doctors

(5) Licensed physical therapists

(6) Licensed speech-language therapists

(7) Licensed audiologists

(8) Registered nurses

(9) Licensed psychologists

(10) Licensed physician assistants

(11) Licensed midwives

(12) Licensed clinical social workers

(13) Licensed marriage and family therapists

(14) Licensed occupational therapy assistants

2) *Technical Changes*. As noted under Sunset Issue #10, there are technical changes that may clarify the practice act or improve CBOT's operations:

a) *OT/OTA Supervision Ratios*. To conform to the change allowing an OT to supervise up to three OTAs, this bill should be amended as follows:

Section 2570.3 of the Business and Professions Code is amended to read:

2570.3. [subdivisions (a)-(i) omitted]

(j) "Supervision of an occupational therapy assistant" means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist who is responsible for appropriate supervision shall formulate and document in each client's record, with ~~his or her~~ *the occupational therapist's* signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant assigned to that client functions under appropriate supervision. As part of the responsible occupational therapist's appropriate supervision, ~~he or she~~ *the occupational therapist* shall conduct at least weekly review and inspection of all aspects of occupational therapy services by the occupational therapy assistant.

(1) The supervising occupational therapist has the continuing responsibility to follow the progress of each client, provide direct care to the client, and to assure that the occupational therapy assistant does not function autonomously.

(2) An occupational therapist shall not supervise more occupational therapy assistants, at any one time, than can be appropriately supervised in the opinion of the board. Three occupational therapy assistants shall be the maximum number of occupational therapy assistants supervised by an occupational therapist at any one time, but the board may permit the supervision of a greater number by an occupational therapist if, in the opinion of the board, there would be adequate supervision and the public's health and safety would be served. In no case shall the total number of occupational therapy assistants exceed ~~twice~~ *three* times the number of occupational therapists regularly employed by a facility at any one time.

b) *Section Numbering Issue*. There is a section of the practice act that does not conform to the California Code numbering format. Therefore, this bill should be amended to renumber BPC § 2570.185 to 2570.18.5.

3) *Sunset Extension*. As noted in Sunset Issue #11, CBOT's regulation should be continued and reviewed again. Therefore, the bill should be amended as follows:

Section 2570.19 of the Business and Professions Code is amended to read:

2570.19. (a) There is hereby created a California Board of Occupational Therapy, hereafter referred to as the board. The board shall enforce and administer this chapter.

[subdivisions (b)-(j) omitted]

(k) This section shall remain in effect only until January 1, ~~2023,~~ *2027,* and as of that date is repealed.

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2685 (Committee on Business and Professions) – As Introduced February 18, 2022

SUBJECT: Naturopathic Doctors Act: Naturopathic Medicine Committee.

SUMMARY: Provides that members of the Naturopathic Medicine Committee (Committee) may be removed from office at any time by their respective appointing authority.

EXISTING LAW:

1) Establishes the Naturopathic Doctors Act for the purpose of regulating naturopathic doctors (NDs). (Business and Professions Code (BPC) §§ 3610 *et seq.*)

2) Establishes the Committee, nominally created within the Osteopathic Medical Board of California. (BPC § 3612)

3) Empowers the Committee with sole responsibility for enforcing and administering the provisions of the Naturopathic Doctors Act. (BPC § 3620)

4) Provides that the Committee shall consist of five NDs, two physicians and surgeons, and two public members, with members appointed by the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. (BPC § 3621)

THIS BILL:

1) Authorizes each appointing authority to remove its appointed members from the Committee for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct.

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

COMMENTS:

Purpose. This bill is the sunset review vehicle for the Naturopathic Medicine Committee, authored by the Assembly Business and Professions Committee. The bill will ultimately be amended to extend the sunset date for the Committee and to enact technical changes, statutory improvements, and policy reforms in response to issues raised during the Board's sunset review oversight process.

Background.

Sunset review. In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunsets" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals.

Currently, the sunset review process applies to 36 different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils. On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacies and efficiencies of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

Naturopathic Medicine Committee. The Committee is responsible for licensing and regulating NDs under the Naturopathic Doctors Act. The foundational principle of naturopathy is a belief that the human body is capable of healing itself with the assistance of natural therapies and treatments. Naturopathic medicine is a system of primary health care that integrates the values and practices of traditional naturopathy with modern methods and modalities for the diagnosing, treating, and preventing of health conditions, injuries, and disease.

As of December 2021, there are 917 NDs actively licensed by the Committee. California is one of 22 states that provide for licensure of naturopathic professionals. While NDs function similarly to allopathic and osteopathic physicians and surgeons, California does not allow them to use the title "physician." According to the Committee, a majority of NDs working in California provide family centered, primary care medicine through office-based private practice, and may often work in collaboration with physicians and surgeons, doctors of chiropractic, and acupuncturists, some in integrative practices.

NDs are authorized to order physical and laboratory examinations, as well as diagnostic imaging studies under certain conditions. An ND may dispense, administer, order, prescribe, and furnish various foods, medicines, vitamins, therapies, and devices. An ND can engage in health education and counseling, and may treat superficial lacerations and abrasions and remove foreign bodies in superficial tissue. An ND is also authorized to furnish or order drugs in accordance with standardized procedures or protocols developed with a supervising physician and surgeon.

An ND may professionally refer to themselves as "Doctor" or "Dr." but must clearly state that they are doctors of naturopathic medicine. While only a licensee of the Committee may represent themselves as licensed, refer to themselves as a naturopathic doctor, or use the professional designation "ND," more general words like "naturopath" and "naturopathic practitioner" are not protected or reserved and may be used generally by anyone educated and trained in naturopathy. These unlicensed individuals are not subject to regulation or oversight by the Committee.

The background paper for the Committee's most recent sunset hearing included the following issues; each of these issues may ultimately result in proposed language to be amended into this bill following additional joint stakeholder engagement by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development:

1) *Name and Placement of the Committee*. Does statute establishing the Committee within the Osteopathic Medical Board accurately reflect its status as an independent regulatory entity?

2) *Committee Composition*. Does the current membership on the Committee appropriately balance professional expertise and public objectivity?

3) *Member Terms*. Is the fact that the majority of committee members are currently scheduled to term out at the same time a cause for concern?

4) *Adequate Staffing*. Does the Committee currently employ the appropriate number of staff to ensure that it is fulfilling its legislative mandates and protecting the public?

5) *Fund Reserves*. Considering the amount of fee revenue collected by the Committee against its program expenditures, is there a fiscal imbalance that could result in excessive reserves?

6) *Attorney General Billing Rate*. Will the abrupt increase in the Attorney General's client billing rate for hours spent representing the Committee in disciplinary matters result in cost pressures for the Committee's special fund?

7) *Delinquent Licenses*. Why is there such a substantial population of delinquent licenses?

8) *Fictitious Name Permits*. Should the Committee be authorized to create a Fictitious Name Permit Program to ensure naturopathic practices are not violating the Moscone-Knox Act?

9) *Fair Chance Licensing Act*. What is the status of the Committee's implementation of AB 2138 (Chiu/Low)?

10) *Elective Examinations.* Should the Pharmacology and Parenteral Therapeutics elective examination be required for license applicants under certain conditions?

11) *Naturopathic Childbirth Attendance Examination*. Should the American College of Nurse Midwives (ACNM) written examination be replaced with the American College of Naturopathic Obstetricians (ACNO) examination for naturopathic childbirth attendance?

12) *Continuing Education Course Approvers*. Should the North American Naturopathic Continuing Education Accreditation Council (NANCEAC) be added as an authorized approver of continuing education courses?

13) *Additional Title Protection*. Should more general terms such as "naturopath" and "naturopathic" be reserved for use only by NDs?

14) *Lack of Formal Discipline*. Why have there been zero cases resulting in formal discipline over the past several years, and does this represent appropriate enforcement by the Committee?

15) *Independent Contractors*. Does the new test for determining employment status, as prescribed in the court decision Dynamex Operations West Inc. v. Superior Court, have any unresolved implications for NDs?

16) *Billing Issues*. Have health insurance providers failed to reimburse for naturopathic care notwithstanding provisions enacted through the Affordable Care Act?

17) *Emergency Waivers*. How have the Committee and the profession utilized the Governor's emergency process for obtaining waivers of the law during the COVID-19 pandemic?

18) *Vaccine Misinformation*. Are there issues with NDs engaging in the spread of COVID-19 vaccine misinformation? Has the Board received and responded to any related complaints regarding COVID-19 and COVID-19 vaccine misinformation from NDs?

19) *COVID-19 Immunizations*. How has the Committee engaged in oversight and enforcement of NDs initiating and administering in COVID-19 vaccinations?

20) *Technical Cleanup*. Is there a need for technical cleanup?

21) *Continued Regulation*. Should the licensing of naturopathic doctors be continued and be regulated by the Naturopathic Medicine Committee?

Current Related Legislation. AB 2671 (Business and Professions) is the sunset review vehicle for the California Board of Occupational Therapy. *This bill is pending in this committee.*

AB 2684 (Business and Professions) is the sunset review vehicle for the Board of Registered Nursing. *This bill is pending in this committee.*

AB 2686 (Business and Professions) is the sunset review vehicle for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board. *This bill is pending in this committee.*

AB 2687 (Business and Professions) is the sunset review vehicle for the California Massage Therapy Council. *This bill is pending in this committee.*

Prior Related Legislation. SB 907 (Burton, Chapter 485, Statutes of 2003) first established the Committee as the Bureau of Naturopathic Medicine.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2687 (Committee on Business and Professions) – As Amended April 21, 2022

SUBJECT: California Massage Therapy Council.

SUMMARY: Extends the operation of the Massage Therapy Act until January 1, 2027.

EXISTING LAW:

1) Establishes the Massage Therapy Act to provide for the voluntary certification of massage therapists. (Business and Professions Code (BPC) §§ 4600 *et seq.*)

2) Creates the California Massage Therapy Council (CAMTC) as a nonprofit organization exempt from taxation. (BPC § 4601(d); § 4602(a))

3) Defines "massage" as the scientific manipulation of the soft tissues. (BPC § 4601(e))

4) Defines "approved school" as a school approved by CAMTC that meets minimum standards for training and curriculum in massage and related subjects as well as other requirements. (BPC § 4601(a))

5) Provides CAMTC with authority to take any reasonable actions necessary to carry out the responsibilities and duties set forth in the Massage Therapy Act, including, but not limited to, hiring staff, entering into contracts, and developing policies, procedures, rules, and bylaws to implement this chapter. (BPC § 4602(b))

6) Provides that CAMTC shall be governed by a board of directors comprised of 13 members, each appointed by an agency or organization representing local government, anti-trafficking advocates, higher education, and the massage industry. (BPC § 4602(f))

7) States that protection of the public shall be the highest priority for CAMTC in exercising its certification and disciplinary authority, and any other functions; whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 4603)

8) Requires an applicant for certification as a massage therapist to have received 500 hours of education at an approved massage school and successfully completed a background investigation. (BPC § 4604)

9) Provides that it is a violation of the Massage Therapy Act for a certified massage therapist or applicant to commit unprofessional conduct, including numerous sexual or erotic acts; commit any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder; or dress while engaged in the practice of massage in a manner that is deemed by CAMTC to constitute unprofessional attire based on the custom and practice of the profession in California. (BPC § 4609)

10) Authorizes CAMTC to discipline a certificate holder by placing them on probation, suspending their certificate, revoking their certificate, or taking other action as CAMTC deems proper, in accordance with certain procedures. (BPC § 4610)

11) Provides that it is an unfair business practice for any person to hold themselves out or to use the title of "certified massage therapist" or "certified massage practitioner," or any other term, such as "licensed," "certified," "CMT," or "CMP," in any manner whatsoever that implies or suggests that the person is certified as a massage therapist or massage practitioner, unless that person currently holds an active and valid certificate issued by CAMTC. (BPC § 4611)

12) Provides CAMTC with responsibility for approving massage schools. (BPC § 4615)

13) Finds and declares that due to important health, safety, and welfare concerns that affect the entire state, establishing a uniform standard of certification for massage practitioners and massage therapists upon which consumers may rely to identify individuals who have achieved specified levels of education, training, and skill is a matter of statewide concern and not a municipal affair. (BPC § 4618)

14) Provides that the Massage Therapy Act shall be liberally construed to effectuate its purposes. (BPC § 4619)

15) Requires CAMTC to provide a report to the appropriate policy committees of the Legislature on or before January 1, 2017 that includes, among other things, a feasibility study of licensure for the massage profession, including a proposed scope of practice, legitimate techniques of massage, and related statutory recommendations; and the council's compensation guidelines and current salary levels. (BPC § 4620)

16) Provides that the Massage Therapy Act shall remain in effect only until January 1, 2023, and as of that date is repealed. (BPC § 4621)

THIS BILL:

1) Extends the operation of the Massage Therapy Act and the authority granted to CAMTC from January 1, 2023 until January 1, 2027.

2) Repeals language stating the intent of the Legislature to consider creating a new licensing board to regulate massage therapy through the sunrise process.

3) Allows CAMTC to appoint an attorney who represents a county or a city and county in lieu of a city attorney.

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

COMMENTS:

Purpose. This bill is the sunset review vehicle for the California Massage Therapy Council, authored by the Assembly Business and Professions Committee. The bill will ultimately be amended to extend the sunset date for the Committee and to enact technical changes, statutory improvements, and policy reforms in response to issues raised during the Board's sunset review oversight process.

Background.

Sunset review. In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunsets" unless the date is extended by the Legislature. The sunset process provides a regular forum for discussion around the successes and challenges of various programs and the consideration of proposed changes to laws governing the regulation of professionals.

Currently, the sunset review process applies to 36 different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils. Each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacies and efficiencies of their licensing and enforcement programs. Both the Administration and regulated professional stakeholders actively engage in this process. Legislation is then subsequently introduced extending the repeal date for the entity along with any reforms identified during the sunset review process.

This bill would extend the repeal date for CAMTC from January 1, 2023 to January 1, 2027.

California Massage Therapy Council. CAMTC was first established in 2009. Unlike most regulatory bodies responsible for overseeing professions and vocations in California, CAMTC is not a state agency and does not function as part of the state's government. Instead, it is incorporated as a private nonprofit public benefit corporation with 501(c)(3) tax exempt status. Certificates granted by CAMTC are voluntary at the state level, though only certificate holders may use the terms "certified massage therapist" or other language that implies certification.

Prior to the creation of CAMTC, massage therapy was almost exclusively regulated at the local level. Several early bills were considered that would have established a new state-level agency tasked with regulating massage professionals, including Assembly Bill 1388 (Kehoe) in 2003, which would have established a new entity under the Department of Consumer Affairs (DCA). In 2005, the Joint Committee on Boards, Commissions, and Consumer Protection in the California State Legislature considered state licensure of massage therapists through the Sunrise Review process, as required by statute whenever creating a new state board or legislation creating a new category of licensed professional.

Ultimately, the Joint Committee recommended that regulation of massage therapists be shifted from the local jurisdiction approach to a state-based approach to provide more uniform standards. The recommendation cited criticisms alleging that the majority of local ordinances were aimed more at curbing illicit adult services than regulating a healing arts profession. Shortly after the final recommendations were published, Senate Bill 412 was amended by Senator Figueroa, Chair of the Joint Committee, to create the Massage Therapy Organization (MTO) to serve as a new nonprofit state-level regulator of massage professionals.

Following two years of negotiations, Senate Bill 412 failed passage on the Assembly Floor by a vote of 24 to 38. The next year, Senator Jenny Oropeza introduced Senate Bill 731, which was substantially similar to the prior Figueroa bill; it maintained the MTO's nongovernmental status, the voluntary nature of the MTO's certificate program, and the continued role of local governments in regulating massage businesses. Senate Bill 731 was signed into law in 2008, creating at last a voluntary statewide certification of massage professionals.

As of June 2019, there are 50,551 certified massage therapists in California. The practice of massage, also referred to as bodywork, is defined in statute as "the scientific manipulation of the soft tissues." According to the National Institutes of Health, massage therapy has been found to provide short-term relief for several kinds of pain, and massage therapy may be helpful for anxiety and depression in people with fibromyalgia, cancer, or HIV/AIDS.

While a number of recent studies support the promotion of massage therapy as a complementary approach to pain management, for much of the profession's history it has been treated less as a healing art and more as a potential front for illicit activities such as sex trafficking and prostitution. Through partnerships with local law enforcement, CAMTC considers efforts to combat human trafficking to be at the core of its mission and mandate from the Legislature. Local governments frequently include a requirement that all massage professionals possess a certificate from CAMTC as part of their anti-trafficking ordinances. As a result, while certification by CAMTC is technically voluntary at the state level, it is mandated in numerous jurisdictions across the state and is often framed by local government as a form of "vice" regulation rather than health care practice.

CAMTC has the authority to grant or deny applications for certification and to discipline certificate holders by denying, suspending, or placing probationary conditions on certificates. CAMTC is also responsible for approving and unapproving massage schools whose students are eligible for certification.

As discussed throughout CAMTC's sunset review background paper, there are potential downsides to empowering an entity outside the auspices of state government to exercise regulatory control over a profession. There are many reforms, both minor and significant, that the background paper suggested may be contemplated by the Committees as CAMTC undergoes its current sunset review. There is little doubt that statute could be revised to require the council to further emulate the state licensing board model in areas that would increase public confidence and allow the industry to more closely resemble other health care professionals. However, each potential new mandate or structural change would likely be at the expense of the advantages that come with constructing CAMTC as a nonprofit corporation.

Currently, this bill makes a modest change to the composition of CAMTC's Board of Directors and extends its sunset date by four years. Additional language will likely be discussed and added to the bill to further address various issues raised during CAMTC's sunset review. These additional provisions will be crafted in consultation with the Senate and stakeholders as this bill continues through the comprehensive sunset review legislative process.

Current Related Legislation. AB 2671 (Business and Professions) is the sunset review vehicle for the California Board of Occupational Therapy. *This bill is pending in this committee.*

AB 2684 (Business and Professions) is the sunset review vehicle for the Board of Registered Nursing. *This bill is pending in this committee.*

AB 2685 (Business and Professions) is the sunset review vehicle for the Naturopathic Medicine Committee. *This bill is pending in this committee.*

AB 2686 (Business and Professions) is the sunset review vehicle for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board. *This bill is pending in this committee.*

Prior Related Legislation. AB 1537 (Low, Chapter 179, Statutes of 2021) extended CAMTC's sunset date by one year.

AB 2194 (Salas, Chapter 411, Statutes of 2016) extended CAMTC's sunset date by four years and enacted reforms to the Massage Therapy Act.

AB 1147 (Bonilla, Chapter 406, Statutes of 2014) extended CAMTC's sunset date by two years and implemented a number of reforms to address issues raised in the background paper.

AB 731 (Oropeza, Chapter 384, Statutes of 2008) established both CAMTC and the Massage Therapy Act.

ARGUMENTS IN SUPPORT:

None on file.

ARGUMENTS IN OPPOSITION:

Associated Bodywork and Massage Professionals (ABMP) opposes this bill unless amended, writing: "ABMP and the massage community continue to work toward introducing a bill for statewide licensure in the coming year. As a result, we are in opposition to Assembly Bill 2687 (AB 2687) unless amended. ABMP asks that the Business and Professions Committee consider amending AB 2687 to revise the sunset date to January 1, 2024, and to reinsert §4621(c) regarding 'subsequent consideration of legislation to create a new state board and a new category of licensed professionals.'"

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

Associated Bodywork and Massage Professionals

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

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2754 (Bauer-Kahan) – As Introduced February 18, 2022

SUBJECT: Psychology: supervising psychologists: qualifications.

SUMMARY: This bill will direct the Board of Psychology (Board) to establish by regulation the qualifications for supervising psychologists include audio and visual modalities.

EXISTING LAW:

1) As used in the Psychology Licensing Law, the following definitions apply: (Business and Professions Code (BPC) § 2902)

    a) "Licensed psychologist" means an individual to whom a license has been issued pursuant to the provisions of this chapter, which license is in force and has not been suspended or revoked. (BPC § 2902 (a))

    b) "Board" means the Board of Psychology. (BPC § 2902(b))

2) Prohibits a person other than a licensed psychologist may perform psychological functions in preparation for licensure as a psychologist unless all of the following conditions are met: (BPC § 2913)

    a) The person is registered with the board as a "registered psychological associate." This registration shall be renewed annually in accordance with regulations adopted by the board. (BPC) § 2913(a))

    b) The person has completed or is any of the following: (BPC § 2913(b)(1))

        i) Completed a master's degree in psychology. (BPC § 2913(A))

        ii) Completed a master's degree in education with the field of specialization in educational psychology, counseling psychology, or school psychology. (BPC § 2913(B))

        iii) Is an admitted candidate for a doctoral degree in any of the following: (BPC § 2913(C))

            (1) Psychology with the field of specialization in clinical, counseling, school, consulting, forensic, industrial, or organizational psychology. (BPC § 2913(C)(i))

            (2) Education, with the field of specialization in educational psychology, counseling psychology, or school psychology. (BPC § 2913(C)(ii))

            (3) A field of specialization designed to prepare graduates for the professional practice of psychology after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations. (BPC) § 2913(C)(iii))

iv) Completed a doctoral degree that qualifies for licensure under BPC § 2914. ((BPC) § 2913(D))

c) The board shall make the final determination as to whether a degree meets the requirements of this subdivision. (BPC) § 2913(b)(2))

d) The registered psychological associate is supervised by a licensed psychologist. The registered psychological associate's primary supervisor shall be responsible for ensuring that the extent, kind, and quality of the psychological services performed are consistent with the registered psychological associate's and the primary supervisor's training and experience. The primary supervisor shall be responsible for the registered psychological associate's compliance with this chapter and regulations. A primary supervisor may delegate supervision as prescribed by the board's regulations. (BPC) § 2913 (c)(1))

e) A licensed psychologist shall not supervise more than three registered psychological associates at any given time. (BPC) § 2913(c)(2))

f) A registered psychological associate shall not do either of the following: (BPC) § 2913 (d))

i) Provide psychological services to the public except as a trainee pursuant to this section. (BPC) § 2913(d)(1))

ii) Receive payments, monetary or otherwise, directly from clients. (BPC) § 2913(d)(2))

THIS BILL:

1) Specifies that the Board requirement to establish, by regulation, the qualifications for supervising psychologists includes audio and visual modalities.

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

COMMENTS:

Purpose. This bill is sponsored by the California Psychological Association. According to the author, "[This bill] ensures that trainees in the field of psychology receive necessary training in a safe and timely manner by extending supervision trainings to audio and HIPAA-compliant video conferencing. After March 31, 2022, psychology trainees will lose their ability to be supervised remotely, which puts an undue burden on their safety as well as time, costs and access to complete their training. It is vital that psychology trainees continue to have the ability to be supervised remotely as California transitions into an endemic approach to COVID-19. Supervised trainings via audio and HIPPA-compliant video conferencing alleviated public health constraints, reduced costs to practitioners, both trainees and supervisors, and resulted in increased practitioner availability and access. This continuous flexibility will maintain the safety and availability of training for a necessary health workforce."

Background. After March 31, 2022, psychology trainees will lose their ability to be supervised remotely, which puts an undue burden on their safety as well as time, costs and access to complete their training. The COVID-19 pandemic has exacerbated mental health conditions and as a result, there is a critical need for more mental health professionals. In addition, California is

experiencing a dire shortage of mental health professionals and grappling with meeting this need. According to the Healthforce Center, California is on track to lose 41% of its psychiatrists and 11% of its psychologists in the next decade. This is on top of the existing scarcity.

Under current law, psychology trainees in California are required to receive 3,000 hours of supervised professional experience as a condition to receive their license to practice. As part of those hours, trainees are required to be supervised by appropriate psychologist for 10% of the total time worked each week – and have at least one hour per week of face-to-face, direct, individual supervision with their primary supervisor. This means that, at least once every week, during a two year period, a trainee has no choice but to be in close quarters with another individual in the midst of a global health pandemic.

In response, Governor Gavin Newsom temporarily waived face-to-face supervision and permitted supervision to be done remotely via HIPAA-compliant video. Despite the continued spread of COVID-19 and the risks associated with behavioral health professionals working in close quarters, the emergency waiver was only extended until March 31, 2022, at which point it will expire.

The face-to-face supervision waiver gave practitioners the ability to expand their capacity and protect their health without any negative impacts to patients. The Board of Psychology's continued extensions of the waiver highlights its efficacy. The COVID-19 pandemic illustrated advances in HIPAA-compliant video and practitioner demand for greater flexibility in practice and education. The face-to-face waiver alleviated public health constraints, reduced costs to practitioners, both trainees and supervisors, and resulted in increased practitioner availability and access.

Prior Related Legislation. AB 93 (Medina) Chapter 743, Statutes of 2018: Revised and recasted numerous provisions of law regarding applications to the Board of Behavioral Sciences (BBS) for licensure as a Licensed Marriage and Family Therapist (LMFT), Licensed Clinical Social Worker (LCSW), and a Licensed Professional Clinical Counselor (LPCC).

SB 620 (Block) Chapter 262, Statutes of 2015: This bill streamlined the supervised experience hour requirements for licensed marriage and family therapists and licensed professional clinical counselors, and revises certain experience hour requirements for licensed clinical social workers for consistency.

SB 33 (Correa) Chapter 26, Statutes of 2009: This bill updated and recast the educational curriculum requirements for marriage and family therapists to require persons who begin graduate study after August 1, 2012, to meet increased total unit requirements, increased practicum hours for face-to-face counseling, integrates specified elements, including public mental health practices, throughout the curriculum, repeals current marriage and family therapist educational requirements on January 1, 2019, revises requirements for applicants licensed or educated outside of California, and makes technical and conforming changes.

AB 234 (Eng) Chapter 586, Statutes of 2007: This bill made clarifying changes and updates to the Marriage and Family Therapy Licensing Law, specifies the experience providing psychotherapy services via telemedicine that may count toward licensure, prohibits trainees and interns from renting space or from paying for the obligations of their employer, clarifies that out-of-state education that may be applied toward licensure shall be gained while residing outside of California.

ARGUMENTS IN SUPPORT:

California Psychological Association, sponsor of the bill, writes in support: "This bill ensures that trainees in the field of psychology receive their necessary training in a safe and timely manner by permanently allowing all supervision to be conducted via HIPAA-compliant video conferencing. California is experiencing a dire shortage of mental health professionals and is grappling with meeting this need. According to the Healthforce Center at UCSF, California is on track to lose at least 11% of its psychologists in the next decade. This is on top of the existing scarcity, and workforce challenges exacerbated by the COVID-19 pandemic."

The California Association of Marriage and Family Therapists (CAMFT) writes in support of the bill: "The flexibility in the pandemic eliminated pre-licensee travel time to meet with their supervisor, which allowed them more time to see more patients. Supervisors could share materials on-screen in 'real time' when guiding their pre-licensees. Additionally, many pre-licensees had an opportunity to select a supervisor with their preferred specialty(s) that may reside in a different city in California."

Association of Independent California Colleges and Universities (AICCU) write in support of the bill: "One of the most important lessons learned from the pandemic is the usefulness of HIPAA-compliant video to meet the needs of those in the field of delivering health care. At our colleges and universities, student affairs staff consistently found that students utilized virtual counseling during the pandemic, even after returning to in-person instruction. We believe that codifying a permanent solution to remote supervision supports the demand for psychological services while leveraging modern technology and protecting patients."

ARGUMENTS IN OPPOSITION:

None on file.

AMENDMENTS:

The author has proposed the following amendments which will provide additional clarity relating to supervision and add an urgency clause:

2913 (c) (1) The registered psychological associate is supervised by a licensed psychologist. ***Any supervision may be provided in real time, which is defined as through in-person or synchronous audiovisual means, in compliance with federal and state laws related to patient health confidentiality.*** *The registered psychological associate's primary supervisor shall be responsible for ensuring that the extent, kind, and quality of the psychological services performed are consistent with the registered psychological associate's and the primary supervisor's training and experience. The primary supervisor shall be responsible for the registered psychological associate's compliance with this chapter and regulations. A primary supervisor may delegate supervision as prescribed by the board's regulations.*

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to preserve access to psychological care by allowing continued real time supervision of registered psychological

REGISTERED SUPPORT:

California Psychological Association (Sponsor)
California Association of Marriage and Family Therapists (CAMFT)
Association of Independent California Colleges and Universities (AICCU)
California Children's Hospital Association (CCHA)
Association of California Healthcare Districts (ACHD)
CaliforniaHealth+ Advocates
County Behavioral Health Directors Association (CBHDA)

REGISTERED OPPOSITION:

None on file.

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