California State Assembly

BUSINESS AND PROFESSIONS

EVAN LOW
CHAIR

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

AGENDA

Tuesday, April 27, 2021
9 a.m. -- State Capitol, Assembly Chamber

BILLS HEARD IN FILE ORDER

1.	AB 443	Carrillo	Physicians and surgeons: fellowship programs: special faculty permits.
2.	AB 868	Eduardo Garcia	State of emergency: funeral expense assistance.
3.	AB 1552	Eduardo Garcia	Dentistry: foreign dental schools: applications.
4.	AB 1302	Quirk	Commercial cannabis billboards: placement restrictions.
5.	AB 702	Santiago	Cat and dog breeding: permits.
6.	AB 356	Chen	Fluoroscopy: temporary permit.
7.	AB 1386	Cunningham	License fees: military partners and spouses.
8.	AB 830	Flora	Business: Department of Consumer Affairs: Alarm Company Act: Real Estate Law.
9.	AB 1064	Fong	Pharmacy practice: vaccines: independent initiation and administration.
10.	AB 1494	Fong	Blood banks: collection.
11.	AB 229	Holden	Use of force instruction: private security guards: alarm company responders.
12.	AB 948	Holden	Real estate licensees: Bureau of Real Estate Appraisers: disclosures: demographic information: reporting: continuing education.
13.	AB 273	Irwin	Cannabis: advertisements: highways.
14.	AB 407	Salas	Optometry: scope of practice.
15.	AB 1236	Ting	Healing arts: licensees: data collection.
16.	AB 1532	Business and Professions	Nursing.
17.	AB 1533	Business and Professions	Pharmacy.
18.	AB 1534	Business and Professions	Optometry: mobile optometric clinics: regulations.
19.	AB 1535	Business and Professions	Veterinary Medical Board: application and examination: discipline and citation.
20.	AB 1536	Business and Professions	Board of Vocational Nursing and Psychiatric Technicians of the State of California.
21.	AB 1537	Low	The California Massage Therapy Council.

COVID FOOTER

SUBJECT:

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

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

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 443 (Carrillo) – As Amended April 19, 2021

SUBJECT: Physicians and surgeons: fellowship programs: special faculty permits.

SUMMARY: Expands the current foreign fellowship program under the Medical Board of California (Board) and authorizes placements of international medical graduates in federally qualified health centers (FQHCs), as specified. Expands eligibility for a Special Faculty Permit (SFP) under the Board, and provides that an immigrant international medical graduate participating in a fellowship program in a rural community or underserved community may receive an SFP, as specified. Makes conforming changes to the SFP program.

EXISTING LAW:

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

2) Creates various boards, bureaus, and commissions under the jurisdiction of the Department whose purpose are to regulate private businesses and professions deemed to engage in activities that have potential impact on the public health, safety, and welfare of the people of California. (BPC Section 101)

3) Creates the Medical Board of California (Board) under the jurisdiction of the Department, responsible for regulating California physicians and surgeons. (BPC Section 2001 et seq.)

4) States that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. (BPC Section 2001.1)

5) Establishes a foreign fellowship program under the jurisdiction of the Board, in which physicians who are not citizens and who seek postgraduate study may participate in a fellowship program in a specialty or subspecialty field in a California hospital. (BPC Section 2112).

6) Specifies that foreign fellows must comply with the following requirements:

   a) Apply and receive approval from the Board.

   b) Be at all times under the direction and supervision of a licensed board-certified physician and surgeon who is recognized as a clearly outstanding specialist in the field in which the foreign fellow is to be trained.

   c) Provide services deemed satisfactory to the Board.

   d) Must not engage in the practice of medicine outside of the fellowship program and cannot receive compensation therefor. (BPC Section 2112)

7) States that the fellowship program duration is for one year, and may be renewed annually upon application and approval by the Board. Specifies that the approval may not be renewed more than four times. (BPC Section 2112)

8) Requires a foreign fellow supervisor to submit, as part of the application process, the curriculum vitae and a protocol for the fellowship program to be completed by the foreign fellow. (BPC Section 2112)

9) Allows the Board to charge a fee based on the cost of operating the foreign fellowship program, which must be paid by the applicant at the time of the application filing. (BPC Section 2112)

10) Establishes a Special Faculty Permit (SFP) program under the jurisdiction of the Board, which authorizes the holder of the permit to practice medicine only within a medical school or an academic medical center and their affiliated institutions. (BPC Section 2168(a))

11) Enumerates the eligibility requirements to apply for an SFP. Specifically, eligible candidates must meet the following criteria:

    a) Be considered "academically eminent." To be considered academically eminent, the candidate must hold a full-time appointment at the level of full professor in a tenure track position or its equivalent at an academic medical center or a California medical school. A person may also be considered academically eminent if the person is clearly outstanding in a specific field of medicine or surgery and has been offered by the dean of a medical school or the dean or chief medical officer of an academic medical center a full-time academic appointment at the level of full professor or associate professor.

    b) Possess a current valid license to practice medicine issued by another state, country, or other jurisdiction.

    c) Must not have committed a crime that would otherwise disqualify the person from obtaining licensure as a physician or surgeon.

    d) Pay the fees prescribed for application and for initial licensure as a physician and surgeon. (BPC Section 2168.1(a))

12) Requires the Board to establish a review committee comprised of two members of the Board, one representative from each of the medical schools, and one individual selected to represent academic medical centers. Requires this committee to make recommendations to the Board regarding the applicants applying for an SFP. (BPC Section 2168.1(c))

13) Specifies that an application for an SFP must be made on a form prescribed by the Board, and shall include any information that the Board may prescribe to establish an applicant's eligibility for a permit. This information must include, but is not limited to, the following:

    a) A statement from the dean of the medical school or dean or chief medical officer at an academic medical center describing the applicant's qualifications and justifying the dean's or chief medical officer's determination that the applicant satisfies the requirements of being academically eminent.

b) A statement by the dean of the medical school or dean or chief medical officer of the academic medical center listing every affiliated institution in which the applicant will be providing instruction as part of the medical school's or academic medical center's educational program and justifying any clinical activities at each of the institutions listed by the dean or chief medical officer. (BPC Section 2168.2)

14) States that an SFP may be denied, suspended, or revoked for any violation that would be grounds for denial, suspension, or revocation of a physician and surgeon's certificate. (BPC Section 2168.3)

THIS BILL:

1) Provides the following findings and declarations:

   a) Bilingual international medical graduates can help meet the needs of medically underserved regions with limited English proficient populations.

   b) There is an increasing number of undergraduate students born in the United States who attend medical school in foreign Spanish-speaking countries, and are considered international medical graduates.

   c) Spanish-speaking physicians, including Spanish-speaking international medical graduates, are highly underrepresented in California's physician workforce.

   d) California needs Spanish-speaking physicians to meet the needs of Spanish-speaking limited English proficient patients more than any other linguistically underrepresented language group.

   e) The current supply is limited and insufficient to address the expected demand from the limited English proficient Spanish-speaking population.

   f) It is the intent of the Legislature to expand the existing pool of international medical graduates serving non-English or limited English-speaking patients in California.

2) Expands the existing foreign fellowship program under the jurisdiction of the Board, and creates a foreign fellowship program for placement in a California federally qualified health centers (FQHCs).

3) Specifies that foreign fellows placed in an FQHC must comply with the following requirements:

   a) Apply and receive approval by the Board.

   b) Be at all times under the direction and supervision of a licensed, board-certified physician and surgeon.

   c) Provide services deemed satisfactory by the Board.

   d) Must speak a language of need matching the federally qualified health center's patient population.

e) Must not engage in the practice of medicine outside of the FQHC fellowship and cannot receive compensation therefor.

4) Provides that the approval of the FQHC foreign fellowship program and supervisor must be for a period of one year and may be renewed annually upon application and approval by the MBC. States that the approval may not be renewed more than four times.

5) Requires the FQHC foreign fellowship supervisor, as part of the application process, to submit a curriculum vitae and a protocol of the fellowship program to be completed by the foreign fellow.

6) Authorizes the Board to determine an application fee not to exceed the reasonable regulatory cost to process an application. This fee shall be paid by the applicant at the time the application is filed.

7) Expands the Special Faculty Permit program, and authorizes the Board to issue an SFP to a person who is an immigrant international medical graduate participating in a fellowship program in a specialty or subspecialty field in a rural community or underserved community.

8) Defines "rural community" as a community included in the list developed pursuant to Section 124425 of the Health and Safety Code.

9) Defines "underserved community" as a California area or population included in the list of designated primary medical care health professional shortage areas, medically underserved areas, or medically underserved populations maintained and updated by the United States Department of Health and Human Services.

10) Defines an immigrant international medical graduate as an international medical graduate that meets the following requirement:

a) Was born outside the United States.

b) Now resides permanently in the United States.

c) Did not enter the United States on a J-1 or similar nonimmigrant visa following acceptance into a United States medical residency or fellowship program.

d) Is proficient in a threshold language, as defined in Section 1810.410 of Title 9 of the California Code of Regulations.

11) Makes conforming changes and states that an SFP authorizes the holder to practice medicine only within the medical school itself, any affiliated institution of the medical school, an academic medical center and any affiliated institution, or a federally qualified health center and any affiliated institution in which the permitholder is providing instruction as part of the medical school's, academic medical center's, or federally qualified health center's educational program and for which the medical school, academic medical center, or federally qualified health center has assumed direct responsibility.

12) Makes conforming changes to the application for an SFP, and provides that an application must include a statement from the dean of the medical school, dean or chief medical officer at an academic medical center, or the clinical or medical director of a federally qualified

health center at which the applicant will be employed describing the applicant's qualifications and justifying the dean's, chief medical officer's, or the clinical or medical director's determination that the applicant is eligible for an SFP.

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

COMMENTS:

Purpose. This bill is sponsored by **AltaMed.** According to the author: "AB 443 expands a current program that allows the Medical Board to grant special permits to visiting international medical graduates, to allow them to train and provide care under the supervision of a board-certified physician within a California federally qualified health center located in a rural or underserved community. Visiting fellows would also have to be able to provide care in a language of need in line with the health center's patient population. California has a unique need for a diverse and culturally competent health care workforce. While studies show that culturally competent care leads to better health outcomes, California only has 6.2 Latino physicians available for every 100,000 Spanish speaking patients, compared to the national average of 36.6. AB 443 will open up more educational opportunities to international health professionals while making linguistically and culturally competent care available to the Californians that need it most."

Background.

Function of the Medical Board of California. The Board's primary mission is to protect health care consumers through the proper licensing and regulation of physicians and surgeons. Through its licensing program, the Board ensures that only applicants who meet the minimum requirements can receive a license or registration to practice medicine. The Board has also jurisdiction to administer special programs – such as the foreign fellowship or the Special Faculty Permit program – which allow individuals who meet licensure exemption criteria to perform certain duties in specified settings.

Foreign Fellowship Program. BPC Section 2112 establishes a fellowship program under the jurisdiction Board that allows foreign trained physicians to be placed in a California hospital that is not affiliated with a medical school. This Section 2112 program is intended to bring internationally trained physicians who seek postgraduate study in a specialty or subspecialty field in California, who will then return to their country of origin to provide improved or enhanced medical care. Participants in the foreign fellowship program may engage in the practice of medicine strictly under the jurisdiction of the sponsoring California hospital and only under the direct supervision of a California licensee, who is board-certified and recognized as a clearly outstanding specialist in the field of training to be offered. Designed as a temporary placement, the fellowship program may only be renewed annually up to four times, with the Board responsible for reviewing and approving all fellowship applications and renewals. In addition, to administer the foreign fellowship, the Board can determine and levy a fee on applicants to cover the cost of operating the program.

Special Faculty Permits. The SFP program – a separate program from the foreign fellowship described above – was established as a unique license type to authorize eminent academic physicians to practice medicine within California medical schools and academic medical centers. The purpose was to allow world-renowned physicians and surgeons from other states or countries, who are known to be the top practitioners in their field but do not have a license to

practice in California, to come to the state to teach and practice medicine in an academic setting. The SFP was intentionally designed to attract the most gifted physicians to California, and bolster the state's position in medical practice and research. As specified in BPC Section 2168.1(c), the Board currently operates a subcommittee for the purpose of evaluating the credentials of applicants proposed by a California medical school or academic center. The committee – consisting of members of the Board and representatives of medical schools and academic centers – determines whether a candidate meets the requirements of an academically eminent physician, or an outstanding physician in an identified area of need. After this initial review, the committee submits a recommendation to the full Board for each proposed candidate for final approval or denial. According to the Board's latest annual report, as of fiscal year 2019-2020, there were 24 active SFP issued.

Federally Qualified Health Centers. FQHCs are community-based health care providers that receive specified federal funding to provide primary care services in underserved areas. Funded through the federal Health Resources and Services Administration Health Center Program, FQHCs must meet certain requirements, including providing care on a sliding scale that is based on ability to pay and operating under a governing board that includes patients. FQHCs provide comprehensive medical services, including preventive health, dental, mental health and substance abuse treatments, hospital and specialty care, and transportation services.

Major provisions of AB 443. This bill expands both the foreign fellowship program and the special faculty permit program under the Board to allow placements of internationally trained physicians in federally qualified health centers. According to the author and sponsor, this expansion of both programs would allow the placement of culturally and linguistically competent international physicians who would be able to provide care to underserved and rural communities.

First, AB 443 expands the foreign fellowship program to allow placements of international medical graduates into FQHCs (under BPC 2112, foreign fellowship placements are limited to California hospitals approved by the Joint Committee on Accreditation of Hospitals). This bill would allow physicians who are not citizens to be permitted to participate in a fellowship program in a specialty or subspecialty field in an FQHC. This FQHC foreign fellowship would follow a similar model as the current foreign hospital fellowship: fellows must apply and be approved by the Board and can only renew their program annually up to four times and must be under direction and supervision of a California-licensed physician at all times. Of note, the FQHC foreign fellowship contains one key difference from its hospital counterpart: the fellow must speak a language of need matching the FQHC's patient population in order to be eligible for placement. To support this program, the bill provides the Board with authority to fix a fee not to exceed the reasonable regulatory cost of processing an application.

Secondly, AB 443 expands the Special Faculty Permit program, and allows an immigrant international medical graduate participating in a fellowship program in a specialty or subspecialty field in a rural community or underserved community to receive an SFP. AB 443 defines an immigrant international medical graduate as meeting the following requirements: (1) being born outside of the United States; (2) currently residing permanently in the United States; (3) must not have entered the United States on a J-1 or similar nonimmigrant visa following acceptance into a United States medical residency or fellowship program, and (4) must be proficient in a threshold language. A threshold language, specified in the California Code or Regulations, is a language that has been identified as the primary language in an identified

geographic area. Under AB 443, an immigrant international medical graduate would be eligible to receive an SFP and practice medicine in specified settings. Under existing law, these settings include medical schools and academic medical centers. AB 443 expands these settings to add FQHCs. Thus, under AB 443, an SFP holder (which includes immigrant international medical graduates in a fellowship in a rural or underserved community) may practice medicine, but only within a medical school, an academic medical center, or a federally qualified health center and any affiliated institution in which the permitholder is providing instruction as part of these institutions' educational program.

Current Related Legislation.

None.

Prior Related Legislation.

AB 2273 (Bloom, Chapter 280, Statutes of 2020) – Physicians and surgeons: foreign medical graduates: special faculty permits: Expanded the Special Faculty Permit program to include academic medical centers.

AB 2478 (Carrillo, 2020) - International medical graduates: study: Would have required the Medical Board of California to prepare and submit to the Legislature a report with recommendations, among other topics, on recruiting bilingual physicians trained in Spanish-speaking countries, and facilitating their practice in medically underserved areas.

ARGUMENTS IN SUPPORT:

AltaMed Health Services writes in support: "AltaMed Health Services is pleased to support and sponsor AB 443 (Carrillo) which would allow immigrant physicians that are seeking postgraduate study to apply to the Medical Board to participate in a fellowship program in a specialty or subspecialty field offered by a Federally Qualified Health Center in a rural or underserved community. Specifically, physician fellows would be under the supervision of licensed, board-certified physician and surgeon, and would practice medicine and receive compensation for practicing medicine as authorized by the fellowship. Visiting fellows must speak a language of need matching the Federally Qualified Health Center's patient population. Additionally, United States citizens who have received a medical degree in another country would be eligible to participate in this program as well."

CaliforniaHealth+ Advocates writes in support: "Workforce studies show immediate action to expand international medical graduate (IMG) placements can alleviate the physician shortage. AB 443 advances this effort and supports [Community Health Centers (CHSs)] as they train, recruit, and retain the next generation of multilingual providers. IMGs are physicians who received their medical education outside the United States or Canada. They tend to practice in primary care specialties and in underserved and rural areas. In partnership with CHCs, the University of California at Los Angeles David Geffen School of Medicine's International Medical Graduate Program train Hispanic IMGs in rural and Spanish-speaking communities. Their patients continue to experience the inequities of COVID-19 exposure and deaths. CHCs rely on IMGs to close the gaps in primary care and support patient provider concordance which results in better health outcomes."

The Coalition of Orange County Community Health Centers, the Community Clinic Association of Los Angeles County, the Latino Coalition for a Healthy California, the Latinx Physicians of California and the Council of Mexican Federations in North America collectively write in support: "California's physician shortage crisis continues to have a devastating impact on underserved communities throughout the state by limiting access to vital health care services. The COVID-19 pandemic has intensified this shortage for vulnerable populations who are experiencing health disparities at alarming rates. The California Healthcare Workforce Commission estimates that approximately 7 million Californians live in a Health Professional Shortage Area (HPSA), a federal designation for counties experiencing a shortage of primary care, dental or mental health care providers, and therefore suffer from this shortage more acutely. To make matters worse, the physician shortage crisis is expected to increase in the near future, as the state's population grows older and continues to be increasingly diverse. Removing existing barriers to the supply of language-capable physicians is key to address the health care needs of the diverse, medically, and linguistically underserved residents of California."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Addressing the shortage of culturally competent physicians. According to the author and sponsor, one of the goals of this bill is to address a growing shortage of culturally and linguistically competent physicians. The author points out to data published in 2020 by the Association of American Medical Colleges (AAMC), and notes that the U.S. could see an estimated shortage of between 21,400 and 55,200 primary care physicians by 2033. This shortage is especially prevalent in Latino communities, as research conducted by the UCLA Latino Policy & Politics Initiative in 2019 found that there are only 6.2 Latino physicians in California for every 100,000 Spanish speaking patients.

While this bill could expand access to culturally and linguistically competent physicians by opening the foreign fellowship and the special faculty permit programs for placement in FQHCs, it is important to note that currently, only few permits are issued each year by the Board. As noted previously, in fiscal year 2019-2020, the Board reported 24 active SFPs. In addition, the Board reports only a few foreign fellowship permits are issued every year. While AB 443 could alleviate some of the need in targeted rural and underserved communities, this committee may want to consider if expanding special permits under the Board would create the supply necessary to address the described shortage of physicians.

IMPLEMENTATION ISSUES:

Change in the intent of the SFP program. As noted previously in this analysis, the special faculty permit program established under BPC Section 2168 was created to bring academically-eminent physicians and surgeons from other states or countries to teach and practice in California. BPC 2168 enumerates the requirements to be considered academically eminent, such as holding a full time appointment at the level of full professor in a tenure track position at a medical school or academic medical center, or being clearly outstanding in a specific field of medicine or surgery and being offered a full-time academic appointment. AB 443 implements many of its objectives by amending BPC Section 2168 – such as placing the definition of an immigrant international

medical graduate participating in a fellowship program into the same section defining academic eminence. From a statutory perspective, this change can be confusing, as it is unclear if the bill aims to change the original intent of the SFP program, (which is to bring academically eminent physicians) or if it is trying to create a separate program to serve rural and underserved communities. As this bill moves through the legislative process, the author and sponsor may want to consider amending the bill to move the provisions regarding the international medical fellowship in a separate or new code section outside of BPC 2168 in order to minimize statutory confusion.

SFPs in federally qualified health centers. As currently amended, this bill authorizes a SFP holder to practice medicine only within and as part of a federally qualified health center's educational program. FQHCs take several forms, including community health centers, clinics providing health care for the homeless, or health centers for residents of public housing. It is unclear how many California FQHCs have academic, faculty, or educational positions. Without such positions, it is also uncertain if the FQHC would be allowed to host a Special Faculty Permit holder. The author and sponsor may want to consider surveying FQHCs to determine if placements are available, or alternatively consider creating a modified program that does not require the permitholder to operate within the context of an academic or educational environment.

REGISTERED SUPPORT:

Altamed Health Services Corporation (Sponsor)
Californiahealth+ Advocates
Coalition of Orange County Community Health Centers
Community Clinic Association of Los Angeles County (CCALAC)
Latino Coalition for A Healthy California
Latinx Physicians of California
The Council of Mexican Federations in North America

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1552 (Eduardo Garcia) – As Introduced February 19, 2021

SUBJECT: Dentistry: foreign dental schools: applications.

SUMMARY: Extends the deadline for foreign dental schools previously approved by the Dental Board of California (DBC) to become approved by the Commission on Dental Accreditation of the American Dental Association (CODA) from January 1, 2024 until January 1, 2030.

EXISTING LAW:

1) Establishes the DBC within the Department of Consumer Affairs (DCA) to regulate the practice of dentistry. (Business and Professions Code (BPC) §§ 1600 *et seq.*)

2) States that protection of the public shall be the highest priority for the DBC in exercising its licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 1601.2)

3) Authorizes the DBC to grant a license to practice dentistry to an applicant who satisfies certain requirements, including a requirement that satisfactory evidence be provided that the applicant has graduated from a dental school approved by a national accrediting body approved by the board or by CODA. (BPC § 1634.1)

4) Beginning January 1, 2024, requires a school seeking approval as a foreign dental school to have successfully completed the international consultative and accreditation process with the CODA or a comparable accrediting body approved by the board. (BPC § 1636.4)

THIS BILL:

1) Changes the date by which a foreign school must have successfully completed the international consultative and accreditation process through CODA from January 1, 2024 to January 1, 2030.

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:

> "AB 1552 seeks to addresses the chronic shortage of dental care in our communities by extending the California accreditation of foreign dental schools from January 1, 2024 to January 1, 2030. This shortage of dental care has an adverse and disproportionate impact on low-income minority communities. Foreign dental schools such as LaSalle and Moldova foreign dental schools can creat an additional pool of dentists, who are required to practice in California, and thus help alleviate the dental provider shortage in underserved communities. Thus far, De La Salle foreign dental school has graduated over 300 dentists, many of whom are practicing in low-income communities."

Background.

Statute currently states that "the Legislature recognizes the need to ensure that graduates of foreign dental schools who have received an education that is equivalent to that of accredited institutions in the United States and that adequately prepares the students for the practice of dentistry shall be subject to the same licensure requirements as graduates of approved dental schools or colleges." The intent of laws authorizing education obtained internationally to count toward California license requirements has historically been focused on ensuring immigrants who have been trained and educated in other countries have access to employment and opportunity upon relocating to California. Various laws aimed at supporting the admission of foreign-trained professionals into the workforce focus particularly on furthering cultural competency and increasing access to care in frequently underserved immigrant communities.

Applicants for licensure as dentists in California are required to submit proof to the DBC that they have met certain education requirements, including a requirement that they have "completed at dental school or schools the full number of academic years of undergraduate courses required for graduation." For schools located within the United States and Canada, the DBC accepts the findings of the American Dental Association Commission on Dental Accreditation, or CODA, when they approve or reapprove a dental school located within the United States. These schools are accredited and re-evaluated by CODA every seven years.

Prior to 2015, CODA did not offer an accreditation process for foreign dental schools located outside the United States and Canada, and therefore education programs offered outside those countries could not become approved through the same CODA process. As a result, foreign-trained dental students could not present their degrees to the DBC for purposes of licensure as dentists. Attempts to solve this issue began in the 1970s, when California allowed international graduates who could pass a restorative technique exam performed to qualify to take the state's licensure exam, without additional education at a CODA-accredited school. However, concerns grew that this process risked licenses being granted to underqualified foreign-trained dentists, and stakeholders engaged in extensive discussions and negotiations to determine what type of alternative accreditation process could be established for purposes of international schools not eligible for accreditation by CODA.

In 1996, AB 1116 (Keeley) was signed into law, creating a new process through which the DBC itself would approve international dental schools not accredited by CODA. According to an issues summary published by the California Dental Association in February 2007:

> Although AB 1116 allowed the Dental Board to approve non-CODA accredited schools, the intent has always been for the board's process to mirror CODA's to the greatest extent possible. In fact, the Dental Board approached CODA about the possibility of contracting with it to evaluate foreign schools. CODA's organizational structure at the time prevented the possibility of contracting. Nevertheless, the board utilized CODA accreditation standards in developing their own approval process regulations, and the board has since consistently included former CODA members in its site visits to applicant schools.

The DBC's investigative process for reviewing applications from foreign dental schools, as outlined in regulations, required schools to meet basic curriculum requirements as well as administrative and programmatic standards to ensure a certain degree of equivalency with schools operating within the United States. An "onsite inspection and evaluation team" appointed by the board was then responsible for making "a comprehensive, qualitative onsite

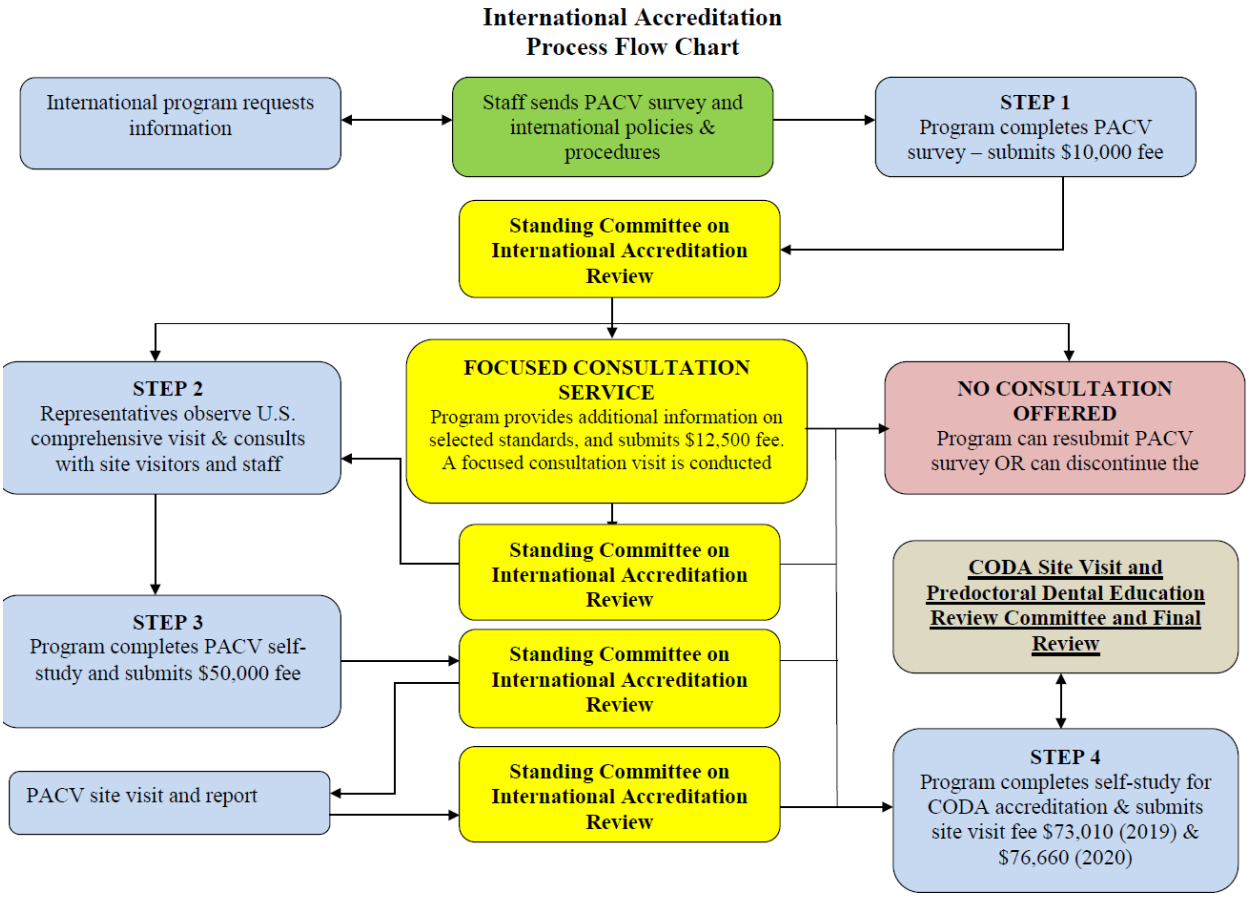
review of each institution that applies for approval." This review included examining documents, inspecting facilities, auditing classes, and interviewing administrators, faculty, and students. Reviewed schools were required to reimburse the DBC for all reasonable costs incurred by staff and the site team relating to the inspection. The DBC was required to notify the school of whether it has been approved within 225 days of a completed application.

Between 1996 and 2019, only two foreign dental schools were ever approved by the DBC. The first, La Universidad De La Salle Bajío ("De La Salle") was first approved in 2004 and is located in Leon, Guanajuato, Mexico. The second, the State of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova, received a two-year provisional approval in December 2016 and full approval in May 2018. While the DBC has conducted site visits for one other applicant, no other schools were approved over the approximately 23 years.
Over the past several years, policymakers questioned whether continuing to charge the DBC with responsibility for approving foreign dental schools continued to make sense.

In the sunset review background paper authored by the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business and Professions during the DBC's sunset review in March 2015, Issue #6 posed the question, "Is the process for approving foreign dental school sufficient? Should the Board consider heavier reliance on accrediting organizations for foreign school approvals if those options become available?" At that time, only De La Salle had ever been approved by the DBC, and the Moldova dental school was struggling to complete its application. While changing the process for approving foreign dental schools was contemplated during the 2015 sunset review, this ultimately did not occur due to a lack of identifiable alternatives to the DBC's process.

Shortly after the completion of the DBC's sunset review in 2015, major developments occurred in relation to foreign dental school approval, specifically in the successful establishment of a new process through CODA for foreign dental school approval. In November 2015, the American Dental Association House of Delegates officially established the CODA Standing Committee on International Accreditation, announcing that a review and approval process for foreign dental schools was now available from the same accrediting entity that had long approved schools located within the United States and Canada.

The CODA approval process includes completion of a Preliminary Accreditation Consultation Visit survey (PACV); a site visit and individual consultation; a PACV self-study and consultation visit; and ultimately an application for CODA accreditation. The process is explained in the following flow chart, provided by CODA:



Following the establishment of the CODA accreditation program for international dental schools, the issue of whether authority should be retained by the DBC was raised once again during the board's sunset review in 2019. In a joint background paper published in February 2019, the committees asked again: "Should the current process by which the DBC approves foreign dental schools continue?" In its formal response to the background paper, the DBC made the following statement: "The DBC believes that the best way to meet the legislature's need to ensure that graduates of foreign dental schools have received an education that is equivalent to that of accredited institutions in the United States is to require foreign dental schools to successfully complete the CODA international consultation and accreditation process that is currently available to all foreign dental schools."

Another driver behind the Legislature's reconsideration of whether the DBC should continue to approval foreign dental schools came from growing concerns about whether the State of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova should have been granted approval by the board. Shortly following the school's full approval, members of the DBC grew concerned that additional details of the Moldova school's recruitment program and admission standards were not disclosed in the application or to the DBC site evaluation team during the review.

In the DBC's November 2018 meeting, the board discussed a recently uncovered flyer advertising the Moldova school titled "Become a dentist… while living in Europe!" The flyer was widely distributed in California through "the University of Moldova USA Inc."—a separate entity operating an admissions office for the Moldova dental school based in Encino, CA. The flyer boasted that the school was "the only Dental School in English outside the United States

Fully Approved by the Dental Board of California." The flyer advertised that applicants to the school in Moldova were not required to have a college degree, or ACT or SAT scores. In addition to the flyer, a "Frequently Asked Questions" page on the University of Moldova USA Inc. site makes various statements clearly intended to recruit United States residents to travel to Moldova to fulfill their dental education requirements before returning to California to practice.

According to the DBC, the relationship between the dental school and the entity in Encino "was never divulged during the site evaluation conducted in October 2016." It is apparent that the Moldova dental school has actively recruited students in California, promising DBC-approved dental school education (taught entirely in English) without the need for a four-year college degree. Further, the tuition charged to students recruited in the United States appeared to be four times that of Moldovan students.

The DBC discussed the potential misrepresentations by the dental school in Moldova multiple times during its public meetings. In November 2018, the DBC posed a number of questions to the DBC's official representative, a former state senator; this representative indicated that he would not be able to answer the board's numerous questions and that school leadership would have to travel to California to provide the requested information. However, no one from the school appeared at the February 2019 board meeting. Finally, leadership for the dental school in Moldova appeared at the DBC's May 2019 board meeting, where they were questioned extensively about the relationship between the school and the University of Moldova USA Inc.

Ultimately, the DBC's 2019 sunset bill was amended by the committees to finally transition the responsibility for approving foreign dental schools from the DBC to CODA. These provisions were strongly supported by the DBC itself, which stated openly that it did not feel it had the resources or expertise to effectively review and approve foreign schools, as evidenced by its approval of the dental school in Moldova. While representatives of the University of Moldova USA Inc. opposed the bill, it was not opposed by De La Salle, which was actively going through the CODA accreditation process.

The provisions of the DBC's 2019 sunset bill required that the board cease accepting new applications from foreign dental schools beginning January 1, 2020, and that the board instead direct schools to CODA to apply for their accreditation. Currently, both foreign dental schools approved by the DBC remain approved until January 1, 2024, by which time they will have to have received CODA accreditation. This date aligns with the DBC's next sunset review, allowing for the Legislature to consider extending the deadline further in the event that either school reasonably needs more time to receive accreditation. Meanwhile, graduates of a foreign dental school whose programs were approved at the time of graduation remain eligible for licensure by the DBC.

This bill, which the author states is sponsored by the State of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova, would extend the deadline by which both schools currently approved by the DBC must transition to CODA approval. The author contends that an extension of 6 years is necessary to come into full compliance. While De La Salle has been working to become CODA approved for since the DBC's sunset bill was signed, the school in Moldova only recently submitted its application, and the author is concerned that they will not be able to meet the January 1, 2024 deadline.

Prior Related Legislation. AB 3315 (Eduardo Garcia) would have reverted the foreign dental school process back to the DBC. *This bill died in the Assembly Committee on Business and Professions.*

AB 1519 (Low, Chapter 865, Statutes of 2019) enacted language transitioning authority for approving foreign dental schools from the DBC to CODA.

ARGUMENTS IN SUPPORT:

The **Nicolae Testemintanu State University of Medicine and Pharmacy of the Republic of Moldova** supports this bill. According to the university, "the January 1, 2024 deadline to successfully complete CODA accreditation is unrealistic, if not impossible, and will result in the loss of our California accreditation. CODA foreign school accreditation process takes between 8-12 year period. Nevertheless, Moldova has started the process for accreditation through CODA, as Moldova firmly believes in the quality of its dental education program and that it will successfully complete the CODA foreign school accreditation requirements and criteria."

ARGUMENTS IN OPPOSITION:

The **California Dental Association** (CDA) opposes this bill. According to the CDA, "By shifting the approval process to CODA, foreign dental schools will be held to the same standards and will be evaluated by the same institution as all dental schools in the United States. CODA oversight for foreign dental schools seeking approval in the U.S. is not only more efficient but a superior method to accreditation because graduates from CODA-approved dental schools will be eligible to apply for licensure in all 50 states and, therefore, practice anywhere in the country. Additionally, having a single accrediting agency will ensure that all dentists who receive licensure in the U.S. have received training that meets a singular minimum standard."

POLICY ISSUE(S) FOR CONSIDERATION:

The author argues that the timeline for schools to receive CODA accreditation is "unrealistic," arguing that the approval process is "eight to ten years." This claim is easily refuted; the CODA process for approving foreign dental schools was essentially established at the beginning of 2016, and CODA approved its first school (located in Saudi Arabia) in August 2019, making the 8-year claim appear dubious. Further, the timeline provided for in statute allows for the Legislature to consider extending the transition timeline if it appears to be necessitated during the Legislature's next sunset review of the DBC. There is no urgent reason to reverse changes deemed prudent by the committees at this time; instead, the sponsor of the bill should continue to work through the CODA process and return to the Legislature in the event that it confronts reasonably insurmountable challenges.

REGISTERED SUPPORT:

Nicolae Testemintanu State University of Medicine and Pharmacy of the Republic of Moldova
Altamed Health Services
Arroyo Vista Family Health Center
Clinicas Del Camino Real, Inc.
Clinica Msr. Oscar A. Romero
El Proyecto Del Barrio, Inc.
South Central Family Health Center

REGISTERED OPPOSITION:

California Dental Association

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1302 (Quirk) – As Amended March 18, 2021

SUBJECT: Commercial cannabis billboards: placement restrictions.

SUMMARY: Allows cannabis licensees to advertise or market on a billboard along a highway that is farther than a 15-mile radius from the California border.

EXISTING LAW:

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

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

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

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

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

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

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

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

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

10) 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))

11) 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))

12) 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))

13) 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)

14) 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)

15) 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)

16) Exempts from the prohibition against advertising within 1,000 feet of a day care, school, playground, or youth center the placement of advertising signs inside a licensed premises and which are not visible by normal unaided vision from a public place, provided that such advertising signs do not advertise cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products. (BPC § 26155)

17) Requires cannabis product advertisements to comply with the applicable provisions of the Outdoor Advertising Act. (BPC § 26156)

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

THIS BILL:

1) Narrows the statutory prohibition against advertising or marketing on a billboard or similar advertising device located on an Interstate Highway or on a State Highway to only prohibit billboards within a 15-mile radius of the California border.

2) Finds and declares that the bill furthers the purposes and intent of Proposition 64.

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:

> "Cannabis advertising is already extremely restricted in California, with detailed regulations directing the content and placement of all advertising. Statute and regulations specify that advertisement cannot be attractive to, or geared to an audience under the age of 21, this includes a prohibition on using cartoon characters, images of anyone under the age of 21 and toys. This is why the *Farmer v Bureau of Cannabis Control* decision out of San Luis Obispo was a blow to the licensed cannabis community. AB 1302 seeks to codify the regulations that the Bureau adopted in 2019. It strikes the appropriate balance between protecting minors and providing cannabis licensees with a limited tool to advertise to their audience."

Background.

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

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

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

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

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

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

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

MCRSA vested authority for:

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

- The CDPH to license and regulate manufacturers; and

- The CDFA to license and regulate cultivators.

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

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

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

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

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

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

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

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

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

Prohibitions against Advertising to Minors. Prior to the AUMA being passed by the voters, arguments both for and against the initiative frequently focused on a debate over whether Proposition 64 would adequately protect children from exposure to the cannabis industry. In the official text of Proposition 64, the purpose and intent of the initiative was stated to include an intention to "prohibit the marketing and advertising of nonmedical marijuana to persons younger than 21 years old or near schools or other places where children are present." The AUMA includes a number of specified safeguards for minors, including:

- Prohibiting consumption of cannabis outside a residence within 1,000 feet of a school, day care center, or youth center while children are present.
- Requiring child-resistant packaging for cannabis products.
- Prohibiting packages and labels from being made to be attractive to children.
- Providing that cannabis products shall not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana.
- Prohibiting cannabis businesses from being located within 600 feet of schools and other areas where children congregate.
- Authorizing a licensing authority to deny a license if there is an unreasonable risk of minors being exposed to cannabis or cannabis products.

- Expressly prohibiting businesses selling recreational cannabis to minors under 21 or employing minors under 21.

Additionally, Proposition 64 included a prohibition against advertisers publishing or disseminating "advertising or marketing containing symbols, language, music, gestures, cartoon characters or other content elements known to appeal primarily to persons below the legal age of consumption." This language was heavily simplified when MCRSA and the AUMA were reconciled through the enactment of SB 94. Under MAUCRSA, licensees are instead prohibited more generally from publishing or disseminating "advertising or marketing that is attractive to children." However, similar language was incorporated into the BCC's regulations governing advertisements placed in broadcast, cable, radio, print, and digital communications.

Regulation of Cannabis Advertisements and Billboards. MAUCRSA imposes a number of advertising and marketing restrictions for cannabis businesses. First, the initiative required all advertisements and marketing to accurately and legibly identify the licensee responsible for its content, which MAUCRSA provides must include the addition of a license number. Further, the AUMA required that "any advertising or marketing involving direct, individualized communication or dialogue controlled by the licensee shall utilize a method of age affirmation to verify that the recipient is 21 years of age or older prior to engaging in such communication or dialogue controlled by the licensee."

MAUCRSA places a series of specific prohibitions on forms of advertising and marketing by cannabis licensees. Cannabis licensees may not do any of the following:

- Advertise or market 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.

- Publish or disseminate advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof.

- Publish or disseminate 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.

- Advertise or market on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border.

- Advertise or market cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products.

- Publish or disseminate advertising or marketing that is attractive to children.

- Advertise or market 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.

- Publish or disseminate advertising or marketing while the licensee's license is suspended.

In addition to these statutory requirements and prohibitions, the BCC's regulations include a number of additional provisions relating to cannabis advertising. Advertisements placed in broadcast, cable, radio, print, and digital communications may only be displayed after a licensee has obtained reliable up-to-date audience composition data demonstrating that at least 71.6 percent of the audience viewing the advertising or marketing is reasonably expected to be 21 years of age or older. These advertisements also may not depict images of minors, objects likely to be appealing to minors, or statements regarding free cannabis goods or giveaways.

The BCC's regulations also added more specific requirements to outdoor advertising of cannabis, including billboards. The BCC requires that, in addition to complying with the general provisions governing advertising, all outdoor signs must be affixed to a building or permanent structure. The BCC regulations also state that these ads must comply with the provisions of the Outdoor Advertising Act.

Finally, the BCC's regulations added more specificity to the AUMA's prohibition against 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. The BCC mirrored this prohibition in its regulations; however, it added the phrase "…within a 15-mile radius of the California border." This addition essentially clarified that cannabis billboards could be placed on an Interstate Highway or on a State Highway that crosses the California border, as long as it was placed farther than 15 miles from the state line.

In the BCC's final statement of reasons, it provided the following explanation for its rulemaking decisions in regards to outdoor advertising along highways:

> "Subsection (b)(3) has been added to clarify that outdoor signs, including billboards, shall not be located within a 15-mile radius of the California border or an Interstate Highway or on a State Highway which crosses the California border. The Act prohibits certain advertisements along Interstate Highways and State Highways that cross the California border but does not clarify to what extent such prohibitions take place. This change is necessary to clarify the prohibitions found in section 26152(d) of the Business and Professions Code, by allowing the placement of outdoor signs or billboards along Interstate Highways or State Highways, provided that they are located further than 15-miles from the California border. The Bureau determined that a 15-mile radius was a necessary and appropriate distance from the California border because it satisfies that the intent of section 26152(d) of the Business and Professions Code, while assuring that Bureau licensees, including those located in jurisdictions along the California border, still have an opportunity to advertise and market their commercial cannabis operations along Interstate Highways and State Highways if they satisfy the identified radius limitations."

This statement of reasons essentially argued that the intent of Proposition 64 was not to necessarily prohibit *all* outdoor advertising along highways, and that the BC was authorized to add clarity to the extent of the prohibition.

In November 2020, the BCC's regulations language allowing for cannabis advertisements to be placed along highways farther than 15 miles from the border were challenged in court. In the case of *Farmer v. Bureau of Cannabis Control*, the plaintiffs argued that the BCC had no authority to promulgate regulations allowing for cannabis advertisements to be placed along highways when the initiative clearly prohibited them. The plaintiffs insisted that the plain language intent of Proposition 64 was to protect the public by limiting outdoor advertising.

In response, the BCC argued that the primary intent of the highway language in Proposition 64 was to avoid running afoul of the federal government's continued classification of cannabis as a Schedule I controlled substance. Cannabis placed on interstate highways or on state highways near the border could potentially be seen as encouraging "cannabis tourism" where individuals from out-of-state enter California to purchase from the state's legal market. The BCC argued that its regulations effectuated this intent while avoiding constitutional issues around free speech.

On January 11, 2021, the San Luis Obispo Superior Court entered a summary judgement that the BCC's regulation language allowing for cannabis billboards to be placed along highways was in direct conflict the law. The court found that "the Bureau exceeded its authority in promulgating the Advertising Placement Regulation" and that the regulation "is clearly inconsistent with the Advertising Placement Statute, expanding the scope of permissible advertising to most of California's State and Interstate Highway system, in direct contravention of the statute." The court invalidated the BCC's regulation and effectively instituted a full prohibition against outdoor advertising of cannabis along highways.

In response, the BCC issued a notice to licensees, informing them of the court's decision. The notice provided the following guidance: "To comply with the law and regulations, licensees may not place new advertising or marketing on any interstate highway or state highway that crosses the California border. Licensees should also begin the process of removing current advertising and marketing that meets this criteria."

This bill seeks to undo the impact of the court decision in *Farmer* by codifying the BCC's regulations and inserting the "15-mile radius" language into MAUCRSA. The author and supporters of the bill believe that reconciling statute with the BCC's regulations would survive any further legal challenge and would allow billboards to once again be placed alongside highways. The author contends that doing so would restore a meaningful tool for lawful cannabis businesses to compete against persistent black market operators and allow the state's regulated marketplace to thrive.

Current Related Legislation. AB 273 (Irwin) would impose a number of additional content restrictions on outdoor advertisements of cannabis and cannabis products. *This bill is pending in the Assembly Committee on Business and Professions.*

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

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

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

ARGUMENTS IN SUPPORT:

The **California Cannabis Industry Association** (CCIA) supports this bill. According to the CCIA, "AB 1302 clarifies the disputed provision of Proposition 64 by clearly establishing in

statute the 15-mile advertising prohibition previously established under regulations. By codifying the disputed regulation, licensing agencies have clear assurance on how to promulgate state law, and cannabis licensees can continue to advertise on billboards in accordance with the State's strict advertising protocols. A strong, regulated cannabis industry is one of California's primary tools to reduce illicit cannabis activities and protect youth from accessing cannabis products before the age of 21."

The **California State Outdoor Advertising Association** (CSOAA) also supports this bill. The CSOAA points out that "the outdoor advertising industry, like so many other industries during the COVID-19 pandemic, has been hit hard as advertisers cut budgets, ask for discounts, or cancel contracts all together. As businesses remained closed during the pandemic, essential businesses that continued to operate served as an important client category for CSOAA member companies. Licensed cannabis businesses, deemed essential, continued to operate in many cases, and for represented a key category of business during a difficult time. Cannabis is a legal product in the state, and businesses are harmed unnecessarily by the inability to advertise it in a legal manner that simultaneously protects the public."

ARGUMENTS IN OPPOSITION:

This bill is opposed by the **Solano County Alcohol, Tobacco and Other Drugs Prevention Collaborative** (Collaborative). The Collaborative writes that "during the time those regulations were in effect California highways were (and many remain) covered in cannabis advertisements, exposing millions of California children and youth to ads promoting a legal, but harmful and addictive substance, every day, on their way to school or other activities. Passing AB-1302 would again violate the promise to the voters and maintain the visual pollution of our public spaces with ads that expose California's children and youth to marketing tactics of the cannabis industry. These have included, for example, visuals that imitate Joe Camel, display fruit flavored names known to attract youth, imply that the problems of young people of color can be solved by a dispensary, or promise happiness. Billboards are not needed for the legal industry to communicate with consumers, other options abound, and many other states have not allowed them."

Contra Costa County also opposes this bill. The county argues that "states that have legalized adult recreational use of cannabis have also seen an increase in motor vehicle accidents associated with the use of cannabis, including in minors. For these reasons Contra Costa Health Services, Behavioral Health's Alcohol and Other Drug Services and Public Health's Tobacco Prevention Programs encourage the Business and Professions Committee to oppose AB 1302 as a measure to eliminate a loophole that would allow the cannabis industry dangerous marketability."

REGISTERED SUPPORT:

Advanced Vapor Devices
Anthony Law Group
Bay Area Americans for Safe Access
Biko
Bizfed Central Valley
Blackbird Distribution
Blaqstar Farms
Bloom Farms

Brite Labs
Brownie Mary Democratic Club of San Francisco
Calasian Chamber of Commerce
California African American Chamber of Commerce
California Cannabis Industry Association
California Cannabis Manufacturers Association
California Hispanic Chambers of Commerce
California NORML
California State Outdoor Advertising Association
Caliva
Cannabis Connect
Cannabis Distribution Association
Cannacraft
Cannasafe Labs
Central Coast Agriculture
Central Valley Business Federation
Cloud9
Cresco Labs, INC.
Dompen
Dosist
Double Barrel
Dreamt
Eaze Technologies, INC.
Eden
Flow Kana
Fume
Gaiaca Waste Revitalization
Harborside
Headstash
Henry G. Wykowski & Associates
Honey
Humboldt's Finest
Infinite Cal
Island
James Henry
Jetty Extracts
Kanha
KGB Reserve
Kiva Confections
LA Vida Verde
Law Office of Kimberly R. Simms
Legion of Bloom
Level Blends
Life Development Group
Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation (BIZFED)
Lowell Herb Co.
Mammoth Distribution
Meadow

MPP
Nabis
National Cannabis Industry Association
New Life CA
NorCal Cannabis
Nouera
Oakland Chamber of Commerce
Oakland Extracts
Old Pal
Operation Evac
Pasadena Chamber of Commerce
Pax Labs, INC.
Perfect Union
Pineapple Express
Pure
Rove
San Diego Americans for Safe Access
San Francisco Chamber of Commerce
Santa Monica Chamber of Commerce
Se7enleaf
Select
Silicon Valley Cannabis Alliance
Spacestation
Sparc
Special Branch
Sunderstorm
Telos
The Farmacy SB
The London Fund
The Werc Shop
United Cannabis Business Association
Utopia
Valley Industry & Commerce Association
Vaya
Veale Outdoor Advertising
Venice Cookie Co.
Veterans Cannabis Coalition
Weed for Warriors Project
Weedmaps
West Hollywood Chamber of Commerce
Yvette McDowell Consulting

REGISTERED OPPOSITION:

Alcohol, Tobacco and Other Drugs Prevention Collaborative
Contra Costa County
Getting It Right From the Start
Pittsburg Bay Point Community Coalition
Youth Forward

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 356 (Chen) – As Introduced February 1, 2021

SUBJECT: Fluoroscopy: temporary permit.

SUMMARY: Authorizes the California Department of Public Health (CDPH) to issue to a physician and surgeon or a doctor of podiatric medicine a one-time, temporary permit authorizing them to operate or supervise the operation of fluoroscopic x-ray equipment if they meet certain requirements.

EXISTING LAW:

1) Provides the Radiologic Health Branch (RHB) within the CDPH with responsibility for administering and enforcing the Radiologic Technology Act. (Health and Safety Code (HSC) §§ 106955 *et seq.*)

2) Requires the RHB within the CDPH to provide for the certification of radiologic technologists, as well as physicians and surgeons, to use certain radiologic technology. (HSC § 114870)

3) Requires the RHB within the CDPH to issue a fluoroscopy permit to a qualified licensee of the healing arts. (HSC § 114872)

4) Authorizes only a licensed physician and surgeon, podiatrist, chiropractor, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of those persons, to operate or maintain any X-ray fluoroscope, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet. (HSC § 106955)

5) Prohibits any healing arts licensee from administering or using diagnostic, mammographic, or therapeutic X-rays on human beings unless that person is certified and acting within the scope of that certification. (HSC § 107110)

6) Allows the RHB within the CDPH to grant limited-term special permits to persons exempting them from certification requirements if there is substantial evidence that the people in the locality in which the exemption is sought would be denied adequate medical care because of unavailability of certified radiologic technologists. (HSC § 114885)

7) Establishes the Medical Practice Act, which provides for the state's licensure and regulation of physicians and surgeons. (Business and Professions Code (BPC) §§ 2000 *et seq.*)

8) Establishes the Podiatric Medical Board of California (PMBC) within the jurisdiction of the Medical Board of California (MBC) and vests the BPM with regulation of podiatric medicine. (BPC §§ 2460 *et seq.*)

THIS BILL:

1) Authorizes the CDPH to issue a physician and surgeon or a doctor of podiatric medicine a one-time, temporary permit authorizing them to operate or supervise the operation of fluoroscopic x-ray equipment.

2) Requires that a physician and surgeon or doctor of podiatric medicine seeking this temporary permit to hold a valid California license, submit an application for a fluoroscopy certificate, and have used fluoroscopy in another state.

3) Requires temporary permit applications to indicate the locations or facilities where the physician and surgeon or the doctor of podiatric medicine will be providing fluoroscopy.

4) Provides that a temporary permit shall convey the same rights as a fluoroscopy certificate for the period for which it is issued in the classification for which the physician and surgeon or the doctor of podiatric medicine is eligible and shall be valid for up to 12 months from the date of issue.

5) Prohibits the CDPH from renewing a temporary permit, and allows each applicant to receive a temporary permit one time only.

6) Authorizes the CDPH to charge a fee for the temporary permits.

7) Provides that temporary permits may be denied, revoked, or suspended by the CDPH for any of the reasons currently provided for other certificates and permits issued to radiographical technologists.

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

COMMENTS:

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

> "Fluoroscopy is a kind of video X ray used in surgery for many purposes. This simple bill helps patients by allowing doctors and podiatrists who have used fluoroscopy in their practice in another state to have a one-time, temporary permit to use fluoroscopy to give them time to complete the requirements for a California fluoroscopy permit. Because California is one of only two states to require doctors and podiatrists to have an additional permit to use fluoroscopy in surgery, many doctors who have practiced in other states do not know they need to get a permit until they get to California. The process to get a permit can take up to nine months. Since patients need their doctors to be able to use fluoroscopy in surgery, this bill will help surgical patients by letting out of state doctors who have used fluoroscopy get a one time temporary permit to use fluoroscopy while they complete the requirements for a California permit."

Background. The U.S. Food and Drug Administration describes fluoroscopy as "a type of medical imaging that shows a continuous X-ray image on a monitor, much like an X-ray movie. During a fluoroscopy procedure, an X-ray beam is passed through the body. The image is transmitted to a monitor so the movement of a body part or of an instrument or contrast agent

('X-ray dye') through the body can be seen in detail." Like most other forms of radiologic procedures, use of this technology is regulated through the CDPH, and healing arts licensees must meet certain training and certification requirements to perform fluoroscopy services.

In California, a radiologic technologist fluoroscopy permit, a fluoroscopy supervisor and operator permit, or a Physician Assistants fluoroscopy permit is required to operate fluoroscopy equipment. To obtain such a permit, an applicant must currently pass an examination administered by the American Registry of Radiology Technologists. According to the CDPH, 12,530 licensed physicians and surgeons and doctors of podiatric medicine currently hold a current and valid fluoroscopy permit.

The supporters of this bill point out that the current timeline for an applicant to sign up for, take, and pass the permit examination is relatively protracted, taking up to six months for an applicant to ultimately receive their results. This has been even more prolonged during the COVID-19 pandemic. Because the examination must only be taken and passed once, most practitioners whose initial licensure takes place within California will sit for the permit exam immediately upon eligibility, and there is no significant interruption in their subsequent ability to perform those services if relevant to their practice. However, because California is unique in requiring this examination to perform fluoroscopy services, practitioners coming to California from other states can potentially see their ability to perform services interrupted as they must wait until they are able to take and pass the permit exam.

This bill would allow the CDPH to issue a temporary permit for physicians and surgeons and doctors of podiatric medicine to operate or supervise the operation of fluoroscopic x-ray equipment. The author contends that this will pose very little risk to patients, as the statistical probability that a person will experience these effects from a fluoroscopic procedure is very small. These permits would not be eligible to be renewed and if a for physician and surgeon or doctor of podiatric medicine who wishes to maintain the authority after 12 months would be required to seek full authorization.

Prior Related Legislation. AB 407 (Santiago) would have allowed for a physician and surgeon or a doctor of podiatric medicine to provide fluoroscopy services without a fluoroscopy permit or certification if they are providing those services a setting that is compliant with the Centers for Medicare and Medicaid Services' (CMS) Conditions for Coverage (CfC) relating to radiation safety. *This bill died in the Senate Committee on Appropriations.*

AB 2544 (Santiago) would have authorized the CDPH to issue a nonrenewable, temporary 9-month fluoroscopy permit to a physician and surgeon or a licensed doctor of podiatric medicine. *This bill died in the Assembly Committee on Business and Professions.*

ARGUMENTS IN SUPPORT:

The **California Orthopaedic Association** and the **Podiatric Medical Association of California** are co-sponsoring this bill. In a joint letter, the organizations state: "This simple bill creates a one-time, temporary permit allowing physicians and doctors of podiatric medicine, who have used fluoroscopy in another state, to use florosopy in California while they go through the process to receive fluoroscopy certification. California has the most stringent and burdensome regulations regarding doctors performing fluoroscopy and radiography across the country. In fact, only California and Alaska require additional certification to use fluoroscopy."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Orthopaedic Association *(Co-Sponsor)*
Podiatric Medical Association of California *(Co-Sponsor)*
California Radiological Society

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 13, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1386 (Cunningham) – As Introduced February 19, 2021

SUBJECT: License fees: military partners and spouses.

SUMMARY: Prohibits a licensing board under the Department of Consumer Affairs from charging an initial or original license fee to an applicant who holds a current similar license in another state and is the spouse of an active duty member of the Armed Forces that is stationed in California.

EXISTING LAW:

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

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

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

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

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

6) Requires a board, if applicable, to post information on the board's website about the ability of veteran applicants to apply military experience and training towards licensure requirements. (BPC Section 114.5(b))

7) Requires a board to expedite and assist the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged. (BPC Section 115.4)

8) Requires a board to shall expedite the licensure process for an applicant who meets both of the following requirements

    a) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed

Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

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

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

THIS BILL:

1) Prohibits a board from charging an initial or original licensing fee to an applicant who meets the following requirements:

   a) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

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

2) Authorizes the board to adopt regulations necessary to administer the bill's provisions.

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

COMMENTS:

Purpose. This bill is author-sponsored. According to the author: "Having to constantly relocate can be difficult on the families of active military members. Needing to pay a fee every time a relocation happens to continue practicing your profession is an unnecessary burden being placed on military spouses. We owe much to our Military members and their families for the stability they sacrifice in the name of service, AB 1386 would relieve some of the pressure and work to make the relocating process easier."

Background.

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

As part of the licensing process, boards are tasked with determining the competency of each applicant seeking licensure. This can be done through reviewing educational transcripts,

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

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

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

Reducing cost of licensure for military spouses. This bill aims to reduce the cost of licensure for military spouses who hold an out-of-state occupational license and wish to gain an equivalent license in California. Specifically, AB 1386 directs regulatory boards under the DCA to waive initial original license fees for individuals who both (1) supply evidence that they are married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California and (2) hold a current, equivalent license in another state.

Current Related Legislation.

AB 1026 (Smith): Business licenses: veterans. Requires a regulatory board under the Department of Consumer Affairs to grant a 50-percent fee reduction for an initial license to an applicant who provides satisfactory evidence that the applicant has served as an active duty member of the United States Armed Forces of the California National Guard and was honorably discharged.

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

Prior Related Legislation.

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

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

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

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

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

ARGUMENTS IN SUPPORT:

The California Board of Accountancy writes in support: "This bill would prohibit a board within the Department of Consumer Affairs, including the CBA, from charging an initial or original license fee to an applicant who meets the existing expedited licensing requirements for spouses, domestic partners, or other legal partners of members of the United States Armed

Forces with an assigned duty station in California. The CBA has taken a Support position on AB 1386, consistent with its continued practice of assisting members of the military and their families, which includes expediting licensure and providing individual assistance via the CBA's military liaison."

The Peace Officers' Research Association of California writes in support: "Current law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law also requires a board to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and provides evidence that they are married to or in a domestic partnership or other legal union with an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders. This bill would prohibit a board from charging an initial or original license fee to an applicant who meets these expedited licensing requirements. PORAC believes our active duty military and their loved ones should be assisted in as many ways as possible. By providing an expedited licesening process, as well not charging the license fees, military families can have more peace of mind and security while as their loved ones are serving our country."

ARGUMENTS IN OPPOSITION:

The California Acupuncture Board writes in on opposition: "This bill would prohibit a board from charging an initial or original license fee to an applicant who meets expedited licensing requirements under Business and Professions Code Section 115.5. […] The Board appreciates the bill's approach to providing more ease and convenience for military families when relocations occur for the retainment of one's career. Although the loss in revenue related to this legislation is expected to be minor, the Board had concern that this kind of legislation may set a precedent for other communities to seek being pardoned from licensing fees."

POLICY ISSUE(S) FOR CONSIDERATION:

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

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

As several bills this legislative session are contemplating fee waivers and discounts for veterans and military spouses, this committee should consider the collective, potential effects of such bills on boards with budget deficits. While it is clear that more should and can be done to assist veterans and veterans transitioning into civilian life, it is possible that boards with financial

structural imbalances would need to increase fees on the general public in order to comply with fee waiver or discount requirements enacted in statute.

AMENDMENTS:

In its current language, AB 1386 directs regulatory boards under DCA to waive an "initial or original license fee" for eligible individuals. There are no definitions of "initial" or "original," and thus it is unclear which fees are being described. Currently, regulatory boards charge various fees related to obtaining initial licensure. For example, a board may charge an application review fee to cover the cost of checking eligibility licensure; a license issuance fee to cover the cost of sending out licensing documentation and updating state records; an examination fee to cover the costs of administering a competency test; or a reapplication fee if an application had been previously abandoned. In some instances, fees related to initial licensure are not charged by the boards themselves, but by a third-party – such as any regulatory boards who use national examinations administered by accredited testing agencies. In those cases, it is unlikely a board can waive such fees, as payments are made directly from the candidate to that third-party entity.

To provide some clarity on the types of fees to be waived, the committee submits the following amendments:

AMENDMENT 1

On page 2, in line 12, after "(b)" insert:
(1)

AMENDMENT 2:
On page 2, in line 13, strike out "or original license fee." and insert:

application fee or an initial license issuance fee.
(2) The board shall not charge an applicant who meets the requirements in subdivision (a) an initial examination fee if the examination is administered by the board.

Section would read:
(b)(1) A board shall not charge an applicant who meets the requirements in subdivision (a) an initial ~~or original license fee.~~ *application fee or an initial license issuance fee.*

(2) The board shall not charge an applicant who meets the requirements in subdivision (a) an initial examination fee if the examination is administered by the board.

(c) A board may adopt regulations necessary to administer this section.

REGISTERED SUPPORT:

California Board of Accountancy
Peace Officers Research Association of California

REGISTERED OPPOSITION:

California Acupuncture Board

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 830 (Flora) – As Amended April 19, 2021

SUBJECT: Business: Department of Consumer Affairs: Alarm Company Act: Real Estate Law.

SUMMARY: Makes various technical changes and noncontroversial reforms to laws governing professions regulated by boards and bureaus under the Department of Consumer Affairs (DCA).

EXISTING LAW:

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

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

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

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

5) Places the DCA under the control of the Director of Consumer Affairs, who is appointed by the Governor and may investigate the work of boards under the DCA. (BPC §§ 150 *et seq.*)

6) Permits the Director of Consumer Affairs to require reports from any board or other agency within the DCA as the director deems reasonably necessary on any phase of their operations. (BPC § 127)

7) Establishes the Alarm Company Act for purposes of regulating alarm company operators and alarm agents. (BPC §§ 7590 *et seq.*)

8) Establishes the Bureau of Security and Investigative Services (BSIS) within the DCA, which licenses and regulates alarm companies. (BPC §§ 7512 *et seq.*)

9) Defines "alarm system" as an assembly of equipment and devices arranged to signal the presence of a hazard requiring urgent attention and to which police may respond. (BPC § 7590.1)

10) Requires alarm company operator license applicants to submit to the BSIS a personal identification form with a photograph taken within one year immediately preceding the date of the filing of the application. (BPC § 7593.1)

11) Requires licensees under the Alarm Company Act who carry a firearm in the course of their duties to complete a course of training in the carrying and use of firearms, receive a firearms

qualification card prior to carrying a firearm, and complete a course in the exercise of the powers to arrest. (BPC § 7596.3)

12) Establishes the Department of Real Estate (DRE) under the Business, Consumer Services, and Housing Agency. (BPC §§ 10050 *et seq.*)

13) Requires a real estate licensee to disclose their name, license identification number, and unique identifier on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting in a manner that requires a real estate license or mortgage loan originator license endorsement in those transactions. (BPC § 10140.6)

THIS BILL:

1) Requires the Director of Consumer Affairs to notify the appropriate policy committees of the Legislature within 60 days after the position of chief or executive officer of any bureau or board within the department becomes vacant.

2) Amends the definition of "alarm agent" to specify that the person is employed to physically conduct activities within the state.

3) Excludes from the definition of "alarm system" a fire protection system.

4) Requires that all applications for licensure under the Alarm Company Act be submitted electronically beginning July 1, 2022.

5) Removes the requirement that applicants for licensure under the Alarm Company Act submit photographs on the personal identification form.

6) Prohibits an applicant for a firearms permit who is a BSIS-certified firearms training instructor from self-certifying their own completion of training requirements or from self-certifying the requalification requirements on the range for a firearms qualification card.

7) Makes the failure of any licensee under the Alarm Company Act who is also licensed to do business as a corporation or limited liability company in California to be registered and in good standing with the Secretary of State and the Franchise Tax Board after notice from the bureau result in the automatic suspension of the licensee by operation of law.

8) Authorizes a real estate licensee who is a natural person and who legally changes the surname in which their license was originally issued to continue to utilize their former surname for business associated with their license so long as both names are filed with the department.

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

COMMENTS:

Purpose. This bill is an omnibus vehicle, authored by the Vice Chair of the Assembly Committee on Business and Professions and intended to enact minor, technical, or noncontroversial proposals relating to licensed professions and businesses within the committee's jurisdiction.

Background.

DCA Director Reporting Requirements. Existing law authorizes executive officers and bureau chiefs to be appointed to oversee boards and bureaus under the DCA. Committees of the Legislature frequently engage with these employees when discussing proposed changes to their respective Acts. Often, these positions will become vacant without notice being provided to the Legislature. While the Senate will eventually be informed if the position is subject to Senate confirmation, not all committees receive timely information about all vacancies. This bill would require the Director of Consumer Affairs to notify the committees in the event that a position becomes vacant.

Alarm Company Act. This bill makes various changes to the Alarm Company Act intended to modernize and update its statutes. The bill would clarify that "alarm agents" only refers to those people conducting work physically in the state of California, which will resolve persistent confusion within the industry regarding who must register with the BSIS. Additional technical changes clarify that alarm agents can work on "ancillary" devices connected to and controlled by the alarm system, such as wireless video cameras, connected locks, carbon monoxide detectors, and supplementary smoke detectors. Additional updates to the definition of "alarm system" reflect that not all hazards detected require police response, such as carbon monoxide detection, smoke detection, doors left open, and leak detection.

This bill also requires that alarm companies and their employees use the online BreEZe system to submit applications. Online applications have a lower percentage of applications returned for errors, are quicker to process, and facilitate contactless licensure. Currently, applications can be submitted online, or using paper applications. This bill would require all applications to be online by July 1, 2022.

Current law requires alarm license applicants to submit a picture that has been taken within one year with their application. Once received, the BSIS typically discards it, since it has no need for the picture, and it is not used by the bureau. This bill would remove the applicant photograph requirement.

The BSIS licenses firearms training instructors for the alarm industry. These instructors are required to take a training course that is also approved by the BSIS, but there is nothing in the law that says that they can't administer this training course to themselves, or simply self-certify that they have completed this training satisfactorily. This bill would require these firearms training instructors to become certified by another training instructor.

Currently, a license number is required to sign a contract in California with a customer. Alarm company employees are often given provisional licenses while their license applications are still being reviewed by the BSIS. This bill would provide applicants with a temporary application number that can be included on contracts while their application is being reviewed. The bill also requires the alarm company employee to carry a photo identification and their temporary application and specifies that this can be digital.

Real Estate Solicitations. Current law requires that realtors disclose their name, among other information, on all solicitation materials to consumers and on real property purchase agreements. However, in many cases, a real estate licensee changes their name legally (often upon entering into a marriage or partnership) but wishes to continue to use their prior surname professionally. This bill would allow that, as long as the DRE is made aware of both names.

REGISTERED SUPPORT:

California Alarm Association

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1064 (Fong) – As Amended March 15, 2021

SUBJECT: Pharmacy practice: vaccines: independent initiation and administration.

SUMMARY: Expands the authority of a pharmacist to initiate and administer immunizations to include any vaccine approved or authorized by the United States Food and Drug Administration (FDA) for persons 3 years of age and older.

EXISTING LAW:

1) Establishes the Board of Pharmacy (BOP) to administer and regulate the Pharmacy Law. (Business and Professions Code (BPC) § 4001)

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

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

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

5) Defines "pharmacist" as a natural person to whom a license has been issued by the BOP which is required for any person to manufacture, compound, furnish, sell, or dispense a dangerous drug or dangerous device, or to dispense or compound a prescription. (BPC § 4036; BPC § 4051)

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

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

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

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

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

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

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

(BPC § 4052)

7) Authorizes a pharmacist to perform the following procedures or functions in certain licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

a) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

b) Ordering drug therapy-related laboratory tests.

c) Administering drugs and biologicals by injection pursuant to a prescriber's order.

d) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(BPC § 4052.2)

8) Authorizes a pharmacist to initiate and furnish preexposure prophylaxis. (BPC § 4052.02)

9) Authorizes a pharmacist to initiate and furnish postexposure prophylaxis. (BPC § 4052.03)

10) Authorizes a pharmacist to furnish self-administered hormonal contraceptives in accordance with standardized procedures or protocols developed and approved by both the BOP and the Medical Board of California (MBC) in consultation with the American Congress of Obstetricians and Gynecologists, the California Pharmacists Association, and other appropriate entities. (BPC § 4052.3)

11) Authorizes a pharmacist to perform skin puncture in the course of performing routine patient assessment procedures. (BPC § 4052.4)

12) Authorizes a pharmacist to independently initiate and administer vaccines listed on the routine immunization schedules recommended by the federal Advisory Committee on Immunization Practices (ACIP), in compliance with individual vaccine recommendations, and published by the federal Centers for Disease Control and Prevention (CDC) for persons three years of age and older, as well as any FDA-approved any COVID-19 vaccines. (BPC § 4052.8(a))

13) Authorizes a pharmacist to furnish nicotine replacement products for use by prescription only in accordance with standardized procedures and protocols developed and approved by both the BOP and the Medical Board of California in consultation with other appropriate entities and provide smoking cessation services, under certain conditions. (BPC § 4052.9)

14) Requires pharmacists that independently initiate and administer vaccines to meet the following training and recordkeeping requirements:

    a) Complete an immunization training program endorsed by the CDC or the Accreditation Council for Pharmacy Education that, at a minimum, includes hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines, and maintain that training.

    b) Be certified in basic life support.

    c) Comply with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry.

    (BPC 4052.8(b))

THIS BILL:

1) Deletes the requirement that a vaccine be listed on ACIP's routine immunization schedule recommendations and published by the CDC prior to being independently initiated and administered by a pharmacist.

2) Expands the scope of practice for a pharmacist to allow for the independent initiation and administration of any vaccine approved or authorized by the FDA for persons three years of age or older.

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

COMMENTS:

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

6. Please include an author's statement as you wish it to appear on the Committee analysis.

    "We trust our pharmacists to provide excellent care through medication, counsel, vaccinations and more. They are highly educated and trained, and they are in prime position to help increase access to vaccinations. The COVID-19 pandemic has put a significant strain on our healthcare system, and we are very grateful to our pharmacists for helping respond to the crisis and spring to action to administer the COVID-19 vaccines. AB 1064 will increase access to vaccinations across the state and takes us another step towards improving our healthcare response."

Background.

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

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

Prior legislation granted authority for licensed pharmacists to independently initiate and administer these routine vaccines to provide for expanded access to immunization. Pharmacists must have completed an immunization training program and be certified in basic life support. Once these requirements are met, a pharmacist may provide the vaccinations without a patient having to visit a primary care provider's office.

On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency as a result of the impacts of the COVID-19 public health crisis. On March 30, 2020, the Governor signed an executive order that created a new process for boards and the public to request waivers of requirements related to healing arts professional licensing through the DCA. Through this waiver process, the DCA issued multiple waivers of law to authorize various healing arts licensees to order and administer the COVID-19 vaccine. These waivers have extended to pharmacists, as well as pharmacy technicians, dentists, dental hygienists, optometrists, doctors of podiatric medicine, licensed midwives, physician assistants, respiratory care practitioners, veterinarians, medical assistants, healthcare students, and naturopathic doctors. Prior legislation codified the authority of a pharmacist to independently initiate and administer COVID-19 vaccines approved by the FDA regardless of whether they are listed as a routine immunization by ACIP and published by the CDC.

This bill would remove the requirement that any vaccine be listed as a routine immunization by ACIP and published by the CDC for it to be independently initiated and administered by a pharmacist. Under the bill, a pharmacist could independently initiate and administer any vaccine approved by the FDA for persons three years or older if they meet existing training and recordkeeping requirements. This would mean that for vaccines not considered to be "routine" but still commonly administered, such as vaccines received for purposes of international travel. Eligible vaccines would include those used to inoculate persons against diseases such as Ebola virus, anthrax, Japanese encephalitis, rotavirus, and typhoid.

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

AB 691 (Chau) would expand the authority of a qualified optometrist to administer immunizations to include the administration of the COVID-19 vaccine. *This bill is pending in the Assembly Committee on Appropriations.*

Prior Related Legislation. AB 1710 (Wood, Chapter 123, Statutes of 2020) allows for a licensed pharmacist to independently initiate and administer COVID-19 vaccines approved by the FDA under the same circumstances that vaccines listed on the routine immunization schedule may initiated and administered.

SB 159 (Wiener, Chapter 532, Statutes of 2019) authorized a pharmacist to initiate and furnish prexposure and postexposure prophylaxis.

AB 1535 (Bloom, Chapter 326, Statutes of 2014) authorized a pharmacist to furnish naloxone hydrochloride in accordance with standardized procedures or protocols developed and approved by both the BOP and the MBC.

SB 493 (Hernandez, Chapter 469, Statutes of 2013) authorized a pharmacist to independently initiate and administer vaccines listed on the routine immunization schedules.

ARGUMENTS IN SUPPORT:

The **California Pharmacists Association** (CPhA) is sponsoring this bill. According to CPhA, "some vaccinations are never placed on the ACIP list because they are not deemed 'routine,' but are increasingly necessary because global commerce and international travel make it possible to spread diseases that have been eliminated in the United States. An example of such a disease is yellow fever. Current law only authorizes physicians to administer vaccinations on the ACIP list. Only allowing physicians to administer these vaccines is an inefficient use of scarce healthcare resources especially since pharmacists have the necessary education and training to safely administer them to patients."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Pharmacists Association *(Sponsor)*
Association of California Healthcare Districts
California Retailers Association
National Association of Chain Drug Stores
Sepsis Alliance

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 229 (Holden) – As Amended March 2, 2021

SUBJECT: Use of force instruction: private security guards: alarm company responders.

SUMMARY: Prohibits a person required to be registered as a security guard from carrying or using a firearm or baton unless the security guard is an employee of a private patrol operator, licensee or an employee of the state or a political subdivision of the state, and would require the course in the carrying and the use of firearms to include training in the appropriate use of force.

EXISTING LAW:

1) Establishes the Bureau of Security and Investigative Services (BSIS) within the Department of Consumer Affairs (DCA), which licenses and regulates the private security industry, private investigators, locksmiths, repossessors, and alarm companies. (Business and Professions Code (BPC) §§ 7512 *et seq.*)

2) Establishes the Private Security Services Act, which provides for the BSIS's regulation of private patrol operators (PPOs) who employ private security guards and security patrolpersons. (BPC §§ 7580 *et seq.*)

3) Establishes the Proprietary Security Services Act, which provides for the BSIS's regulation of proprietary private security employers and officers. (BPC §§ 7574 *et seq.*)

4) Establishes the Alarm Company Act, which provides for the BSIS's regulation of alarm company operators and alarm agents. (BPC §§ 7590 *et seq.*)

5) Establishes the Collateral Recovery Act, which provides for the BSIS's regulation of repossessors. (BPC §§ 7500 *et seq.*)

6) Establishes the Private Investigator Act, which provides for the BSIS's regulation of private investigators (PIs). (BPC §§ 7512 *et seq.*)

7) Establishes the Locksmith Act, which provides for the BSIS's regulation of locksmiths. (BPC §§ 6980 *et seq.*)

8) Requires the powers and duties of the BSIS to be reviewed by the appropriate policy committees of the Legislature as if the Locksmith Act, the Alarm Company Act, the Private Security Services Act, the Proprietary Security Services Act, the Collateral Recovery Act, and the Private Investigators Act were scheduled to be revealed on January 1, 2020. (BPC §§ 6981, 7511.5, 7573.5, 7576, 7588.8, 7599.80)

9) Requires an application for a locksmith license to be made in writing to the BSIS chief. (BPC § 6980.17)

10) Requires penalties collected when the Attorney General brings action against an unlicensed repossession agency, an unlicensed PI, or a person representing themselves as a licensed investigator when they do not hold a license to be deposited in the PI Fund. (BPC §§ 7502.6(b), 7523(c), 7523(e), 7523.5(d))

11) Requires specified administrative fines collected that relate to disciplinary proceedings for PIs and Alarm Companies to be deposited in the PI Fund. (BPC §§ 7564, 7591.9)

12) Requires the DCA to receive and account for all money derived from the Private Investigator Act, to keep the money in the PI Fund, and to propose a separate budget and expenditure statement and a separate revenue statement outlining all money derived from and expending for the licensing and regulation of PIs. (BCP § 7571)

13) Requires BSIS to consider requiring proof of satisfactory completion of a course in professional ethics in order to be a licensed PI and authorizes the BSIS to specify which courses satisfy the requirement. (BPC § 7541.2)

14) Requires BSIS to issue a firearms permit to an applicant is a licensed under the PI Act, the Private Security Services Act, or the Alarm Company Act, as specified, when specified conditions are met and when they have determined that carrying and use of a firearm presents no apparent threat to public safety. (BCP §§ 7542.2, 7583.23, 7596.3)

15) Prohibits any person, corporation, or firm from selling, loaning, or transferring a firearm to a minor or from selling a handgun to anyone under 21 years of age. (Penal Code (PEN) § 27505)

16) Requires sales, loans, or transfers of firearms to occur through a licensed firearms dealer unless certain requirements are met. (PEN §§ 27545, 27875, 27880)

17) Prohibits a person, including a licensed firearms dealer, from selling, supplying, delivering, or giving possession or control to any person under 21 years old, except if the person is an active peace officer, federal officer, law enforcement agent, a reserve peace officer, or a specified military personnel. (PEN § 27510)

18) Prohibits a private patrol officer from failing to properly maintain accurate and current records of proof of completion be each employee of the licensee of the course in the training of the power to arrest, the security officer skills training, and the annual practice and review, as specified. An employee's completion of the course of training in the exercise of the power to arrest must be certified before the employee is placed at a duty station. Violation of this provision results in a fine of $500. (BCP §§ 7583.2, 7587.8)

19) Requires a person entering the employ of a licensee as a security guard or a security patrolperson to complete a course in the exercise of the power to arrest before being assigned to a duty location. (BCP § 7583.6)

20) Requires a person registered pursuant to the Private Security Services Act to complete at least 32 hours of training in security officer skills within six months from the date the registration

card is issued and that that 16 of the hours must be completed within 30 days of the registration card issuance. (BCP § 7583.6)

21) Requires a course provider to issue a certificate to a security guard upon satisfactory completion of a required course and authorizes a private patrol operator to provide additional training programs and courses. Requires a registrant who is unable to provide their employer the certificate to complete 16 hours or the training within 30 days of the registrant's employment date and the 16 remaining hours within six months of the registrant's employment date. (BCP § 7583.6)

22) Requires the DCA to develop and approve by regulation a standard course and curriculum for skills training and authorizes the course of training to be administered, tested, and certified by any licensee, organization, or school approved by the DCA. Requires the DCA to consult with consumers, labor organizations, and subject matter experts to do so. (BCP § 7583.6)

23) Requires a PPO licensee, on and after January 1, 2005, to annually provide each registered employee with 8 hours of review or practice of security officer skills, as described, and to maintain records of such training. (BCP § 7583.6)

24) Prohibits a security guard or security patrolperson who is employed by a licensed PPO from being issued a registration card before the instructor of the exercise of the power to arrest course properly certifies that the employee has been taught and the certificate has been sent to the DCA. (BCP § 7583.8)

25) Requires a potential security guard employee, before accepting employment by a PPO, to apply for registration as a security guard and to obtain fingerprint cards for submission to the Department of Justice (DOJ) for use as specified.
(BCP § 7583.9)

26) Requires a PPO licensee to maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request. (BCP § 7583.9)

27) Requires a security guard employee, on their first day, to display to the client their registration card if it is feasible and practical and requires the employee to display their card upon the request of the client. (BCP § 7583.9)

28) Requires the application for a security guard registration who is employed by a PPO to be verified and include information about the employee, employer, and the employer's certification that the employee received a course in the exercise of the power to arrest. (BCP § 7583.10)

29) Requires a PPO licensee to be responsible for ascertaining that their employees who are subject to registration are currently registered or have made proper application for registration and prohibits a PPO licensee from employing a person whose registration has expired or been revoked, denied, suspended, or canceled. (BCP § 7583.19)

30) Permits a PPO registrant to present evidence of renewal to substantiate a continued registration for up to 90 days after the date of expiration if the renewed registration card has not been delivered prior to the expiration date of the prior registration. (BCP § 7583.20)

THIS BILL:

1) Prohibits a person required to be registered as a security guard from carrying or using a firearm or baton unless the security guard is an employee of a private patrol operator, licensee or an employee of the state or a political subdivision of the state.

2) Beginning on January 1, 2023 would require the course in the carrying and the use of firearms to include training in the appropriate use of force.

3) Includes and adds topics related to the appropriate use of force to the training courses, including objectively reasonable force, explicit bias, cultural competency, and de-escalation techniques.

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

COMMENTS:

Purpose. According to the Author, "When private security are responsible for the safety of the general public, those private operators must have the proper training in order to apply the appropriate use of force in any particular situation. We put a lot of attention on our State's peace officers, but private security who sometimes are in similar circumstances need comparable training. What happened to Mario Matthews is unacceptable, and proper training will play big role in avoiding unnecessary harm or death to others."

Background. *BSIS.* Regulation of the private security industry began in 1915, when California enacted a licensing requirement for private investigators. The history of the industry in the United States, however, dates back nearly another century. One of its founders was Allan Pinkerton, who immigrated to this country in 1843. By 1850, he had founded the Chicago-based Pinkerton National Detective Agency, which would quickly become the industry's largest private security companies. Among the Agency's main customers were the railroads, which had to contend with outlaws who robbed trains of cargo and passengers of personal possessions. In the mid-1800s, there were no federal authorities to chase outlaws across state and territorial lines, and local law enforcement was too poorly equipped to pursue fleeing gangs very far. Therefore, the job fell to crime victims and their hired agents. The Pinkerton Agency's work for the railroads helped build an international reputation for the company.

In addition to tracking down and apprehending criminals, the early private security industry performed many other duties now associated with federal and state law enforcement: guarding interstate railroad and stagecoach shipments , investigating crimes and providing security advice to banks and other businesses that were frequent targets of outlaws. Much of this work diminished when federal and local agencies improved their law enforcement capabilities shortly after the turn of the 20th century. However, the industry had grown considerably by that time, with large numbers of people working as private guards, detectives and other security-related jobs, many of them armed. That growth was part of the reason that regulation became necessary.

The BSIS issues licenses, registrations, certificates, and permits; however, for the purpose of this discussion, the terms "license" and "licensee" will be used. There are currently over 433,000 BSIS licenses held by about 350,000 business and individuals serving in the areas of alarm companies, locks, private investigations, private security, repossession, and firearm and baton training facilities. The BSIS regulates the following Acts:

1) Alarm Company Act
2) Locksmith Act
3) Private Investigator Act
4) Private Security Services Act
5) Proprietary Security Services Act
6) Collateral Recovery Act

Continued Education in Security Guard Skills Training. In 2019, SB 609 (Glazer), Chaptered by Secretary of State. Chapter 377, Statutes of 2019 places the responsibility of completing annual guard skills training on the security guard registrant, instead of the employing Personal Protection Officer (PPO), and requires the registrant, instead of the employer, to attest on their renewal application that they have completed the required annual security guard skills training. Guard registrants are able to obtain the annual training from either their PPO employer or any BSIS-licensed Firearms or Baton Training Facility or any BSIS-approved trainer authorized to provide security guard skills training.

Additionally, SB 609 (Glazer) requires security guards who are unemployed or working for a business that does not require a PPO license to be similarly responsible for completing annual guard skills training if they wish to maintain a valid registration. This places the financial burden of obtaining this continuing education requirement on security guard registrants instead of on their employers, though some employers may continue to provide it.

Pending Litigation. The Golden 1 Center is an arena owned by the City of Sacramento and operated by a private entity, the Sacramento Downtown Arena, LLC. Universal Protection Service, LP, is a Pennsylvania Limited Partnership that was doing business in Sacramento. Universal Protection Service, LP, provides uniformed private security in Sacramento under the name, Allied Universal Security Service. Universal Protection Service, LP is licensed by the State of California Bureau of Security and Investigative Services (BSIS) as a private patrol operator.

Mario Matthews was a Mexican-American, who worked as a warehouse worker. According to a lawsuit filed by his parents, on July 2, 2019, at around 3:30 a.m., after attending an outdoor concert held following two NBA exhibition games, Mario entered the Golden 1 Center through a propped-open door, which was part of the main entrance. Video surveillance showed Mario running around the court and dribbling as if he was playing basketball. Two Universal Protection Security personnel began chasing Mario and eventually detained him.

The lawsuit alleges that Mario was slammed face-first into a wall, tackled and restrained face-down on the floor. His hands were handcuffed behind his back and the two security personnel got on top of his back. One security guard used his right knee to apply pressure to the side of Mario's neck for approximately four and a half minutes. In addition to the initial two Universal Protection Security personnel, a third security officer placed himself on Mario's back. After

approximately ten minutes, several Sacramento Police Department officers arrived and used maximum restraints; they tied his legs together with one strap and another strap around his waist. For a total of 20 minutes, Mario was facedown with as many as four people on top of him.

Mario became unresponsive and was taken to the hospital. He passed away two days later. The lawsuit claims that the Sacramento County Coroner acknowledged that restraint was a cause of Mario's death. Additionally, the coroner's pathologist noted deep bruising of Mario's back as a result of the weight and pressure that had been placed on him. Mario weighed 125 pounds.

This litigation is one of many that are currently being highlighted in the news and media. Education and awareness could be one of the key options to curtailing this un use of excessive force.

Prior Related Legislation. SB 609 (Glazer). Chaptered by Secretary of State. Chapter 377, Statutes of 2019. Makes various changes to the operations of the Bureau of Security and Investigative Services (BSIS), including prohibiting BSIS from issuing firearms permits to applicants under 21 years of age, consolidating the Private Investigator (PI) Fund and the Private Security Services (PSS) Fund, increasing certain fees within the PI Act, and ensuring Legislative review of BSIS by January 1, 2024.

SB 1196 (Hill, Chapter 800, Statutes of 2016) Sunset extension bill for the BSIS. subjects the Bureau of Security and Investigative Services (BSIS) to review by the appropriate committees of the Legislature, and makes various changes to provisions in the Alarm Company Act, Locksmith Act, Private Investigator Act, Private Security Services Act, Proprietary Security Services Act, and Collateral Recovery Act to improve the oversight, enforcement and regulation by the BSIS of licensees under each Act; adds a sunset review date for the Bureau of Real Estate (CalBRE) and Bureau of Real Estate Appraisers (BREA), and makes various changes to provisions in the Real Estate Law and the Real Estate Appraisers' Licensing and Certification Law to improve the oversight, enforcement and regulation by the CalBRE and BREA, and makes other technical changes.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 948 (Holden) – As Amended April 14, 2021

SUBJECT: Real estate licensees: Bureau of Real Estate Appraisers: disclosures: demographic information: reporting: continuing education.

SUMMARY: Makes various reforms to safeguard against discrimination during the appraisal process. Requires the collection of information in order to provide data in regards to demographics and other relevant evidence to analyze the appraiser's practices.

EXISTING LAW:

1. Provides for the licensure and regulation of appraisers that transact in federally-related transactions under Real Estate Appraisers' Licensing and Certification Law. (Business and Professions Code (BPC) §§ 11300-11423)

2. Establishes the Bureau of Real Estate Appraisers within the Department of Consumer Affairs to administer and enforce Real Estate Appraisers' Licensing and Certification Law. (BPC § 11301)

3. Specifies that an "appraisal" means the act or process of developing an opinion of value of the property and states that the term "appraisal" does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection a function for which a license is required, as specified, and the opinion shall not be referred to as an appraisal. (BPC § 11302 (b))

4. Defines "Appraisal Foundation" as the entity that was incorporated as an Illinois not-for-profit corporation on November 30, 1987. (BPC § 11302 (c))

5. Defines a "federally related transaction" to mean any real estate-related financial transaction which a federal financial institutions regulatory agency engages in, contracts for, or regulates, and which requires the services of a state licensed real estate appraiser, and also includes any transaction identified as such by a federal financial institutions regulatory agency. (BPC § 11302 (s))

6. Defines "Uniform Standards of Professional Appraisal Practice" (USPAP) to mean the standards of professional appraisal practice established by the Appraisal Foundation. (BPC § 11302(z))

7. Prohibits a person from engaging in federally-related real estate appraisal activity, as specified, without an active real estate appraiser license. (BPC § 11320)

8. Requires licensed real estate appraisers to comply with USPAP as the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. (BPC § 11319)

THIS BILL:

1) Requires that every contract for the sale of real property contain a notice stating that the buyer is entitled to an unbiased appraisal of the property, and that an appraisal is required to be objective and not influenced by improper or illegal considerations.

2) Requires the aforementioned notice to include information regarding reporting biased appraisals to the financial institution or mortgage broker that hired the appraiser or the Bureau of Real Estate Appraisers.

3) Require the aforementioned notice to be delivered by the entity making a residential mortgage loan or refinancing a residential mortgage loan either prior to, or with, the good faith estimate or the mortgage loan disclosure statement, and make conforming changes with regard to certain of those entities.

4) Requires the Bureau to place on an existing complaint form, a place for property owners or their authorized representative to voluntarily provide demographic information.

5) Requires the Bureau to compile specified demographic information regarding sellers in real estate transactions and homeowners that file complaints based on low appraisals and report that information to the Legislature on or before July 1, 2024.

6) This bill would prohibit a licensee from basing their appraisal of the market value of a property on the basis of race, color, religion, gender, gender expression, age, national origin, disability, marital status, sexual orientation, familial status, employment status, or military status of either the present or prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property, or on any other basis prohibited by the federal Fair Housing Act.

7) Requires, beginning January 1, 2023, an applicant to complete at least one hour of instruction in cultural competency. As part of the continuing education requirement in order to renew a license or restore a license to active status, would require at least 2 hours of elimination of bias training.

8) A current licensee would be required to complete at least one hour of instruction in cultural competency every 4 years.

9) Would make it unlawful for any person or other entity whose business includes performing appraisals of residential real property to discriminate against any person in making available those services, or in the performance of those services, because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, source of income, disability, genetic information, veteran or military status, or national origin.

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

COMMENTS:

Purpose. This bill is Author sponsored. According to the Author, "Black homeowners in predominantly White neighborhoods are getting their homes appraised for far less than their neighbors. It's just another example of how bias, whether explicit or implicit, creates inequity for Black Americans. This is redlining 2.0. This bill reflects a starting point in a much-needed conversation about how discrimination is still prevalent in the home buying, selling, and refinance process, and I am committed to addressing this inequity."

Background. *The Fair Housing Act of 1968.* The Fair Housing Act prohibited discrimination concerning the sale, rental and financing of housing based on race, religion, national origin or sex. Intended as a follow-up to the Civil Rights Act of 1964, the bill was the subject of a contentious debate in the Senate, but was passed quickly by the House of Representatives in the days after the assassination of civil rights leader Martin Luther King, Jr. The Fair Housing Act stands as the final great legislative achievement of the civil rights era.

In addition, The Fair Housing Act prohibits home appraisers from discriminating based on race, religion, national origin or gender. However, according to a recent study by Howell and Korver-Glenn, new research shows that 50 years after laws were put in place to stop the use of race in real estate appraisals, the homes of people of color are still being undervalued.[1] For many Californians, their home is considered to be their greatest asset. The equity in their homes allows them to fund continuing education for their children, retirement, and health expenses.

Recently, there have been a series of documented instances where the homes of people of color where severely undervalued. In Marin City, an appraiser lowballed the value of a Black couple's home by nearly $500,000. In Oakland, an appraiser lowballed the value of a Black and Puerto Rican couple's home by $254,000.[2] There have been additional headlines and news reports of racial bias in real estate appraisals throughout the United States.

Why it matters. For most U.S. families, their home is their greatest asset. As their home appreciates in value, their wealth increases, enabling them to fund their retirement, their children's college educations or unexpected expenses like large medical bills. The racial inequality in home values and appreciation rates has created a large and increasing racial wealth gap. On average, U.S. white families have 20 times more wealth than families of color. Our research identifies increasing racial inequality in home values as a key reason this gap persists and has doubled since 1980.

These growing gaps don't affect just homeowners. They also affect renters. Since 1980, real estate prices have risen far faster than inflation, incomes and prices of consumer goods like food or clothing. As a result, housing costs now make up a larger proportion of residents' expenses.

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[1] https://kinder.rice.edu/urbanedge/2020/09/24/housing-racial-disparities-race-still-determines-home-values-America
[2] https://abc7news.com/black-homeowner-problems-sf-bay-area-housing-discrimination-minority-homeownership-anti-black-policy/10362859/

Families who have historically owned homes in white neighborhoods can afford these increased costs because their appreciating home values have expanded their relative wealth. But for everyone else, high housing costs are a burden. For many renters, high housing costs combined with stagnant wages have created an acute and worsening affordable housing crisis. Many struggle to remain housed — including during the pandemic — and very few can save enough to transition into home ownership.

Finally, because the property taxes that pay for physical infrastructure, public services and other amenities are determined based on real estate values, the higher home values in white neighborhoods enable better-funded schools, libraries, parks and utilities — even essential services like clean water.[3]

More State Oversight. There is no national database of discrimination complaints against appraisers. The few that were filed to the Department of Housing and Urban Development totaled just six in 2020 compared with three in 2019.

An analysis by the American Enterprise Institute, a public-policy think tank, found that allegations of intentional or unintentional racial bias in appraisals on refinance loans were "uncommon and not systemic." The group compiled hundreds of thousands of appraisals on transactions that actually closed. The research combines data from several sources, including Collateral Risk Network's survey of Appraisal Management Companies and Lenders, Home Mortgage Disclosure Act data, and AEI Housing Center's national housing market database.

Fair housing advocates say that it is not uncommon for bias complaints to go unreported by discouraged homeowners and that consumers often don't recognize when they are being discriminated against.

"When buyers of color face discrimination in the marketplace, it can discourage them from the whole process," said Lisa Rice, president and chief executive of the National Fair Housing Alliance. She says compiling data from closed property sales does not take into account home deals that fell apart after a lower appraisal. "And research shows that in many cases, especially when the appraisal differences are slight, consumers won't realize that bias could have been a factor in lowering the value of their homes," adds Rice.

Despite the lack of hard data on discrimination complaints, some states are tightening oversight of the industry as anecdotal evidence of bias piles up. Lawmakers in Illinois are considering an amendment to the state's Real Estate License Act that would make it easier to bring civil claims for damages in cases of discrimination in property valuations.

The Auditor's Office in Franklin County, Ohio, has set up a commission to help eliminate inequalities in the housing appraisal process after a rise in complaints of unfair treatment from Black and other minority homeowners.

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[3] Ibid

In New Jersey, policymakers have introduced a bill that would revoke or suspend the license of any appraiser found engaging in a discriminatory appraisal based on race or national origin.

"There's a cost to devaluing property," says New Jersey Assemblywoman Angela McKnight, a Democrat who is sponsoring the legislation. "Every homeowner should have the right to be given the true worth of their home."

Robert Schwemm, a professor emeritus of law at the University of Kentucky, says proving discrimination in appraisals is difficult, but tighter oversight at the state level could increase awareness. "Homeowners will have a better understanding of their rights when it comes to the appraisal process," says Schwemm, author of "Housing Discrimination: Law and Litigation. "And the added level of scrutiny will make the industry more aware of the stakes." During his campaign, President Biden pledged to create national standards for home appraisals as part of an effort to eliminate racial discrimination in the real estate industry. The measures would "ensure appraisers have adequate training and a full appreciation for neighborhoods and do not hold implicit biases because of a lack of community understanding," the campaign said.[4]

The effort is part of a broader housing plan aimed at lifting minority homeownership rates by calling for tax credits for first-time home buyers and expanding regulations on mortgage lenders and insurers, among other measures.

Prior Related Legislation. SB 70 (Bates, Chapter 928, Statutes of 2018) provided that until January 1, 2020, a licensee is not required to comply with provisions of the USPAP that provide a limitation on restricted appraisal reports to intended users other than or in addition to the client, if certain requirements are met, including that the consent of the client is obtained in advance.

AB 624 (Wilk) of 2015 would have authorized licensed real estate appraisers to use a standard of valuation practice approved by the Bureau of Real Estate Appraisers for performing non-federally related appraisal activities, as specified. (Status: *This measure was held in the Senate Appropriations Committee.*)

ARGUMENTS IN SUPPORT:

According to *Government Relations Committee of the Appraisal Institute*, "[This bill] deals with the subject of bias in real estate appraisals. Around the country, there have been anecdotal reports of potential undervaluations of property based upon the race of the principals in transactions. If true, this is simply wrong and indefensible. Appraisals are critical components in real estate transactions, and all parties to those transactions, and their lenders and brokers, should have confidence that the appraisals reflect valuations based upon market conditions. Expressions of opinion of market value should not be influenced by the race, gender, national origin, sexual orientation, or any other protected characteristic of the principals in transactions.

[This bill] contains a number of important elements, including disclosures in transactions, required pre-licensing and continuing education, and the addition of clear language in the Fair

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[4] https://www.washingtonpost.com/realestate/for-black-homeowners-a-common-conundrum-with-appraisals/2021/01/20/80fbfb50-543c-11eb-a817-e5e7f8a406d6_story.html

Employment and Housing Act that discrimination based upon protected classes in the provision of appraisal services is unlawful."

The California Association of Realtors (CAR) also writes in support, "As a diverse organization comprised of over 200,000 California real estate licensees, we understand exactly how important home ownership is for communities of color. Homeownership and the building of positive equity is often the sole factor that is determinative of whether a person will have any wealth to pass on to their heirs. It also serves to stabilize communities and provide access to education and employment opportunities. Unfortunately, the racial divide in home ownership is stark. For example, according to CalHFA's 2019 statistics, just 41% of black families in California own their home compared to 68% of white families. Systemic racism and exclusionary housing policies have played a part in this but so has California's dwindling housing supply. California is an extremely diverse state, and for our state to prosper, we need to do all that we can to close the home ownership gap for underserved communities.

To that end, this legislative session, C.A.R. has a renewed focus on partnering with our legislative allies to further efforts to eliminate bias in the home buying and selling process. We are the sponsors of SB 263 (Rubio) which implements implicit bias training for real estate licensees as well as the sponsors AB 633 (Calderon), which implements the Uniform Partition of Heirs Property Act, reforming the current property partition law to be fairer for unrepresented property heirs. In the rental housing arena, we are also the proud sponsors of AB 491 (Gonzalez) which eliminates access inequality in mixed-income multifamily dwellings."

AMENDMENTS:

The first amendment addresses the new notice. Currently the language says that the buyer is entitled to an unbiased appraisal of the property. However, later the notice references buyer and seller. Everyone involved in the real estate transaction (buyer, seller, and lender) is entitled to an unbiased, objective appraisal, not influenced by improper or illegal considerations. Amendment language clarifies this point without changing the notice's intent.

The second amendment is dealing with the continuing education (CE) piece. Currently the language adds 2 hours of elimination of bias training but the language is silent about when this new CE requirement starts. A few lines below in subdivision (c), AB 948 specifies that beginning January 1, 2023 part of the CE includes cultural competency every 4 years. The Bureau will have to update their continuing education regulations to incorporate the new CE on elimination of bias training as specified in the bill. Additionally, with rolling renewal cycles for licensees some appraisers may be left with very limited time to complete this new CE requirement. To be consistent with the additional cultural competency CE, it is suggested that clarifying that "each licensee renewing on or after January 1, 2023" will be required to complete the new CE requirements. This language simply gives the Bureau and licensees enough time to complete these new courses.

The third amendment will add Assembly Member Friedman as a "Principal Co-Author".

The fourth amendment will strikes and replaces with the following:

Sec 2. Section 10149.1

10149.1.
(a) After July 1, 2022, every contract for the sale of real property shall contain, in no less than 8-point type, the following notice:

"The buyer is entitled to an unbiased appraisal of the property. An appraisal is required to be objective and not influenced by improper or illegal considerations, including, but not limited to, any of the following: race, color, religion (including religious dress, grooming practices, or both), gender (including, but not limited to, pregnancy, childbirth, breastfeeding, and related conditions, and gender identity and gender expression), sexual orientation, marital status, medical condition, military or veteran status, national origin (including language use and possession of a driver's license issued to persons unable to provide their presence in the United States is authorized under federal law), ancestry, disability (mental and physical, including, but not limited to, HIV/AIDS status, cancer diagnosis, and genetic characteristics), genetic information, or age. If a buyer or seller believes that the appraisal has been influenced by any of the above factors, the seller or buyer can report this information to the lender or mortgage broker that retained the appraiser and may also file a complaint with the Bureau of Real Estate Appraisers at ~~https://www.dca.ca.gov/consumers/complaints/rea.shtml or call (916) 552-9020~~ for further information on how to file a complaint."

Replaced with:
1. https://www2.brea.ca.gov/complaint/
2. or call 916.552.9000.

The fifth amendment strikes and adds the following:

SEC. 3. Section 11310.3 is added to the Business and Professions Code, to read:

11310.3.
(a) It is the intent of the Legislature, in enacting this section, to ensure that no one is discriminated against during the appraisal process of a real estate transaction.

(b) The bureau, on its existing complaint form, shall create a check box asking if the complainant believes the opinion of value is below market value. ~~Place~~ The bureau shall collect demographic information regarding sellers, those seeking to refinance, buyers, or a representative authorized in real estate transactions, including, but not limited to, their ~~age, gender, race, and ethnicity~~ protected class as identified in Section 10149.1 . This information shall be provided on a voluntary basis by the seller, those seeking to refinance, buyers, or by a representative authorized ~~by the seller~~ in real estate transactions. The information may include a contact phone number, email if available, and home address of complainant.

(c) The bureau shall compile data on the ~~race or other~~ protected class of ~~the homeowners~~ sellers, those seeking to refinance, buyers, or a representative authorized that believes the opinion of value is below market value The bureau complaint form shall have check boxes or a drop down menu for the complainant to select the protected class.

(d) The bureau shall verify that the complainant is the seller, those seeking to refinance, buyer or a representative authorized in real estate transactions by the contact information provided in (b). The authorized representative shall provide a contact phone number, email if available, and home address of person that provided the authorization.

REGISTERED SUPPORT:

Appraisal Institute of California Government Relations Committee
California Association of Realtors

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 273 (Irwin) – As Introduced January 19, 2021

SUBJECT: Cannabis: advertisements: highways.

SUMMARY: Places numerous restrictions on the content of outdoor advertising by cannabis businesses and requires a licensing authority to suspend the license of any licensee who violates those restrictions for one year.

EXISTING LAW:

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

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

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

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

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

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

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

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

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

10) 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))

11) 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))

12) 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))

13) 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)

14) 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)

15) 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)

16) Exempts from the prohibition against advertising within 1,000 feet of a day care, school, playground, or youth center the placement of advertising signs inside a licensed premises and which are not visible by normal unaided vision from a public place, provided that such advertising signs do not advertise cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products. (BPC § 26155)

17) Requires cannabis product advertisements to comply with the applicable provisions of the Outdoor Advertising Act. (BPC § 26156)

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

THIS BILL:

19) Makes various findings and declarations regarding the intent of Proposition 64 to protect children from marijuana advertisements, the proliferation of cannabis billboards, and reports that recreational marijuana legalization in California was associated with an increase in adolescent marijuana use.

20) Codifies regulations promulgated by the BCC requiring advertising and marketing that is placed in broadcast, cable, radio, print, and digital communications to meet certain requirements, as well as existing regulations specifically applicable to outdoor advertisements.

21) Enacts new restrictions on outdoor signs advertising cannabis, including billboards, as follows:

a) Prohibits advertisements from containing any text other than the licensee's name, address or location, website, and information accurately identifying the nature of the business.

b) Prohibits any images or depictions of animals, cannabis plants or leaves, or food or beverage products designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain cannabis, with numerous examples provided.

c) Prohibits the depiction of smoking, vaporizing, or ingesting of cannabis or cannabis products, or food or beverages implied to be cannabis infused.

d) Prohibits any text, display, depiction, or image that contains or implies any content associated with any television, film, or print generally marketed toward minors.

22) Requires a licensing authority to suspend the license of any licensee who violates the provisions of the bill for one year.

23) Provides that in construing and enforcing the advertising restrictions, any action, omission, or failure of an advertising agent, representative, or contractor retained by the licensee shall in every case be deemed the act, omission, or failure of the licensee.

24) Provides that any provision held invalid shall be severed from the remaining portions of the law.

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:

> "Proponents of Proposition 64 sold their initiative to voters with the promise that the cannabis industry would not target or advertise to children. Five years later, with billboards advertising cannabis infused gummies and hard candies, with shops named "Cookies" touting flavors like lemonade, and with some advertisements mimicking the logo of shows featured on Disney+, it is easy to see that the industry has broken their promise and that it is time to reform the law. According to the study out of Rutgers University, using data from the California Healthy Kids Survey, researchers observed significant increases in marijuana use among nearly all demographic groups from 2017-2018 to 2018-2019. The study cited an 18% increase in the likelihood of lifetime use and a 23% increase in past-30-day use. Unfortunately, this increase follows a 7-year decline in marijuana use from 2010–2011 to 2016–2017. The data doesn't lie that more adolescents are using cannabis after legalization. Prop 64 itself makes it clear that cannabis sellers shall not "advertise or market marijuana or marijuana products in a manner intended to encourage persons under the age of 21 years to consume marijuana or marijuana products." Yet, we continue to see billboards with cartoon animals hocking cannabis infused candies and chocolates. The exact same items that we hand out to children every Halloween. It is time for some commonsense rules relating to what kinds of content should be allowed relating to advertisements for a drug that millions of Californians -- of all ages -- see every single day."

Background.

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

findings and declarations encouraging the federal and state governments to implement a plan to provide for the safe and affordable distribution of cannabis to patients with medical needs.

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

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

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

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

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

MCRSA vested authority for:

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

- The CDPH to license and regulate manufacturers; and

- The CDFA to license and regulate cultivators.

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

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

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

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

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

MAUCRSA. In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was introduced to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws and deleted redundant code sections no longer necessary due to the combination of

the two systems. MAUCRSA also clarified a number of components, including but not limited to licensing, local control, taxation, testing, and edibles.

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

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

Prohibitions against Advertising to Minors. Prior to the AUMA being passed by the voters, arguments both for and against the initiative frequently focused on a debate over whether Proposition 64 would adequately protect children from exposure to the cannabis industry. In the official text of Proposition 64, the purpose and intent of the initiative was stated to include an intention to "prohibit the marketing and advertising of nonmedical marijuana to persons younger than 21 years old or near schools or other places where children are present." The AUMA includes a number of specified safeguards for minors, including:

- Prohibiting consumption of cannabis outside a residence within 1,000 feet of a school, day care center, or youth center while children are present.
- Requiring child-resistant packaging for cannabis products.
- Prohibiting packages and labels from being made to be attractive to children.
- Providing that cannabis products shall not designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana.
- Prohibiting cannabis businesses from being located within 600 feet of schools and other areas where children congregate.
- Authorizing a licensing authority to deny a license if there is an unreasonable risk of minors being exposed to cannabis or cannabis products.
- Expressly prohibiting businesses selling recreational cannabis to minors under 21 or employing minors under 21.

Additionally, Proposition 64 included a prohibition against advertisers publishing or disseminating "advertising or marketing containing symbols, language, music, gestures, cartoon characters or other content elements known to appeal primarily to persons below the legal age of consumption." This language was heavily simplified when MCRSA and the AUMA were reconciled through the enactment of SB 94. Under MAUCRSA, licensees are instead prohibited

more generally from publishing or disseminating "advertising or marketing that is attractive to children." However, similar language was incorporated into the BCC's regulations governing advertisements placed in broadcast, cable, radio, print, and digital communications.

Regulation of Cannabis Advertisements and Billboards. MAUCRSA imposes a number of advertising and marketing restrictions for cannabis businesses. First, the initiative required all advertisements and marketing to accurately and legibly identify the licensee responsible for its content, which MAUCRSA provides must include the addition of a license number. Further, the AUMA required that "any advertising or marketing involving direct, individualized communication or dialogue controlled by the licensee shall utilize a method of age affirmation to verify that the recipient is 21 years of age or older prior to engaging in such communication or dialogue controlled by the licensee."

MAUCRSA places a series of specific prohibitions on forms of advertising and marketing by cannabis licensees. Cannabis licensees may not do any of the following:

- Advertise or market 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.

- Publish or disseminate advertising or marketing containing any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof.

- Publish or disseminate 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.

- Advertise or market on a billboard or similar advertising device located on an Interstate Highway or on a State Highway which crosses the California border.

- Advertise or market cannabis or cannabis products in a manner intended to encourage persons under 21 years of age to consume cannabis or cannabis products.

- Publish or disseminate advertising or marketing that is attractive to children.

- Advertise or market 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.

- Publish or disseminate advertising or marketing while the licensee's license is suspended.

In addition to these statutory requirements and prohibitions, the BCC's regulations include a number of additional provisions relating to cannabis advertising. Advertisements placed in broadcast, cable, radio, print, and digital communications may only be displayed after a licensee has obtained reliable up-to-date audience composition data demonstrating that at least 71.6 percent of the audience viewing the advertising or marketing is reasonably expected to be 21 years of age or older. These advertisements also may not depict images of minors, objects likely to be appealing to minors, or statements regarding free cannabis goods or giveaways.

The BCC's regulations also added more specific requirements to outdoor advertising of cannabis, including billboards. The BCC requires that, in addition to complying with the general provisions governing advertising, all outdoor signs must be affixed to a building or permanent structure. The BCC regulations also state that these ads must comply with the provisions of the Outdoor Advertising Act.

Finally, the BCC's regulations added more specificity to the AUMA's prohibition against 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. The BCC mirrored this prohibition in its regulations; however, it added the phrase "…within a 15-mile radius of the California border." This addition essentially clarified that cannabis billboards could be placed on an Interstate Highway or on a State Highway that crosses the California border, as long as it was placed farther than 15 miles from the state line.

In the BCC's final statement of reasons, it provided the following explanation for its rulemaking decisions in regards to outdoor advertising along highways:

> "Subsection (b)(3) has been added to clarify that outdoor signs, including billboards, shall not be located within a 15-mile radius of the California border or an Interstate Highway or on a State Highway which crosses the California border. The Act prohibits certain advertisements along Interstate Highways and State Highways that cross the California border but does not clarify to what extent such prohibitions take place. This change is necessary to clarify the prohibitions found in section 26152(d) of the Business and Professions Code, by allowing the placement of outdoor signs or billboards along Interstate Highways or State Highways, provided that they are located further than 15-miles from the California border. The Bureau determined that a 15-mile radius was a necessary and appropriate distance from the California border because it satisfies that the intent of section 26152(d) of the Business and Professions Code, while assuring that Bureau licensees, including those located in jurisdictions along the California border, still have an opportunity to advertise and market their commercial cannabis operations along Interstate Highways and State Highways if they satisfy the identified radius limitations."

This statement of reasons essentially argued that the intent of Proposition 64 was not to necessarily prohibit *all* outdoor advertising along highways, and that the BC was authorized to add clarity to the extent of the prohibition.

In November 2020, the BCC's regulations language allowing for cannabis advertisements to be placed along highways farther than 15 miles from the border were challenged in court. In the case of *Farmer v. Bureau of Cannabis Control*, the plaintiffs argued that the BCC had no authority to promulgate regulations allowing for cannabis advertisements to be placed along highways when the initiative clearly prohibited them. The plaintiffs insisted that the plain language intent of Proposition 64 was to protect the public by limiting outdoor advertising.

In response, the BCC argued that the primary intent of the highway language in Proposition 64 was to avoid running afoul of the federal government's continued classification of cannabis as a Schedule I controlled substance. Cannabis placed on interstate highways or on state highways near the border could potentially be seen as encouraging "cannabis tourism" where individuals from out-of-state enter California to purchase from the state's legal market. The BCC argued that its regulations effectuated this intent while avoiding constitutional issues around free speech.

On January 11, 2021, the San Luis Obispo Superior Court entered a summary judgement that the BCC's regulation language allowing for cannabis billboards to be placed along highways was in direct conflict the law. The court found that "the Bureau exceeded its authority in promulgating the Advertising Placement Regulation" and that the regulation "is clearly inconsistent with the Advertising Placement Statute, expanding the scope of permissible advertising to most of California's State and Interstate Highway system, in direct contravention of the statute." The court invalidated the BCC's regulation and effectively instituted a full prohibition against outdoor advertising of cannabis along highways.

In response, the BCC issued a notice to licensees, informing them of the court's decision. The notice provided the following guidance: "To comply with the law and regulations, licensees may not place new advertising or marketing on any interstate highway or state highway that crosses the California border. Licensees should also begin the process of removing current advertising and marketing that meets this criteria."

As recently amended, this bill is not intended to either prohibit or expressly allow cannabis billboards along highways. However, to the extent that these or other outdoor advertisements are allowed, the bill would enact various new content restrictions. The bill would substantially limit the text that may appear on a billboard, and would specifically ban a number of images from being depicted. The intent of the author is to further what they believe to be the intent of the voters in enacting Proposition 64, which was to legalize recreational cannabis in a way that prioritized safeguards for children and minors.

Current Related Legislation. AB 1302 (Quirk) would allow cannabis licensees to advertise or market on a billboard on a highway that is farther than a 15-mile radius of the California border. *This bill is pending in the Assembly Committee on Business and Professions.*

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

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

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

ARGUMENTS IN SUPPORT:

The **Hazelden Betty Ford Foundation** supports this bill. According to the Foundation, "not only are the consequences of substance use often higher for children and youth, but so is their susceptibility to commercial marketing and advertising. Studies have shown that advertising changes teens' attitudes about alcohol and tobacco and can cause them to start using. Policymakers have long been aware of this issue, and have attempted, through legislation and regulation, to limit marketing and advertising of these substances to children. These public policies—dating back decades in the case of tobacco —have been effective at improving public health and reducing use. States across the country that have legalized marijuana have applied some of the same public health protections to their public policy on cannabis, including through

limiting or prohibiting advertising by marijuana interests. California voters attempted to do the same in Proposition 64, but those protections have failed to be implemented and enforced."

ARGUMENTS IN OPPOSITION:

The **California State Outdoor Advertising Association** (CSOAA) opposes this bill. The CSOAA argues that "as drafted, AB 273 seeks to do what the Supreme Courts says a law or ordinance can't do: target speech based on its content. In this case the bill targets advertisements for cannabis products that have been expressly approved by the State of California as legal." The CSOAA argues that "the CSOAA and its members support the right of businesses to promote legal products and services."

POLICY ISSUE(S) FOR CONSIDERATION:

This bill would place new bans on marketing content on billboards and other outdoor advertisements. This could potentially raise constitutionality issues in regards to the First Amendment's protections regarding freedom of speech. Because the bill's key prohibitions apply specifically to words and images used to advertise products, it would fall under caselaw relating to laws and regulations restricting commercial speech.

The Supreme Court of the United States established a test for determining whether restrictions on commercial speech violate the First Amendment of the Constitution. In *Central Hudson Gas Elec v. Public Service Comm of New York* 447 U.S. 557 (1980), the Court recognized commercial speech as constitutionally protected but established a multi-pronged test for determining whether restrictions are permissible. In its decision, the Court ruled that in order for the government to limit commercial speech, it must pass intermediate scrutiny and each of the following must be demonstrated:

1) The government must have a substantial interest.

2) The regulation must directly and materially advance the government's substantial interest.

3) The regulation must be narrowly tailored.

In this instance, the author would likely argue that the government's interest is in protecting children from exposure to cannabis advertisements. There is likely a strong argument that this interest is indeed substantial, and that the regulation would advance that interest. However, the author may wish to consider whether a court would be likely to find that the regulations imposed by this bill are sufficiently narrowly tailored to survive intermediate scrutiny.

REGISTERED SUPPORT:

Alcohol Justice
American Automobile Association of Northern California, Nevada & Utah
Automobile Club of Southern California
Contra Costa County
Getting It Right From the Start
Hazelden Betty Ford Foundation

REGISTERED OPPOSITION:

Advanced Vapor Devices (AVD)
Anthony Law Group
Bizfed Central Valley
Blackbird Distribution
Bloom Farms
Body and Mind
Brite Labs
California Cannabis Industry Association
California Cannabis Manufacturers Association
California NORML
California State Outdoor Advertising Association
Caliva
Cannabis Connect
Cannabis Distribution Association
CannaCraft
CannaSafe Labs
Central Coast Agriculture
CMG/Caliva
Cresco Labs
Dompen
Dosist
Double Barrel
Eaze Technologies, INC.
Eden
Flow Kana
Fume
GAIACA Waste Revitalization
Harborside
Headstash
Henry G. Wykowski & Associates
Honey
Humboldt's Finest
Infinite Cal
Island
Jetty Extracts
Kanha
KGB Reserve
Kiva
La Vida Verde
Law Office of Kimberly R. Simms
Legal Cannabis for Consumer Safety (LCCS)
Legion of Bloom
Level Blends
Los Angeles County Business Federation (BIZFED)
Lowell Herb Co.
Mammoth Distribution
Meadow

MPP
Nabis
Natura
NCIA
NorCal Cannabis Company
Old Pal
PAX
Perfect Union
Pineapple Express
Pure
Rove
Santa Monica Chamber of Commerce
Se7enLeaf
Select / Curaleaf
Sparc
Sunderstorm
SVCA
The Farmacy SB
The London Fund
The Werc Shop
UCBA
Utopia
Valley Industry and Commerce Association (VICA)
Venice Cookie Co.
Yvette McDowell Consulting
Weedmaps

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1236 (Ting) – As Amended April 15, 2021

SUBJECT: Healing arts: licensees: data collection.

SUMMARY: Requires all healing arts boards under the jurisdiction of the Department of Consumer Affairs to collect demographic information from its licensees and registrants, as specified. Requires such boards to post de-identified, aggregate information on the data collected on their websites, and to transmit the data to the Office of Statewide Health Planning and Development beginning July 1, 2022.

EXISTING LAW:

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

2) Creates various boards, bureaus, and commissions under the jurisdiction of DCA whose purpose are to regulate private businesses and professions deemed to engage in activities that have potential impact on the public health, safety, and welfare of the people of California. (BPC Section 101 et seq.)

3) Establishes "healing arts" boards under the jurisdiction of DCA, which includes the following entities:

    a) Acupuncture Board;

    b) Board of Behavioral Sciences;

    c) Board of Chiropractic Examiners;

    d) Dental Board of California;

    e) Dental Hygiene Board of California;

    f) Medical Board of California;

    g) Naturopathic Medicine Committee;

    h) California Board of Occupational Therapy;

    i) Board of Optometry;

    j) Osteopathic Medical Board of California;

    k) Board of Pharmacy;

    l) Physical Therapy Board of California;

m) Physician Assistant Board;

n) Podiatric Medical Board of California;

o) Board of Psychology;

p) Board of Registered Nursing;

q) Respiratory Care Board;

r) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board;

s) Veterinary Medical Board;

t) Board of Vocational Nursing and Psychiatric Technicians. (BPC Section 500 et seq.)

4) Establishes the Office of Statewide Health Planning and Development (OSHPD), which is vested with all of duties, powers, purposes, responsibilities and jurisdiction related to health planning and research development. (Health and Safety Code (HSC) Section 127000 et seq.)

5) Requires OSHPD to prepare an annual report to the Legislature that accomplishes the following:

a) Identifies education and employment trends in the health care profession.

b) Reports on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas

c) Recommends state policy needed to address issues of workforce shortage and distribution. (HSC Section 128052).

6) Requires the Board of Registered Nursing (BRN), the Board of Vocational Nursing and Psychiatric Technicians (BVNPT), the Physician Assistant Board (PAB), and the Respiratory Care Board (RCB) to collect, at least biennially, at the times of both issuing an initial license and issuing a renewal license, all of the following data on licensees under those boards' respective jurisdictions:

a) Location of practice, including city, county, and zip Code.

b) Race or ethnicity. Specifies that a licensee may, but is not required to, report their race and ethnicity to regulatory boards.

c) Gender.

d) Languages spoken.

e) Educational background.

f) Classification of primary practice site among the types of practice sites specified by the boards, including, but not limited to, clinic, hospital, managed care organization, or private practice.

7) Requires the boards listed above to annually provide the data collected to OSHPD for inclusion in the OSHPD annual report to the Legislature. (BPC Section 2717, 2852.5, 3518.1, 3770.1, and 4506)

8) Directs the Board of Registered Nursing to further analyze the data collected and produce reports to be published on the BRN's website, at a minimum, on a biennial basis. Specifies that the BRN shall maintain the confidentiality of the information it receives from licensees must only release information in an aggregate form that cannot be used to identify an individual. Mandates that the data shall also include future work intentions, reasons for leaving or reentering nursing, job satisfaction ratings, and demographic data. (BPC Section 2717(a)

9) Authorized the Board of Registered Nursing to expend the sum of $145,000 for the purposes of data collection and reporting. (BPC Section 2717(d))

THIS BILL:

1) Requires all boards supervising healing arts licensees to request workforce data from licensees and registrants for the purposes of future workforce planning. Specifies that the data may be requested at the time of electronic application for a license and license renewal, or at least biennially from a scientifically selected random sample of licensees and registrants.

2) Specifies that the data must include, at a minimum, the following information:

   a) City, county, and ZIP Code of practice.

   b) Type of employer or classification of primary practice site among the types of practice sites specified by the board, including, but not limited to, clinic, hospital, managed care organization, or private practice.

   c) Work hours.

   d) Titles of positions held.

   e) Time spent in direct patient care.

   f) Clinical practice area.

   g) Race or ethnicity.

   h) Gender identity.

   i) Languages spoken.

   j) Educational background.

k) Future work intentions.

l) Job satisfaction ratings.

m) Sexual orientation.

3) States that a licensee or registrant shall not be required to provide any of the data listed above.

4) Provides findings and declarations that in order to protect the privacy of licensees and registrants, while also gathering useful workforce data, it is necessary that some information collected from licensees and registrants only be released in aggregate form.

5) Directs each boards collecting data to maintain the confidentiality of the information it receives from licensees and registrants and specifies that any information released may only be in an aggregate form that cannot be used to identify an individual.

6) Mandates each board to produce and post on its respective websites reports containing the workforce data it collects, at a minimum, on a biennial basis.

7) Requires each board, or DCA on its behalf, beginning on July 1, 2022, and each year thereafter, to provide the data it collects to OSHPD for inclusion into OSHPD's annual report to the Legislature.

8) Repeals current data collection provisions established on the BRN, BVNPT, PAB and RCB related to future workforce planning.

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

COMMENTS:

Purpose. This bill is sponsored by the **San Francisco Jewish Vocational Services** and the **California Pan-Ethnic Health Network.** According to the author: "For millions of Californians, comprehensive access to healthcare depends on professionals who can provide culturally and linguistically appropriate medical services. The state recognizes that communities of color are more likely to use needed health care services when their provider speaks their language or shares the same cultural background, but the current data is insufficient for determining the state's capacity to address the needs of our diverse population. By expanding demographic data collection on healthcare workers, the state can better identify healthcare disparities, conduct targeted outreach strategies, and craft solutions to ensure comprehensive coverage and greater healthcare access for all Californians."

Background.

The Department of Consumer Affairs and Healing Arts Boards. The DCA consists of 37 boards and bureaus that regulate over 3.9 million licensees across 250 professions and occupations. 20 of such boards are designated as "healing arts" boards under Division 2 of the Business and Professions Code, and are responsible for licensing and regulating health professionals providing care to California patients – ranging from medical, mental or veterinary health services. The healing arts boards include the following entities: Acupuncture Board; Board of Behavioral Sciences; Board of Chiropractic Examiners; Dental Board of California; Dental Hygiene Board

of California; Medical Board of California; Naturopathic Medicine Committee; California Board of Occupational Therapy; Board of Optometry; Osteopathic Medical Board of California; Board of Pharmacy; Physical Therapy Board of California; Physician Assistant Board; Podiatric Medical Board of California; Board of Psychology; Board of Registered Nursing; Respiratory Care Board; Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board; Veterinary Medical Board; and the Board of Vocational Nursing and Psychiatric Technicians.

OSHPD and the Healthcare Workforce Clearinghouse (HWC). The HWC, established in 2007 and housed under OSHPD's Healthcare Workforce Development Division, serves as California's central source for collection, analysis, and reporting of information on the healthcare workforce employment and educational data trends for the state. As part of its statutory duties, OSHPD is mandated to prepare an annual report to the Legislature that accomplishes the following three goals: (1) identifying education and employment trends in the health care professions (2) reporting on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas; and (3) recommending state policy needed to address issues of workforce shortage and distribution.

Data Collection under AB 2102. AB 2102 (Ting, Chapter 420, Statutes of 2014) required four specific boards – the Board of Registered Nursing, the Physician Assistant Board, the Respiratory Care Board of California, and the Board of Vocational Nursing and Psychiatric Technicians – to collect and report specific demographic data related to its licensees. Additionally, the bill required the data to be provided to OSHPD for inclusion in the OSHPD annual report to the legislature. The bill was enacted, in part, because race, language capacity and gender demographic information for many important allied health professionals was at the time incomplete and uncollected. Access to this data was critical to determining California's capacity to provide culturally and linguistically competent care to its diverse population. To that end, AB 2102 mandated the four specific boards to collect the following data from licensees: (1) location of practice, including city, county, and zip Code; (2) race or ethnicity; (3) gender; (4) languages spoken; (5) educational background and (6) classification of primary practice site, such as clinic, hospital, managed care organization, or private practice. In order to implement the provisions of AB 2102, DCA and OSHPD established an interagency agreement to facilitate the specified data collection and exchange.

According to the 2018 Health Care Workforce Clearinghouse Annual Report to the Legislature, OSHPD has access to the following data from the following healing arts boards, provided either voluntarily or by statutory mandate:

- Board of Registered Nursing
- Board of Vocational Nurses and Psychiatric Technicians
- Dental Board of California
- Dental Hygiene Committee of California
- Medical Board of California
- Osteopathic Medical Board of California
- Physician Assistant Board

- Respiratory Care Board

Major provisions of AB 1236. This bill expands upon existing data collection mandates on California's health care workforce. Specifically, AB 1236 requires all healing arts boards under DCA to collect specified demographic data, and to produce and publish online a report containing such workforce data collected on a biennial basis. The bill specifies the data to be collected, which spans 13 categories: (1) City, county, and ZIP Code of practice; (2) type of employer or classification of primary practice site among the types of practice sites such as a clinic, hospital, managed care organization, or private practice; (3) work hours; (4) titles of positions held; (5) time spent in direct patient care; (6) clinical practice area; (7) race or ethnicity; (8) gender identity; (9) languages spoken; (10) educational background; (11) future work intentions; (12) job satisfaction ratings and (13) sexual orientation.

Mirroring similar provisions as AB 2102, this bill requires healing arts boards to request the data at the time of electronic application for a license and license renewal. Beginning July 1, 2022 and every year thereafter, this bill also requires each board or DCA to provide the data collected to OSHPD for the purpose of OSHPD's annual report to the Legislature related to health care workforce planning.

Additionally, to address privacy concerns, this bill enacts two data privacy and protection provisions. First this bill requires each board to maintain the confidentiality of the information it receives from licensees and registrants, and specifies that the boards may only release data or information in an aggregate form that cannot be used to identify an individual. Secondly, this bill clarifies that all data submission is voluntary and optional, and that licensees or registrants are not to be required to provide any of the information requested.

Current Related Legislation. None.

Prior Related Legislation.

AB 2102 (Ting, Chapter 420, Statutes of 2014) – Licensees: data collection. Required the Board of Registered Nursing, the Physician Assistant Board, the Respiratory Care board of California, and the Board of Vocational Nursing and Psychiatric Technicians to collect and report specific demographic data relating to its licensees, to the Office of Statewide Health Planning and Development. Required these boards to collect this data at least biennially, at the times of both issuing an initial license and issuing a renewal license.

ARGUMENTS IN SUPPORT:

The San Francisco Jewish Vocational Service, **the California Pan-Ethnic Health Network, the California LGBT Health and Human Services Network, the California State Council of Service Employees International Union, and the National Association of Social Workers – California Chapter** collectively write in support: "Although our state is growing more and more diverse, wide disparities persist among underserved populations across all areas of life including physical health, economic opportunity, and mental health outcomes. For example, California Department of Health Care Services found that while African-Americans represent eight percent of the overall diabetic population in Medi-Cal, they disproportionately make up a larger percentage of the most costly diabetic patients due to inaccessibility to preventative care. For mental health treatment, Caucasian patients access mild-to-moderate mental health services provided by managed care plans at twice the rate of their non-white counterparts. […]

Collection of demographic data on healthcare workers is essential in making progress on this issue. In 2014, AB 2102 (Ting), required the Department of Consumer Affairs (DCA) to collect demographic data on their allied health professional licensees and provide that data to the Office of Statewide Health Planning and Development. However, AB 2102 only required data on a limited number of health care occupations, omitting psychiatrists, optometrists, and dentists, behavioral health board licensees among others.

AB 1236 expands on AB 2102 (Ting, 2014) by requiring the collection of demographic data for all registered health professions under DCA who apply for and maintain licensure through electronic application. The demographic data collected would include race/ethnicity, gender, language(s) spoken, location of practice, and educational background. This information would be compiled and shared with the Healthcare Workforce Clearinghouse within the Office of Statewide Health Planning and Development and could be used to identify and address disparities in the workforce. This would provide the state with a greater sense of the workforce shortage needs including the need to serve specific underserved populations. This data would be useful in conducting more targeted outreach strategies."

CaliforniaHealth+ Advocates write in support: "National reports suggest a more diverse health workforce are better equipped to serve diverse patient populations and form patient-provider concordance, which result in better health outcomes. CHCs recognize provider race and ethnicity data collection as a vital tool to expand California's workforce diversity and close gaps in the provider shortage. AB 1236 supports this effort by requiring each board overseeing health arts licensees to request and publicize their self-reported race and ethnicity data. Releasing de-identified aggregate data maintains the licensees' privacy. CHCs [Community Health Centers], health associations, and academic medical institutes can access the information to monitor and analyze trends in California's health workforce and consider methods to support a more racially representative workforce. They can also target advocacy approaches to grow a more multiethnic workforce and identify health professionals' short- and long-term needs."

ARGUMENTS IN OPPOSITION:

None on file.

AMENDMENTS:

The committee has received stakeholder input about adding an additional, important category of data to be collected. The committee submits the following amendment:

AMENDMENT 1:

On page 3, between lines 9 and 10, insert:

(N) Disability status.

REGISTERED SUPPORT:

San Francisco Jewish Vocational Center (Sponsor)
California Pan-Ethnic Health Network (Sponsor)
California LGBTQ Health and Human Services Network
California State Council of Service Employees International Union

Californiahealth+ Advocates
National Association of Social Workers, California Chapter

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1533 (Committee on Business and Professions) – As Amended April 19, 2021

SUBJECT: Pharmacy.

SUMMARY: Extends the sunset date for the California State Board of Pharmacy (Board) until January 1, 2026 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the Board's sunset review oversight process.

EXISTING LAW:

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

2) Establishes the Board to administer and enforce the Pharmacy Law, comprised of seven pharmacists and six public members, and provides that the statute establishing the Board shall be repealed on January 1, 2022. (BPC § 4002)

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

4) Provides that the Board's executive officer may or may not be a member of the Board. (BPC § 4003)

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

6) Authorizes the Board to employ legal counsel and inspectors of pharmacy. (BPC § 4008)

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

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

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

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

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

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

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

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

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

(BPC § 4052)

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

11) Imposes a maximum penalty of $5,000 for any person who attempts to secure or secures licensure by making or causing to be made any false representations, or who fraudulently represents themselves to be registered. (BPC § 4322)

12) Imposes a maximum penalty of $5,000 for any person or entity who violates provisions of the Pharmacy Law governing outsourcing facilities. (BPC § 4129.5)

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

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

15) Defines an "automated drug delivery system" (ADDS) as a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, dispensing, or distribution of drugs. (BPC § 4053.2)

16) Defines an "automated unit dose system" (AUDS) as an ADDS for storage and retrieval of unit doses of drugs for administration to patients by persons authorized to perform these functions. (BPC § 4017.3)

17) Allows for an ADDS to be placed and operated inside an enclosed building, with a premises address, at one of several enumerated locations that may be approved by the Board. (BPC § 4427.3)

18) Limits the authority for most licensing boards under the Department of Consumer Affairs (DCA) to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial. (BPC § 480)

THIS BILL:

1) Extends the sunset date for the Board from January 1, 2022 to January 1, 2026.

2) Provides that each appointing authority has power to remove from office at any time any member of the Board appointed by that authority.

3) Requires that one of the professional members of the Board be a representative of compounding pharmacy specializing in human drug preparations.

4) Expressly authorizes the Board to meet by teleconference.

5) Prohibits the Board's executive officer from being a member of the Board.

6) Requires the Board to employ its own legal counsel.

7) Provides that an outsourcing facility licensed by the Board that dispenses patient-specific compounded preparations pursuant to a prescription for an individual patient shall not be required to be licensed as a pharmacy.

8) Authorizes the Board to waive the home state licensure requirement for a nonresident third-party logistics provider (3PL) if the Board inspects the location and finds it to be in compliance with the Pharmacy Law or accredited by the Drug Distributor Accreditation program of the National Association of Boards of Pharmacy.

9) Allows the Board to deny an application for licensure if the applicant has been convicted of a crime or subjected to formal discipline that would be grounds for denial of a federal registration to distribute controlled substances.

10) Provides that for purposes of meeting the requirements to become an advanced practice pharmacist, if, as a condition of completion of one of the required criteria fulfillment of a second criterion is also required, that completion shall be deemed to satisfy the requirements.

11) Requires pharmacists who prescribes a Schedule II controlled substance to have completed an education course on the risks of addiction associated with the use of Schedule II drugs.

12) Requires the Board to convene a workgroup of interested stakeholders to discuss whether moving to a standard of care enforcement model would be feasible and appropriate for the regulation of pharmacy and make recommendations to the Legislature.

13) Authorizes the Board to bring an action for specified civil penalties for repeated violations of the Pharmacy Law by pharmacies operating under common ownership or management.

14) Authorizes the Board to bring an action against a pharmacy for civil penalties for violations of the Pharmacy Law demonstrated to be the result of a policy or which was otherwise encouraged by a common owner or manager.

15) Allows for an AUDS to be placed in additional locations, including a facility licensed by the state with the statutory authority to provide pharmaceutical services and a jail, youth detention facility, or other correctional facility where drugs are administered under the authority of the medical director.

16) Authorizes a pharmacist to initiate, adjust, or discontinue drug therapy for a patient under a collaborative practice agreement with any health care provider with prescriptive authority and to provide nonopioid medication-assisted treatment pursuant to a state protocol.

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

COMMENTS:

Purpose. This bill is the sunset review vehicle for the California State Board of Pharmacy, authored by the Assembly Business and Professions Committee. The bill extends the sunset date for the Board and enacts 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.

California State Board of Pharmacy. The Board regulates over 47,000 pharmacists, 550 advanced practice pharmacists, 6,500 intern pharmacists, and 70,000 pharmacy technicians across a total of 32 licensing programs. Entrusted with administering and enforcing the state's Pharmacy Law, statute provides that "protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The Pharmacy Law provides that the Board consists of thirteen members, seven of which are licensees of the Board and six of which are unlicensed members of the public.

Board Member Expertise. Issue #2 in the Board's sunset review background paper asked whether existing law requiring the appointment of pharmacists representing specific practice settings provide sufficient expert perspectives on matters coming before the Board. In addition to requiring both professional and public members, there is further specificity regarding who serves on the Board. Statute requires at least five of pharmacist appointees be actively engaged in the practice of pharmacy. The Board must also include "at least one pharmacist representative from each of the following practice settings: an acute care hospital, an independent community pharmacy, a chain community pharmacy, and a long-term health care or skilled nursing facility."

Notwithstanding these requirements, there are a number of perspectives that are currently not required to be reflect on the Board. One such category of professional expertise is in the area of pharmacy compounding. This area of practice has recently drawn national attention for both its importance and complexity, and the Board recently put forth a number of regulations regarding pharmacy compounding. While the Board does feature some expertise in this area there has not been a compounding pharmacist specifically represented on the Board. By amending the law to require at least one of the professional members to be a compounding pharmacist, this bill intends to provide new meaningful expertise in Board decision-making.

Board Vacancies. Issue #3 in the Board's sunset review background paper asked what What solutions might be considered to address the substantial member vacancy rates that have persisted on the Board. In recent years, the Board has experienced challenges in achieving a quorum at meetings, with an average of three vacancies existing on the Board. These vacancies have participated in large part due to difficulty recruiting qualified appointees to serve on the Board. The time commitment involved has been identified as a large driver of this problem, with the Board currently holding as many as eight meetings in a year in addition to its committee meetings. Particularly for professional members, this means time away from paid practice and can present a substantial hardship.

One potential solution to these recruitment issues is increasing the availability of teleconferencing when possible to allow Board members to participate remotely. The Board already holds some meetings via teleconference, and the format has been adopted by other boards. Increasing its use could potentially increase the range of available applicants. This bill would expressly provide that the Board may meet via teleconference to the extent permitted by the Bagley-Keene Open Meetings Act.

Executive Officer Eligibility. Issue #4 in the Board's sunset review background paper asked whether statute be revised to ensure future Executive Officers remain sufficiently independent in their service to the Board. The Pharmacy Law currently states that the Executive Officer "may or may not be a member of the board as the board may determine." No Executive Officer has concurrently served as a board member in recent history, and such practice is either discouraged or prohibited for similar boards because of the potential for conflicts of interest and the diminishment of independence between Board staff and the voting members. This bill strikes reference to board members serving as Executive Officer.

Board Attorney. Issue #5 in the Board's sunset review background paper asked whether the Board has sufficient legal counsel. Business and Professions Code § 4008 expressly provides the Board with the authority to employ legal counsel. However, the Board does not currently have its own dedicated attorney. Legal representation in disciplinary prosecution is provided by the Attorney General's Licensing Section, and the Department of Consumer Affairs offers counsel as part of the centralized services it provides to boards, as needed to assist with rulemaking, address legal issues that arise, and support compliance with open meeting laws.

Dedicated board counsel is, however, considered to provide substantial value when questions of law occur regularly enough to warrant the presence of attorney who specializes in a board's practice act, and may help improve the Board's rulemaking timelines. It is under this line of thinking that the Legislature has authorized the Board to appoint its own lawyer, and any reasons for that position remaining unfilled should be discussed before the committees.

Further, the Attorney General's Office has recently transferred both deputy attorneys general who previously advised the Board. Particularly as the Attorney General's billing rate has increased substantially, these may each be factors in costlier and lengthier enforcement activities by the Board. This bill would require the Board to hire its own dedicated attorney, as already permitted by statute.

Fair Chance Licensing Act. Issue #8 in the Board's sunset review background paper asked whether any statutory changes needed to enable the Board to better carry out the intent of Assembly Bill 2138 (Chiu/Low). AB 2138 was signed into law in 2018, making substantial reforms to the license application process for individuals with criminal records. 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. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, the bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. These provisions were scheduled to go into effect on July 1, 2020.

Because AB 2138 significantly modifies current practice for boards in their review of applications for licensure, it was presumed that its implementation would require changes to current regulations for every board impacted by the bill. Recently, the Board was in the process of finalizing its regulations to revise its denial criteria to incorporate the changes from the bill. The Board's sunset review background paper stated is also likely that the Board has identified changes to the law that it believes may be advisable to better enable it to protect consumers from license applicants who pose a substantial risk to the public. This bill would authorize the Board to deny an application for licensure by an applicant whose prior criminal or disciplinary history would make them ineligible for a federal registration to distribute controlled substances.

Third-Party Logistics Providers. Issue #9 in the Board's sunset review background paper asked whether the Board should be authorized to conduct inspections of 3PLs that are not fully licensed in their resident states to allow for operation within California. Federal law enacted in 2013 prohibits states from regulating 3PLs as wholesalers. Because 3PLs are considered vital members of the supply chain that store, select, and ship prescription drugs, the Board pursued legislation in 2014 to establish licensure of 3PLs as a separate category of licensee. While other states have taken similar action in their jurisdictions, some states continue to regulate 3PLs as wholesalers. As a result, these entities are prohibited from doing business in California, because they are not appropriately licensed in their home state and therefore cannot be licensed in California.

To remedy the problem, the Board proposes to seek statutory authority to change the licensing requirements for such 3PLs. This bill allows the Board to inspect the business before licensure, similar to the process used for initial licensure of nonresident sterile compounding pharmacies. If the inspection confirms the business is in compliance with state and federal law, licensure as a 3PL in the home state will not be required. The Board does not believe that an annual inspection would be required. Instead, inspection would be limited to every four years or until such time as the resident state makes the necessary changes to its law.

Advanced Practice Pharmacists. Issue #10 in the Board's sunset review background paper asked whether modifications to the minimum qualifications for licensure for Advanced Practice Pharmacists would enable these specialized licensees to further enhance access to care. In 2013, Senate Bill 493 (Hernandez, Chapter 469, Statutes of 2013) was signed into law, creating a new license type under the Board known as the Advanced Practice Pharmacist. This new class of highly educated and trained health care professionals is intended to further the role of pharmacists in providing direct patient care, and advanced practice pharmacists are authorized to perform additional procedures that are often unavailable in low-access parts of the state. To implement the bill, the Board adopted regulations setting training and certification requirements for advanced practice pharmacists, who are authorized to perform specific care functions for patients.

To date, fewer individuals have successfully applied to become advanced practice pharmacists than anticipated, and this may be due to unnecessarily complicated or onerous qualifications and overly limited independence in practice. The Board proposed language in this bill that would recast the requirements for licensure as an advanced practice pharmacist license so that completion of one requirement is subsumed within completion of another requirement. Further, this bill would provide that it be acceptable if certification is earned as part of the requirements for completion of a residency or completion of 1,500 hours of collaborative practice experience or a residency is completed that included the 1,500 hours of collaborative practice experience.

Continuing Education for Opioids. Issue #12 in the Board's sunset review background paper asked whether pharmacists who prescribe Schedule II drugs pursuant to a collaborative practice agreement complete continuing education on the risks associated with opioid use. In October 2017, the White House declared the opioid crisis a public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country. According to the Centers for Disease Control and Prevention, as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28 percent increase over the previous year. Additionally, the number of Americans who died of an overdose of fentanyl and other opioids more than doubled during that time with nearly 20,000 deaths. These death rates compare to, and potentially exceed, those at the height of the AIDS epidemic.

Partly in response to the opioid crisis, some boards that regulate health professionals authorized to prescribe serious painkillers now require continuing education courses in the risks associated with the use of Schedule II drugs. Currently, pharmacists can prescribe Schedule II drugs under limited circumstances pursuant to a Collaborative Practice Agreement. This bill would require that pharmacists who prescribe Schedule II opioids be required to complete similar continuing education related to the hazards of Schedule II opioid use.

Pharmacies Operating Under Common Ownership. Issue #13 in the Board's sunset review background paper asked whether the Board should be better empowered to take enforcement action against the owners and operators of pharmacies under common ownership and control for system-wide violations of law. The Pharmacy Law holds each pharmacy and its pharmacist-in-charge responsible for operations at the individual site, even if that pharmacy is part of a larger chain. However, in many cases, administrative or disciplinary action at an individual store may be the result of policies set at a corporate level. Currently, the Board's remediation and sanctions against an individual pharmacy is arguably unfair and inadequate to address a system wide issue across a large multi-store chain.

As an example of how it has sought to address this issue, the Board has pointed to how in response to a large number of store violations regarding patient consultations several years ago, the Board worked with local district attorneys to secure large penalties against certain pharmacy chains. However, this coordination is not always possible. In addition, the Board states that violations regarding patient consultations continue, despite citations issued by the Board and fines assessed by district attorneys.

Because the Board is limited to citing each pharmacy individually, making it difficult to address in an effective manner, violations resulting from corporate policy. In some settlements involving individual stores, the Board has stipulated that the ownership as a whole must address the issue; in such cases, however, the corporate owner must agree. This approach leaves unresolved the underlying challenge of regulating numerous entities under common ownership.

The Board has stated that it believes it may be appropriate to put into law some threshold evidence of a system-wide pharmacy failure that would allow additional enforcement tools to be used. There have long been accusations of major chain-store pharmacies engaging in misconduct (for example, pushing pharmacists to meet certain output metrics for pharmacy sales that may supersede their professional judgement), but violations are technically only attributable to individual sites. The Board has asked whether there should be some additional ability for the Board to take action against entire chains for systemic violations of the law.

This bill would authorize the Board to bring an action for civil penalties for repeated violations of any of the Pharmacy Law by one or more pharmacies operating under common ownership or management, as follows:

(1) A second violation within one year may be punished by an administrative fine or civil penalty not to exceed one hundred thousand dollars per violation.

(2) A third violation within five years may be punished by an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars per violation.

(3) A fourth or subsequent violation within five years may be punished by an administrative fine or penalty not to exceed one million dollars per violation and shall also be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.

Additionally, this bill would authorize the Board to bring an action against a pharmacy operating under common ownership or management for civil penalties not to exceed one million dollars for any violation of this chapter demonstrated to be the result of a policy or which was otherwise encouraged by the common owner or manager.

Standard of Care Model for Pharmacy Practice. Issue #15 in the Board's sunset review background paper asked whether the Board begin moving toward more of a standard of care model for its disciplinary actions against licensees. A number of healing arts licensing boards are granted a substantial amount of flexibility in investigations when determining whether a licensee should be subject to discipline. Rather than enforcing strict adherence to codified practice requirements, boards may instead focus on the question of whether a licensee followed the "standard of care" and acted reasonably under the circumstances as a trained professional. It has been argued that a similar model should be enacted for the Board in regards to its actions against its licensees.

The Board does currently employ 56 licensed pharmacists who assist with investigations as professional experts. Therefore, it is arguable that something resembling the standard of care is already applied when the Board is determining whether an investigation should result in an action for discipline. However, the Committees recommended that the Board should discuss whether it believes a standard of care model would be appropriate and what steps it might take over the next few years to move toward that model. This bill would require the Board to convene a workgroup of interested stakeholders to discuss whether moving to a standard of care enforcement model would be feasible and appropriate for the regulation of pharmacy and make recommendations to the Legislature about the outcome of these discussions through a report submitted to the Legislature.

Patient-Specific Outsourcing. Issue #18 in the Board's sunset review background paper asked under what conditions should a licensed outsourcing facility be allowed to fill patient-specific prescriptions. Since June of 2017, the Board has issued licenses to outsourcing facilities concurrently with applicable licensure by the federal Food and Drug Administration. Outsourcing facilities are authorized to compound sterile and nonsterile products in compliance with regulations issued by the Board and are subject to inspection wherever they are located, with inspections occurring prior to license issuance or renewal for facilities doing business within or into California. The Board has issued 31 outsourcings licenses and performed 77 inspections since implementing the program.

While outsourcing facilities receive significant oversight and have proven successful at providing compounding services, statute currently prohibits a licensed outsourcing facility from filling individual prescriptions for individual patients. It is worth considering whether easing or eliminating this prohibition may result in greater access to pharmacy services. If such a change were to be made, licensed outsourcing facilities providing patient-specific care should be provided the same obligations and corresponding responsibilities as traditional pharmacists, and the Board should ensure any additional safeguards are incorporated. This bill would allow licensed outsourcing facilities to fill patient-specific prescriptions.

Collaborative Practice Agreements. Issue #19 in the Board's sunset review background paper asked whether statute be updated to expand the capacity of pharmacists to engage in expanded services pursuant to collaborative practice agreements. Current law authorizes pharmacists to enter into collaborative practice agreements with physicians to provide additional care to patients. These agreements are believed to take advantage of a pharmacist's knowledge, skills, and abilities as a means to reduce demands on health professionals and improve patient care. Existing law allows for pharmacists to engage in limited activities pursuant to a collaborative practice agreement.

Opportunities may exist to expand the use of the conditions under which pharmacists could operate under a collaborative practice agreement, as well as the conditions under which an advanced practice pharmacist could perform authorized duties. The Board has made some recommendations for ways in which statute could be updated to allow for these expansions. This bill would authorize a pharmacist to initiate, adjust, or discontinue drug therapy for a patient under a collaborative practice agreement with any health care provider with prescriptive authority. The collaborative practice agreement would be allowed to be between a single or multiple pharmacists and a single or multiple health care providers with prescriptive authority.

Medication-Assisted Treatment. Issue #10 in the Board's sunset review background paper asked whether pharmacists should be further authorized to directly dispense non-opioid medication assisted treatments (MAT) to increase access to care for patients with substance abuse disorders. Statute allows for pharmacists to furnish certain medications directly to a patient, including self-administered hormonal contraceptives, nicotine replacement products, and preexposure and postexposure prophylaxis. It has been suggested that similar authority be established for pharmacists to directly furnish non-opioid MAT to patients pursuant to a statewide protocol.

MAT is the use of medications, in combination with counseling and behavioral therapies, to treat substance use disorders. MAT has proven successful in helping addicted patients enter recovery and are commonly used for the treatment of addiction to opioids. While some forms of MAT, such as buprenorphine, are themselves a type of opioid, other forms of MAT do not contain opioids. This bill would authorize a pharmacist to provide nonopioid medication-assisted treatment pursuant to a state protocol.

Automated Drug Delivery Systems. Issue #22 in the Board's sunset review background paper asked whether statute should be revised to allow the placement of ADDS in additional locations. An ADDS is a mechanical system controlled remotely by a pharmacist that performs operations or activities relative to the storage, dispensing, or distribution of prepackaged dangerous drugs or devices. A specific type of ADDS is an Automated Unit Dose System (AUDS), used for storage and retrieval of unit doses of drugs for administration to patients by health practitioners. The law requires that there be specific written policies and procedures to ensure safety, accuracy, accountability, security, patient confidentiality, and maintenances of the quality, potency and purity of drugs located at the clinic.

Use of an ADDS is authorized only in specific locations, including certain types of clinics serving low-income Californians and fire departments under certain conditions. The Board has recommending amending existing statutes to expand authority for pharmacies to license and operate AUDS in additional settings to provide medication management services. This bill would authorize an AUDS to be located in addition settings including jails, correctional treatment centers, hospice facilities, psychiatric health facilities, and other locations.

Technical Cleanup. Issue #25 in the Board's sunset review background paper asked whether there was the need for technical changes to the Business and Professions Code to add clarity and remove unnecessary language. This bill makes various technical and clarifying changes to the Pharmacy Law.

Continued Regulation. Issue #26 in the Board's sunset review background paper asked whether the licensing of pharmacy professionals be continued and be regulated by the California State Board of Pharmacy. The Committees recommended that the Board's current regulation of the pharmacy profession should be continued, to be reviewed again on a future date to be determined. This bill would extend the sunset date for the Board from January 1, 2022 to January 1, 2026.

Current Related Legislation. AB 1064 (Fong) would expand the authority of a pharmacist to initiate and administer immunizations to include any vaccine approved or authorized by the United States Food and Drug Administration (FDA) for persons 3 years of age and older. *This bill is pending in the Assembly Committee on Business and Professions.*

SB 362 (Newman) would prohibit a community pharmacy from establishing a quota, subject to a fine not exceeding one million dollars and a 30-day suspension of the licenses of its pharmacies in the state for the first violation, and the revocation of the community pharmacy's licenses for a second violation. *This bill is pending in the Senate Committee on Appropriations.*

Prior Related Legislation. SB 1193 (Hill, Chapter 484, Statutes of 2016) extended the operation of the Board from January 1, 2017 to January 1, 2021.

ARGUMENTS IN SUPPORT:

The **United Food and Commercial Workers Western States Council** (UFCW) writes that it supports this bill, "especially the long over-due increase in fines available to the Board of Pharmacy to motivate compliance with current law from some of the world's largest publicly-traded corporations – the maximum fine available to the BOP now is embarrassing: less than half the ceiling for small claims court or $5,000. The fines proposed in the bill for the most stubborn, repeat, nation-spanning corporate actors who repeatedly and stubbornly violate life-saving and life-preserving health care laws are amply justified."

ARGUMENTS IN OPPOSITION:

The **California Retailers Association** (CRA) opposes this bill unless amended. The CRA writes: "CRA and NACDS members are supportive of extending the sunset of the Board of Pharmacy, as well as the Board's mission to protect patient safety. We also appreciate the Board's enforcement authority, including its authority to cite and fine pharmacies for pharmacy law violations. While we understand the Committee's objective to ensure penalties are meaningful deterrents for violations, the Board's existing cite and fine authority currently achieves this goal. Our members take every violation and fine seriously and take efforts to avoid similar fines in other stores. Fines at the individual pharmacy level do add up and have a considerable financial impact on our members."

REGISTERED SUPPORT:

California Labor Federation
SEIU California
United Food and Commercial Workers Western States Council (UFCW)
United Nurses Association of California (UNAC)

REGISTERED OPPOSITION:

California Retailers Association

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1534 (Committee on Business and Professions) – As Introduced February 19, 2021

SUBJECT: Optometry: mobile optometric clinics: regulations.

SUMMARY: Requires the California State Board of Optometry (Board) to notify the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development when it has completed the adoption of regulations establishing a registry for the owners and operators of mobile optometric offices.

EXISTING LAW:

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

2) Makes it unlawful for a person to engage in or advertise the practice of optometry without having first obtained an optometrist license from the Board. (BPC § 3040)

3) States that protection of the public is the highest priority of the CBO in exercising its licensing, regulatory, and disciplinary functions. (BPC § 3010.1)

4) Provides that the practice of optometry includes the prevention, diagnosis, treatment, and management of disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services, and specifically authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat the human eye for various enumerated conditions. (BPC § 3041)

5) Defines "mobile optometric office" as a trailer, van, or other means of transportation in which the practice of optometry is performed and which is not affiliated with an approved optometry school in California. (BPC § 1070.2(a))

6) Limits the ownership and operation of a mobile optometric office to a nonprofit or charitable organization that provides optometric services to patients regardless of the patient's ability to pay, and requires the owner and operator of a mobile optometric office to register with the Board. (BPC § 1070.2(c))

7) Requires the Board to adopt regulations establishing a registry for the owners and operators of mobile optometric offices no later than January 1, 2022. (BPC § 1070.2(i))

THIS BILL:

1) Requires the Board to notify the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development when it has completed the adoption of regulations establishing a registry for the owners and operators of mobile optometric offices.

2) Requires the Board's notification to the committees to comply with statute generally governing reports submitted by a state agency to the Legislature.

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

COMMENTS:

Purpose. This bill is the sunset review vehicle for the California State Board of Optometry, authored by the Assembly Business and Professions Committee. The bill will ultimately be amended to extend the sunset date for the Board 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.

Mobile Optometric Offices. Existing law allows for healing arts licensees to deliver services through mobile health care units to the extent authorized by written policies established by the governing body of the licensee. Previously, Board regulations allowed for the provision of optometry services through registered "extended optometric clinical facilities." This registration program is restricted to clinical facilities employed by an approved school of optometry where optometry services are rendered outside or beyond the walls, boundaries, or precincts of the primary campus of the school. Mobile optometric facilities were only allowed to function as a part of a school teaching program as approved by the Board.

While the extended optometric clinical facility program was historically used to provide mobile optometry services to low-access communities, optometrists seeking to provide these services were limited to the extent that they were affiliated with a school of optometry. Nevertheless, the widely recognized need for expanded access to optometric care for patients who are uninsured and unable to pay out of pocket led to the establishment of charitable organizations and nonprofits dedicated to providing care through mobile clinics. One reputable nonprofit, Vision to Learn, has provided more than 186,500 eye exams and more than 148,500 pairs of glasses to students and other Californians, regardless of income, since it was established in 2012.

Despite the success of these programs, their operation was technically unsupported by statute or Board regulation to the extent that the provision of services was unaffiliated with a school of optometry. This lack of clarity led to concerns relating to the possibility of enforcement action by the Board against nonprofit optometry service providers. In 2020, the Legislature passed AB 896 (Low, Chapter 121, Statutes of 2020 to rectify that apprehension by creating a new registration program to formalize the presence of mobile optometric offices operated by nonprofits and charitable organizations.

Organizations authorized under the bill are required to submit information to the Board regarding services provided and any complaints received by the organization. Further, all medical operations of a mobile optometric office must be directed by a licensed optometrist. Finally, the bill created a safe harbor for charitable organizations and nonprofits currently providing services while the Board promulgates regulations to implement the new registration program, providing peace of mind to those already working to expand access to optometry services for low-income communities in California. The Board is required to adopt regulations implementing the bill no later than January 1, 2022.

This bill will require the Board to notify the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development when it has completed the adoption of its regulations establishing a registry for the owners and operators of mobile optometric offices. This notification will enable the committees to begin tracking the success of the program.

Current Related Legislation. AB 407 (Salas) would expand the scope of practice for qualified optometrists. *This bill is pending in the Assembly Committee on Business and Professions.*

Prior Related Legislation. AB 1708 (Low, Chapter 564, Statutes of 2017) was the most recent sunset bill for the Board.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1535 (Committee on Business and Professions) – As Amended April 20, 2021

SUBJECT: Veterinary Medical Board: application and examination: discipline and citation.

SUMMARY: Eliminates the requirement that a veterinarian complete a California state board examination for licensure. Specifies changes to the Veterinary Medical Board's (Board) veterinary premises registration application, and the Board's enforcement authority over veterinary premises. Establishes safeguards related to the corporate practice of medicine. Implements changes to the Board's drug and alcohol diversion program. Clarifies the process to contest Board-issued citations. Clarifies the appropriate use of the title "veterinary specialist" or "board-certified." Authorizes the Board to abandon applications for licensure or registration left incomplete.

EXISTING LAW:

1) Creates the Veterinary Medicine Practice Act (Act), outlining the licensure requirements, scope of practice, and responsibilities of individuals practicing veterinary medicine and animal health care tasks in California. (Business and Professions Code (BPC) Section 4811 et seq.)

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

3) Declares that it is unlawful to practice veterinary medicine in California unless a person holds a valid, unexpired, and unrevoked license as provided in this chapter. (BPC Section 4825)

4) Outlines the requirements for obtaining a license to practice veterinary medicine, which includes passing three examinations: a licensing examination that is administered on a national basis; a California state board examination; and an examination on California statutes and regulations of the Veterinary Medicine Practice Act. (BPC Section 4848(a))

5) Requires all premises where veterinary medicine, dentistry and surgery is practiced to be registered with the Board. Defines "premises" to include a building, kennel, mobile unit, or vehicle. Specifies that every application for registration of veterinary premises must include the name of the responsible licensee manager acting for and on behalf of the licensed premises. (BPC Section 4853)

6) Requires every application for registration of veterinary premises to set forth the name of the responsible licensee manager who is to act and on behalf of the licensed premises. (BPC Section 4853)

7) Authorizes the Board to withhold, suspend or revoke the registration of veterinary premises when the licensee manager listed on the application ceases to become responsible for management of the registered premises and no substitution of the responsible licensee manager has been made through a subsequent application, or the licensee manager has had their license revoked or suspended. (BPC Section 4853.6)

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

9) Declares that it is the intent of the Legislature that the Board seeks ways to identify and rehabilitate veterinarians and registered veterinary technicians with impairment due to abuse of dangerous drugs or alcohol, affecting competency so that veterinarians and registered veterinary technicians so afflicted may be treated and returned to the practice of veterinary medicine in a manner that will not endanger the public health and safety. (BPC Section 4860)

10) Establishes diversion evaluation committees under the Board, composed of individuals appointed by the Board, whose duties and responsibilities include, among other activities, the evaluation of veterinarians and registered veterinary technicians requesting participation into the Board's drug diversion program; reviewing and designating treatment facilities for referrals; and considering the case for each participant in determining if they may safely continue the practice of veterinary medicine or assisting in the practice of veterinary medicine. (BPC Section 4860)

11) Requires the Board to charge each veterinarian and registered veterinary technician who is accepted to participate in the diversion program a diversion program registration fee. The diversion program registration fee shall be set by the board in an amount not to exceed four thousand dollars ($4,000). In the event that the diversion program registration exceeds five hundred dollars ($500), the board may provide for quarterly payments. (BPC Section 4873)

12) Outlines the process for the Board to issue a citation for violations of the Act, and specifies the process for an individual to administratively contest a civil citation or the proposed assessment of a civil penalty. (BPC Section 125.9 and Section 4875.6)

THIS BILL:

1) Eliminates the requirement that a veterinarian complete a California state board examination, and makes conforming changes to provisions related to out-of-state, temporary, and university licenses.

2) Specifies that if an applicant for licensure or registration fails to complete their application within one year after it has been filed, the application shall be considered abandoned and the application fee forfeited. Provides that an application submitted subsequent to the abandonment of the former application shall be treated as a new application.

3) Requires an applicant for licensure ore registration to notify the board of any changes in mailing or employment address that occur after filing the application.

4) Amends the definition of a "premise" for the purposes of the Act to mean the location of operation where the various branches of veterinary medicine, dentistry or surgery is being practiced.

5) Requires the owners or operators of a veterinary premise to submit a premises registration application to the board, and requires the application to set forth the name of each owner or operator, including the type of corporate entity that is owning or operating the premise, if applicable.

6) Specifies that if the owner or operator submitting a premises registration application is a veterinary corporation, the application must set forth the titles of each officer director, or shareholder.

7) Specifies that if the owner or operator is a corporation or other artificial legal entity other than a veterinary corporation, the application shall set forth the names and titles of all owners, officers, general partners, if any, and the agent for service of process.

8) States that premises registration is non-transferrable, and that any changes in owners, operators, officers, directors, shareholders, general partners, agent for service of process to be reported to the Board within 30 days after any such change.

9) Authorizes the Board to:

   a) Deny, suspend, or revoke veterinary premises registration based on prior criminal and disciplinary history of the premises registration holder or licensee manager.

   b) Deny, suspend or revoke registration of veterinary premises in the event that a premises registration holder that is not licensed under the Board has practiced, influenced or exerted control over provision of veterinary medicine, dentistry and surgery.

   c) Deny renewal of premises registration if there is no licensee manager associated with the premises.

10) Prohibits a premises registration holder who is not a California-licensed veterinarian from interfering with, controlling, or otherwise directing the professional judgment of any California licensed veterinarian or registered veterinary technician. Authorizes the board to require any information, including employment contracts, necessary for enforcement of this provision.

11) Authorizes the Board President to have the authority to suspend any diversion evaluation committee member pending an investigation into allegations of existing alcohol or drug addiction. Specifies that, if after investigation, there is evidence of an alcohol or drug addiction relapse, the Board President shall have authorized discretion to remove the member without input from the Board.

12) Eliminates the requirement that the Board set a diversion program registration fee and offer a quarterly payment plan for diversion participants.

13) Clarifies the process and timeline for contesting citations issued by the Board. Specifically:

a) Allows a cited person to request an administrative hearing, and request an informal conference to review the citation. Specifies that the cited person must make the request for an informal conference in writing, within 30 days of the date of issuance of the citation.

b) Requires the Board's executive officer or designee, within 60 days from receipt of the request, to hold an informal conference with the cited person.

c) Specifies that following the informal conference, the Board's executive officer or designee may affirm, modify, or dismiss the citation, including any fine that is levied, order of abatement, or order of correction issued. The executive officer or their designee shall state in writing the reasons for the action and transmit a copy of those findings to the cited person within 30 days after the informal conference.

d) Provides that if the citation is affirmed or modified following the informal conference, the respondent may make a request in writing to the executive officer within 30 days of the affirmed or modified citation, for a formal hearing. A cited person cannot request an informal conference for a citation that has been affirmed or modified following an informal conference.

14) Prohibits a licensee or registrant under the Board from making any statement, claim, or advertisement that they are a veterinary specialist or that they are "board-certified" unless that licensee or registrant is certified by an American Veterinary Medical Association Recognized Veterinary Specialty Organization.

15) Prohibits a licensee or registrant from exercising control over, interfering with, or attempting to influence the professional judgment of another California licensed veterinarian or registered veterinary technician through coercion, extortion, inducement, collusion, intimidation through any means, such as using compensation to require the other California licensed veterinarian or registered veterinary technician to perform veterinary services in a manner inconsistent with current veterinary medical practice.

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

COMMENTS:

Purpose. This bill is one of several "sunset review bills" authored by the Assembly Committee on Business and Professions and the Senate Business, Professions, and Economic Development Committee (Committees). Each year, the Committees hold joint sunset review oversight hearings in order to review the boards and bureaus under the Department of Consumer Affairs (DCA). As these boards and bureaus are responsible for protecting consumers and the public and regulating the professionals they license, the sunset review process provides an opportunity for the DCA, the Legislature, the boards, and interested parties and stakeholders to discuss the performance of the boards, and make recommendations for improvements.

The joint Committees held a sunset review oversight hearing for the Veterinary Medical Board on March 3, 2021. Several of the issues examined during the hearing related to the Board are also reviewed in a committee background paper "Identified Issues, Background, and

Recommendations Regarding the Veterinary Medical Board," which is published and available on the Assembly Committee on Business and Professions' website. AB 1535 is the sunset review bill that will implement changes to the Board and its operations, as identified on the committee background paper, the sunset review oversight hearing, and stakeholder input.

Background.

The Veterinary Medical Board. The Veterinary Medical Board (Board) traces its origins back to 1893, originally established as the State Board of Veterinary Examiners. Over the next century, the Board has regulated the veterinary medical profession through many of its changes and evolution: from opening the first California veterinary college in 1894, to helping eradicate the Hog cholera in 1972, to the creation of the animal health technician profession (now titled Registered Veterinary Technician) in 1975. Today, the Board licenses and regulates Veterinarians, Registered Veterinary Technicians (RVTs), Veterinary Assistant Controlled Substances Permit (VACSP) holders, veterinary schools, and veterinary premises. The Board derives its authority through the enforcement of the Veterinary Medicine Practice Act. The Board protects the California public from the incompetent, unprofessional, and unlicensed practice of veterinary medicine. The Board requires adherence to strict licensure requirements for California Veterinarians, RVTs, and VACSP holders, and ensures that each licensee possesses the level of competence required to perform animal health care services. The Board further protects the public by investigating complaints – and if violations are found, take disciplinary actions against licensees.

Major provisions of AB 1535, as amended April 20, 2021. As currently amended, AB 1535 contains non-controversial statutory changes identified by the Board, the Committees, and stakeholders involved with or impacted by veterinary medicine. As the bill moves through the legislative process and as additional stakeholder discussions are conducted, further legislative changes may be proposed as part of the sunset review bill.

AB 1535 proposes seven changes to the Veterinary Medical Board. Specifically, the bill (1) eliminates the requirement that a veterinarian complete a California state board examination for licensure; (2) specifies changes to the Board's veterinary premises registration application, and the Board's enforcement authority over veterinary premises; (3) creates safeguards related to the corporate practice of medicine; (4) implements changes to the Board's drug and alcohol diversion program; (5) clarifies the process to contest citations; (6) clarifies the use of the title "veterinary specialist" or "board-certified" and (7) authorizes the Board to abandon applications for licensure or registration. Each of these changes are discussed in detail below.

Elimination of the California state board examination. The BPC requires the Department to have a process for developing and/or validating examinations required for licensure. To that end, the DCA's Office of Professional Examination Services (OPES) periodically conducts an occupational analysis to validate that examinations adequately test applicants and are effective at preventing unqualified individuals from obtaining professional licensure. To obtain licensure as a veterinarian, an individual must pass three examinations to determine competency: (1) a national examination, known as the the North American Veterinary Licensing Examination (NAVLE); (2) a California state board examination (CSBE) and (3) a veterinary law examination of California rules, statutes, and regulations (CVLE).

In coordination with the Board, OPES conducted a comprehensive review and linkage study of the NAVLE national examination and the CSBE to evaluate their continued use for veterinary licensure in California. OPES concluded that the NAVLE met the professional and technical standards to adequately test applicants. Furthermore, it was determined that the NAVLE also covered the practice areas tested by the CSBE, except for California law, rules and regulations – making the CSBE a largely redundant examination. As a result, OPES recommended that the CSBE be revised from a practice-based examination to a supplemental examination that measures California law, rules, and regulations only. OPES further recommended that this revised CSBE replaces the current CVLE. In October 2020, based on the OPES recommendations, the Board voted to pursue the elimination of the CSBE given its redundancy with the NAVLE. The Board subsequently established a workgroup comprised of board members and stakeholders to consider the impacts of eliminating the state examination, and draft statutory changes that would properly implement the elimination of the CSBE.

AB 1535 implements these recommended changes and eliminates the requirement that a candidate for licensure as a veterinarian pass a California state board examination. As a result, a candidate would only need to pass a national examination, and a veterinary law examination administered by the board concerning the Veterinary Medicine Practice Act statutes and regulations.

BPC Section 4848 currently specifies a process for out-of-state licensees to have their state examination requirements waived. Because of the proposed elimination of the CSBE, AB 1535 enacts changes for out-of-state veterinarians seeking licensure in California. Specifically, in addition to passing the veterinary law and examination administered by the Board, an applicant who has passed the national examination over five years from the date of application must satisfy one of three requirements: either (1) retake and pass the national licensing examination; (2) submit proof of having practiced clinical veterinary medicine for a minimum of two years and completed a minimum of 2,500 hours of clinical practice in another state, Canadian province, or United States territory within the three years immediately preceding filing an application for licensure in this state; or (3) complete the minimum continuing education requirements of Section 4846.5 for the current and preceding year.

AB 1535 also makes some changes to university licenses. Created in 2016, university licenses were created specifically for faculty practicing veterinary medicine at the University of California, Davis, and Western University. University licenses provide the Board with enforcement authority in the event that a consumer or animal patient was harmed from the veterinary services provided by faculty. University license applicants, among other items, are required to take a specified educational curriculum on regionally specific and important diseases and conditions. However the Board and stakeholders note that there is a significant decrease in the demand for such educational curriculum, and that these classes are likely to no longer be offered in the future. According to the Board, California consumers are already adequately protected, since the Board has authority to discipline a licensee with a University license. As such, this bill includes the Board's CSBE workgroup recommendation to eliminate the California curriculum requirement from the university license requirement.

Changes to Veterinary Premises Registration. The BPC requires all premises where veterinary medicine, dentistry, and surgery to be registered with the Board. An application for premises

registration is required to contain the name of the responsible licensee manager (MGL) who is to act for and on behalf of the licensed premises. All license applicants are required to submit to a criminal background check. Based on the person's record, the Board has authority to deny license and registration applications for convictions and discipline by public agencies.

However, existing law does not require the owner or operator of the veterinary premises to be the premises registration applicant or be identified on the application. Therefore, according to the Board, it is unclear who needs to be fingerprinted and under what circumstances the Board can deny premises registrations. In addition, the buildings where veterinary medicine is practiced may be leased from a third party not involved in the practice. The Board notes that the statute is unclear whether the premises means the real estate, the brick and mortar building, or the location of the practice.

Furthermore, it is unclear if the Board has authority to deny a premises registration or MGL substitution application when a Veterinarian who had their licensed revoked or suspended is the owner or operator of the premises. Currently, a Veterinarian, who was named as the premises MGL but whose license was subsequently revoked or suspended, may submit to the Board an application naming a new MGL associated with the premises, while the revoked veterinarian attempts to operate the premises without the Board's knowledge. The Board reports instances of such abuse, in which MGLs who have been disciplined for various violations were able to continue controlling the veterinary premises and the veterinary practice therein. This can also lead to bad actors owning or operating the premises without maintaining minimum facility standards and keep rotating MGLs. New MGLs assume responsibility, realize the premises owner will not provide necessary resources to properly maintain the premises, decide to go elsewhere, and the premises owner/operator hires a new MGL. This endless loop leads to veterinary services being provided on an ongoing basis without the unlicensed premises owner/operator ever being held responsible for the premises conditions.

Although the Board does have authority to withhold, suspend, or revoke the premises registration when an MGL leaves, there is no specified timeframe for how long the owner has to designate a new MGL. Without a specified timeframe or explicit authority to cancel the registration, the Board explains that its only options are to either hold a renewal, which could take an entire year, or go through the disciplinary process in order to suspend or revoke the registration. The Board argues that the ability to enforce a clear timeframe incentivizes compliance and enables the Board to adequately enforce the consumer protection statute.

AB 1535 implements three broad categories of changes related to veterinary premises registration to address these issues. The bill (1) clarifies that veterinary premises refers to the location of operation where veterinary medicine, dentistry and surgery is being practiced rather than the real estate; (2) requires that any owner, operator, officers, directors, shareholders, general partners or agent for service of process be clearly identified on a premises application, and requires any changes in these positions to be reported to the Board within 30 days; and (3) grants the Board with specified enforcement authority, including the ability to deny, suspend, or revoke premises registration on the basis of a premises registration holder criminal and disciplinary history.

Safeguards related to corporate practice of medicine. In 2017, the Board received information from Veterinarians that general corporations that own or operate veterinary premises are using

employment contracts to control the provision of veterinary medical care to animal patients. Examples include forcing the veterinarians to use, sell, or recommend to clients particular products that are owned by the corporation. Current statutory and regulatory law does not explicitly prohibit general corporate ownership or operation of a veterinary medical practice or influence over the standards of veterinary medicine practice. The Board explains that without statutory language, it cannot protect consumers from commercial motives of the corporation being asserted over a licensee's professional judgment. To address these concerns, AB 1535 includes provisions for veterinary corporations to be identified on a premises permit application, and prohibits a premise registration holder that is not a California-licensed veterinarian to interfere with, control, or otherwise direct the professional judgment of any California licensed veterinarian or registered veterinary technician. To enforce this provision, this bill authorizes the Board to require any information, including, but not limited to, employment contracts between the premises registration holder and a California-licensed veterinarian or registered veterinary technician as deemed necessary.

Changes to the Board's drug and alcohol diversion program. The Board's Diversion Program was established to identify and rehabilitate Veterinarians and RVTs who suffer from alcohol or drug abuse addiction. This voluntary program aims treat these licensees with the goal of eventually returning them to the practice of veterinary medicine in a manner that will not endanger public health and safety. Participants in the program are enrolled for a minimum of three years – but the length of treatment can extend based on individual needs and level of rehabilitation. Under current regulations, participant in the diversion program pay a flat fee of $2,000, which can be raised to a statutory maximum of $4,000. Any expenses beyond the initial $2,000 registration fee is covered by the Board. According to the Board, the minimum cost for a three-year diversion program is roughly $16,000 – thus the Board covers on average $14,000, or 88% of diversion costs. According to the Board, program participation has historically been low. Since 2003, there have been 24 total participants, and as of this Sunset Review, only one individual is currently participating in Diversion. The Board believes that the low participation rate may be due to the lack of knowledge about this program. As a result, the Board would like to develop an outreach campaign that would educate licensees about the rehabilitative and healing benefits of the Diversion program. However, there is significant concern that the Board's fund condition would not be able to sustain the program if more participants enrolled. AB 1535 aims to sustain the Board's fund condition in the event that more participants enroll in Diversion. To that end, the bill eliminates the registration flat fee, and instead requires participants pay the administrative costs for the program.

AB 1535 also makes changes to the Board's Diversion Evaluation Committee (DEC), which assists in the administration of the Diversion program. Among other responsibilities, the DEC evaluates licensees who request participation in the program; designates the treatment facilities which licensees may be referred to; and considers whether licensees may safely continue or resume the practice of veterinary medicine. Existing law requires a majority vote of the Board to appoint members of the DEC. However, according to the Board, there is no provision for suspending or dismissing DEC members without the full Board conducting a meeting. The Board is requesting legislative authority to dismiss a DEC member who relapses or is suspected of drug or alcohol abuse, as that member's integrity with the DEC may be compromised. AB 1535 includes a provision authorizing the Board's president to suspend any diversion evaluation committee member pending an investigation into allegations of existing alcohol or drug

addiction. If, after investigation, there is evidence of an alcohol or drug addiction relapse, the board president would be authorized to remove the member without input from the full Board.

Process to contest citations. Existing statutes allows the Board's to issue citations to Veterinarians, RVTs, or unlicensed persons for Act violations. The Board reports conflicting statutes regarding the timelines for contesting a citation: BPC section 125.9 allows a cited individual 30 days to contest a citation and request an informal conference or hearing. On the other hand, BPC section 4875.6 requires notification in 10 business days from receipt of the citation if the individual contests the citation and wants an informal conference. The Board explains that this inconsistency leads to confusion amongst Board staff and cited individuals wishing to appeal the citation. AB 1535 provides clarification on the process and timelines for citations: a cited person may request an informal conference to review the acts shared in the citation. The cited person shall make the request for an informal conference in writing, within 30 days of the date of issuance of the citation, to the Board's executive officer. Upon receiving the request, the Board or its representative must hold an informal conference with the cited person within 60 days. Following the informal conference, the Board may affirm, modify, or dismiss the citation. The Board or its representative must state in writing the reasons for the action and transmit a copy of those findings to the cited person within 30 days after the informal conference. If the citation is affirmed or modified following the informal conference, the respondent may make a request in writing to the executive officer within 30 days of the affirmed or modified citation, for a formal hearing.

Use of the title "Veterinary Specialist" or "Board-Certified." The American Board of Veterinary Specialties (ABVS) is an organization within the American Veterinary Medical Association (AVMA). The ABVS establishes criteria for recognition of veterinary specialty organizations, ensuring well-defined levels of competency in specific areas of study or practice categories within veterinary medicine. Currently, there are 22 AVMA-Recognized Veterinary Specialty Organizations comprising 40 distinct AVMA-Recognized Veterinary Specialties. According to the AVMA, there are more than 13,500 veterinarians have been awarded diplomate status in one or more of these specialty organizations after completing postgraduate training, education, and examination requirements. Unlike some other healing arts licensees who are statutorily required to be certified by a recognized entity to advertise the licensee's specialized practice, the Veterinary Medicine Practice Act does not provide any distinction between veterinarians who are general practitioners and veterinarians who are specialists. The Board argues that this puts consumers at risk, as they may not be able to distinguish a veterinarian who has specialist training and certification from a veterinarian who claims an interest in a particular field but has no specialist training or certification. According to the Board, it is important to protect the public from misleading claims of specialized veterinary practice and ensure that consumers have full understanding of a veterinarian's qualifications. To accomplish this goal, AB 1535 contains a provision prohibiting a Board licensee or registrant from making any statement, claim, or advertisement that they are a veterinary specialist or that they are "board-certified" unless they are actually certified by an American Veterinary Medical Association-Recognized Veterinary Specialty Organization.

Ability to abandon application. According to the Board, it currently does not have authority to abandon applications if the applicants pay the fee but fail or are unable to correct any deficiencies on a submitted application. As a result, applications can stay on the Board's system

for several years never to be completed, causing problems such as skewing Board-produced statistical reports. To ensure the Board's limited resources are spent more efficiently, AB 1535 provides that if applicant fails to complete their application within one year after it has been filed, the application shall be considered abandoned and the application fee forfeited. Any application submitted subsequent to the abandonment of the former application shall be treated as a new application. Additionally, AB 1535 requires an applicant to notify the board of any changes in mailing or employment address that occur after filing the application.

POLICY ISSUE(S) FOR CONSIDERATION:

As noted previously, this current version of the sunset review bill contains non-controversial statutory changes as identified by the Board, the Committees, and stakeholders involved with or impacted by veterinary medicine. Additional policy changes will be considered by the Legislature pending additional input from stakeholders. Several organizations have noted their interest in the following policy issues to be considered for inclusion in the sunset review bill:

Telemedicine. A veterinarian is required to establish a veterinarian-client-patient-relationship (VCPR) before providing care to an animal patient. Among other requirements, VCPR is established when the client has authorized the veterinarian to make medical judgements, and when the veterinarian has gained sufficient knowledge of the animal to make a diagnosis, generally through an in-person examination. Existing laws and regulations provide that a VCPR must be established before care can be provided remotely via telehealth. It is also generally understood that VCPR must be re-established for any subsequent diagnosis and treatment of a new medical condition. In practice, this means a veterinarian will request to examine an animal in-person again if diagnosing or treating a new condition, even if the animal was receiving care via telemedicine on a prior medical condition.

On June 4, 2020, in response to the ongoing COVID-19 pandemic, DCA issued a VCPR waiver authorizing a veterinarian to use telemedicine to diagnose and treat an animal patient for a new or different medical condition, if a veterinarian-client-patient relationship was previously established. At the request of various stakeholders, the Board directed its research committee, the Multidisciplinary Advisory Committee (MDC) to evaluate the telemedicine waiver and determine if it should be made permanent. In its preliminary discussions, the MDC acknowledged the need for clarity in statutes and regulations around the definitions of telehealth and telemedicine. At the time of writing, the MDC is conducting research and convening stakeholder discussions, and will meet to provide recommendations to the Board.

The San Francisco SPCA writes in support of making the VCPR waiver permanent: "It is beyond dispute that, via telemedicine, significant advice could be given by veterinarians simply talking to new clients, and then by being able to prescribe palliative and therapeutic treatments and medications for some conditions and problems. As professionals licensed by the state, these veterinarians would use their medical judgment, extensive training, and discretion to differentiate between patients who they need to see in person, and patients they can assist through telemedicine. However, the current regulations expressly prohibit veterinarians from establishing the requisite veterinarian-client-patient relationship ("VCPR") by telemedicine. See 16 Cal. Code Regs. 2032.1(e). This regulation harms consumers and their animals by depriving them of veterinary care they might otherwise obtain if the VCPR could be established by telemedicine. […] California can trust its licensed veterinarians to engage in careful, safe telemedicine where

appropriate, and when indicated, to tell clients to bring their pets to clinics for in-person examinations. California consumers and their animals are suffering every day, because of the current regime requiring an in-person examination to establish a VCPR. The SF SPCA urges relaxation of the current regulation through direction from the legislature in AB 1535 to allow the VCPR to be established by telemedicine in appropriate situations, with those situations to be determined by licensed California veterinarians."

The ASPCA also writes in support: "According to a report from the Access to Veterinary Care Coalition (AVCC), one in four pet owners experience barriers in accessing veterinary care. There are a variety of challenging circumstances that lead families to forgo veterinary care. The AVCC study emphasizes that finances, ie. disposable income and affordability of care, are a primary obstacle for all pet owners seeking veterinary care. […] We believe that the rigorous education and Board-sanctioned licensing requirements that California veterinarians undertake to become licensed in the state prepare them to utilize professional judgement in determining whether the use of telemedicine is appropriate in the care of a particular animal or a particular condition. Furthermore, California veterinarians are required to practice the standard of care required by their license and the law. One part of this obligation is that a veterinarian establish a veterinarian-client-patient-relationship (VCPR) before providing care to an animal patient. Professional discretion and full transparency must routinely be utilized in furtherance of this requirement, including a determination of whether an animal could/should be treated via telemedicine. As trained professionals, veterinarians must employ sound professional judgment to determine whether the use of telemedicine is suitable in each and every case in which veterinary services are provided and only furnish medical advice or treatment via telemedicine when it is medically appropriate. In sum, telemedicine should be viewed as another tool in a veterinarian's toolbox rather than a liability to the profession. For these reasons, the ASPCA supports the broadest responsible use of telemedicine by both private practitioners and shelter veterinarians and urges a deference to professional competency and discretion in determining the application of this essential tool in California."

The Humane Society of the United States also writes in support: "Veterinary telemedicine can provide numerous benefits to pet owners—especially for people without access to a private vehicle or who are unable to easily leave their home with their companion animal including the elderly and disabled pet owners. Although telemedicine has been an available tool to veterinarians for years, it is widely underutilized. Yet it is one of the most effective methods in providing animal wellness services equitably. Telemedicine can also be useful in managing chronic conditions such as diabetes, in facilitating progress checks during post-operative recovery, and in weight loss, physical conditioning and rehabilitation programs. It is well-suited to nutritional counseling, behavior consultation and the supervision of in-home hospice care. Additionally, telemedicine may be used for quickly triaging emergency vs. non-emergency cases, promptly addressing 'quick questions' from clients, discussing the appropriateness of prescription refills, and troubleshooting low-risk conditions such as external parasites, minor wounds and motion sickness."

Shelter Medicine. In 2015, the Orange County Animal Shelter contacted the Board requesting guidance on the shelter's existing protocols for directing RVTs to provide animal care on in-take, in the absence of the supervising Veterinarian. At that time, the Orange County Animal Shelter

had been audited by the County Auditor, who inquired whether established shelter protocols complied with the Practice Act.

Following this request, the Board began an effort to review existing and needed regulations related to the practice of animal medicine in a shelter setting. After interviewing several shelters throughout the state and examining their facility protocols, the Board determined that shelters that performed certain animal health care tasks – such as administering medication or rendering basic first aid – were required to register with the Board. However, it appeared at the time that some shelters in California were either unaware of the registration requirements, or were not able to comply with them due to the unique nature of providing animal care in a shelter environment. For example, under a premises registration, one of the more difficult requirements for shelters to meet is having a veterinarian maintaining a physical presence within the facility at all times. Some shelters in California, particularly those in rural areas, report that there are no Veterinarians available in their jurisdiction, and thus cannot meet the premises registration requirements.

Between 2015 and 2018, in response to concerns from animal shelters, the Board engaged in stakeholder discussions with the California Veterinary Medical Association (CVMA), the State Humane Association of California (SHAC) and the California Animal Control Director's Association (CACDA) to identify the unique challenges of providing animal care in shelters. (Note: SHAC and CACDA merged in 2018 to become the California Animal Welfare Association, or CalAnimals.) The Board aimed to use this feedback to draft regulations that would enact minimum standards of care specifically designed for animal shelters.

In April of 2018, after multiple rounds of stakeholder negotiation, the Board voted to approve a regulatory package that would establish minimum standards of care in animal shelters. These regulations are undergoing the review process and are not yet implemented.

The draft regulations approved by the Board, among other items, would allow shelter staff to provide limited medical care to animals, but still require a degree of involvement and physical presence from a Veterinarian. For example, RVTs, VACSP holders and Veterinary Assistants at the shelter would be able to provide care for the purpose of controlling infectious and zoonotic disease, controlling acute pain, and preventing environmental contamination, but only if a supervising Veterinarian has direct knowledge of the shelter's animal population and has established written care protocols for shelter staff to follow.

CalAnimals and several county organizations representing rural areas have since expressed significant concerns over the Board's proposed regulations. These stakeholders posit that many shelters are struggling to obtain veterinary support, and that shelters cannot meet the proposed Board requirements due to a chronic shortage of veterinarians specializing in shelter medicine. Shelters propose that in order to safeguard the lives of animals, shelter staff must have the ability to perform low-risk animal care without veterinary oversight, such as vaccinations and prophylactic control of internal and external parasites. Stakeholders have also expressed concerns that some of the building and equipment requirements proposed by the Board's regulations are too vague and necessitate additional clarifications.

In response to the Board's regulations, stakeholder groups representing animal shelters pursued legislation to allow shelter staff and employees to perform certain animal health care tasks

without the supervision of a veterinarian. This legislation, SB 1347 (Galgiani, 2019) did not pass and was held in the Assembly.

The California Animal Welfare Association (CalAnimals) writes in regards of shelter medicine: "This issue is critically important to California's animal shelters and we are requesting support to either instruct the VMB to pull the proposed Shelter Medicine Regulations back for more stakeholder input, or include language in AB 1535 to allow shelters to provide basic care without a veterinary premises permit. […] The health and safety of shelter pets must be protected by ensuring that shelters are allowed to provide vaccinations and parasite control, administer first aid, and carry out veterinary instructions without the presence of a veterinarian or the requirement to obtain a veterinary premise permit for their facility; the same activities permitted of the average pet owner. Existing law allows shelters to euthanize pets without veterinary oversight but does not allow shelters to provide vaccinations or even over-the-counter flea treatments to protect the health of animals in their care. […] To protect their health, dogs and cats need vaccinations, prophylactic control of parasites, basic first aid, and necessary follow-up care prescribed by a veterinarian. It is paramount these needs are met regardless of the shelter's ability to obtain veterinary staffing for their facility."

REGISTERED SUPPORT:

None.

REGISTERED OPPOSITION:

None.

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

Date of Hearing: April 27, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1537 (Low) – As Introduced February 19, 2021

SUBJECT: The California Massage Therapy Council.

SUMMARY: Extends the sunset date for the California Massage Therapy Council (CAMTC) until January 1, 2023 and states that it is the intent of the Legislature that there be subsequent consideration of legislation to create a new state board and a new category of licensed professional through the sunrise review process.

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 CAMTC as a nonprofit organization exempt from taxation. (BPC § 4601(d); BPC § 4602(a))

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

4) 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))

5) 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))

6) 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)

7) 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)

8) 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)

9) 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)

10) 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)

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

12) 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)

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

14) 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)

15) Provides that the Massage Therapy Act shall remain in effect only until January 1, 2022, and as of that date is repealed. (BPC § 4621)

16) Establishes a process for legislative oversight of state board formation and licensed professional practice, referred to as "sunrise review," in which a plan for the establishment and operation of the proposed state board or new category of licensed professional is developed and discussed prior to the consideration of legislation. (Government Code § 9148.4)

THIS BILL:

1) Extends the sunset date for CAMTC from January 1, 2022 to January 1, 2023.

2) States that it is the intent of the Legislature in extending the operation of the Massage Therapy Act until January 1, 2023, that there be subsequent consideration of legislation to create a new state board and a new category of licensed professional in accordance with the sunrise process.

FISCAL EFFECT: None; this bill is keyed nonfiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is the sunset review vehicle for the California Massage Therapy Council, authored by the Chair of the Assembly Business and Professions Committee. The bill extends the sunset date for CAMTC and states the intent of the Legislature to further discuss solutions to issues raised during CAMTC'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, 2022 to January 1, 2023.

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.

Nonprofit Status of CAMTC. It is understood that while a new state agency was originally recommended for the regulation of massage therapists, there was resistance within the Administration to expanding state bureaucracy and a nonprofit entity was a more politically viable option. While nonprofit councils have been celebrated for their low cost and efficiency, there have been persistent criticisms of the model. While Senate Bill 412 was supported by the American Massage Therapy Association, California Chapter, it was opposed by both the California Chiropractic Association and the California Physical Therapy Association. Floor analysis for the bill summarized the opposition's arguments against the MTO's proposed status as a nongovernmental nonprofit and belief that "the regulation of massage practitioners and therapists, like the regulation of other health care providers, be better placed in the hands of the Department of Consumer Affairs."

During CAMTC's first sunset review, the Committees considered a number of issues relating to how massage therapy was now regulated. Whether it was appropriate to continue the operation of CAMTC as a nonprofit organization was discussed in the Committees' background paper. The final issue in the paper read:

> *A strong argument can be made for the continuation of some form of professional regulation: statewide regulation is more efficient, consistent, and the norm across the majority of states. Without any regulation, consumers would lose any hope of making distinctions in quality between massage practitioners, practitioners would be again subject to a patchwork of licensing regimes, and local governments would be forced to develop new regulatory processes from scratch.*
>
> *However, the question remains as to the form that regulatory oversight should ideally take. Should the non-profit model represented by CAMTC, perhaps with some changes, continue for another four years? Should CAMTC be allowed to sunset, and have its responsibilities taken over by a newly created board or bureau under the jurisdiction of DCA? Transition to*

a board/bureau model would certainly entail transition costs, including setting up the physical office, hiring staff, and shifting over the database and certificate production processes. Conversely, a board or bureau would provide greater consistency in administrative practices, greater transparency to the public, and perhaps confer greater enforcement powers as well. Of course, such a change would also represent a shift in control over regulation from the industry to the public sector as well.

If the Committee decides to retain CAMTC in its current form, staff recommends that it be granted only a two-year sunset extension in order to ensure that any outstanding issues are dealt with quickly and to the satisfaction of the Committees.

CAMTC's sunset review background paper in 2021 outlined a number of issues arguably related to CAMTC's status as a nonprofit. These issues included the composition of CAMTC's Board of Directors, the compensation of its CEO, and the lack of applicability of various laws aimed at improving transparency and accountability for state regulators. Issue #27 in CAMTC's sunset review background paper asked whether the certification of massage professionals be continued by CAMTC in its current form.

As stated in the background paper, there is little argument to be made that the state should not continue to revert to the so-called "chaotic mish-mash" of local ordinances governing the requirements to practice massage therapy in California. The certificate program operated by CAMTC has greatly increased mobility and clarity within the profession, though as previously discussed, inconsistencies in whether the certificate is featured as a requirement for a particular locality continues to frustrate historical efforts by the profession to achieve the universal scheme that exists in other states.

From an administrative perspective, the background paper concluded that CAMTC has certainly delivered upon the promises inherent with the nongovernmental regulator model. The council is able to act swiftly, flexibly, and inexpensively in its operations, particularly when compared to analogous boards and bureaus under the Department of Consumer Affairs. If the Legislature wishes to prioritize these traits in its regulation of professionals, the background paper stated, then CAMTC could certainly be held up as a paragon of the nonprofit structure.

However, as discussed throughout the background paper, there are potential downsides to empowering an entity outside the auspices of state government to exercise regulatory control over a profession. Some may argue that the efficiencies boasted by CAMTC come at the cost of transparency, accountability, and due process. With so many so-called "good government laws" passed over the years to promote public confidence in bureaucracy inapplicable to CAMTC, the balance of interests remains subject to adjustment by the Legislature. Further prompting this deliberation is statements from some within the massage industry, including those representing societies and associations, that the current framework CAMTC operates is unconducive to the persistent goal of elevating the profession as a healing art.

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.

As stated in the background paper, this essentially raises an existential question for the Committees to consider as they review CAMTC in advance of its repeal date. Are the arguable disadvantages to how the council currently operates its certification program justified by its benefits? Further, the background paper asked, if the Legislature were to address these issues through significant reform, at what point would it no longer be practical for the regulatory authority to be placed with CAMTC as it is currently constituted?

The background paper argued that the Legislature were ultimately to explore resolving perceived deficiencies in the administration of the Massage Therapy Act by transitioning CAMTC from a nonprofit council to a state board under an agency like the Department of Consumer Affairs, it should consider seriously the impact on those who work within the profession. While many within the massage industry have called for full licensure by an entity more closely resembling other healing arts boards, this change would potentially burden many massage professionals through increased fees, longer application processing timelines, and slower reactions to changes in the industry. Any change to how CAMTC is currently structured would also likely require readjustments on behalf of local governments, which have by now adapted to working with the current council in exercising its share of oversight.

In its conclusion the background paper stated that as the Committees carry out this discussion, the original goals for enacting state law to regulate the practice of massage should be kept in mind: protecting the public, creating uniformity, and elevating the profession. These objectives can certainly no longer be achieved were the Massage Therapy Act to simply be repealed. However, the background paper acknowledged that whether CAMTC's current structure and authority should be simply extended is also a subject for fair debate, and the Committees should seek closure on some of these questions over the course of this sunset review.

Certification versus Licensure. Issue #13 in CAMTC's sunset review background paper asked whether the voluntary certification obtained from CAMTC be converted to a license that is required at the state level. While the certification program operated by CAMTC was established by the State Legislature and was intended to bring statewide uniformity to the standards and qualifications for massage therapists, there is no state-level requirement for a massage professional to seek and obtain a massage therapy certificate. The Massage Therapy Act makes it unlawful for a person to advertise their services using the title "certified massage therapist" or or any term implying they are certified or licensed, unless they are in fact in possession of an active and valid certificate. Otherwise, state law does not restrict who may provide services considered to be within the informally accepted scope of practice of a massage professional, nor does it expressly prohibit a massage therapist whose certificate was revoked by CAMTC from continuing to practice massage therapy as long as they do not claim certification.

In most cases, the certificate granted by CAMTC serves instead as part of local regulation of the massage industry. The Legislature initially created the council after determining that the massage industry was "regulated in California by a chaotic mish-mash of local vice ordinances," with each locality setting its own standards for who can offer massage services based on how it chose to draft its local ordinances to prevent prostitution or sex trafficking operations. While the Massage Therapy Act does not require that any local jurisdiction incorporate CAMTC's certificate program into its local regulatory scheme, it does prohibit local governments from enacting or enforcing an ordinance that conflicts with the Act. If a massage therapist possesses a valid certificate from CAMTC, local governments cannot impose any additional professional standards or required qualifications on the professional.

Local governments otherwise do continue to exercise a great deal of control over how massage services are provided within their jurisdictions. CAMTC has no authority over massage establishments, except when the owner of a massage business is a certificate holder. The Legislature restored much of local government's authority to regulate establishments under its land use authority when it removed preemption language in Assembly Bill 1147.

Significantly, cities and counties may enact ordinances that require massage professionals to receive a CAMTC certificate at the local level. For example, the City of Los Angeles's massage ordinance states that "each person employed or acting as Massage Practitioner or Massage Therapist shall have a valid certificate issued by the California Massage Therapy Council." The City of San José's massage ordinance states that "it shall be unlawful for a person to perform Massage on a person in exchange for money or any other thing of value, or for checks, credit or any other representation of value unless that individual is a certified Massage Therapist." More often than not, the "voluntary" statewide certification is effectively a requirement for massage professionals to practice in a particular jurisdiction.

However, the background paper pointed out that the fact that certification technically remains voluntary at the state level has led to a number of concerns and complaints from representatives of the industry. Advocates for several professional associations have argued that because California lacks a consistently required statewide license, the industry is frequently disqualified from discussions such as the expansion of coverage and ability to bill Medicare and Medicaid and the incorporation of nonpharmacological therapies into pain management treatment plans. These advocates point out that California is one of only five states without statewide licensure for massage therapy.

Finally and not insignificantly, representatives of the industry have argued that by not enacting a for full licensure requirement for massage therapy, California has essentially relegated the profession to a class below that of other healing arts. Arguments have been made that the existing certification program for massage therapy exists more as a safeguard against criminal activity and vice than as support for a profession offering genuine health and wellness services. The Bureau of Labor Statistics, which reports that employment of massage professionals nationwide is projected to grow 26 percent from 2016 to 2026, has stated that "as more states adopt licensing requirements and standards for massage therapists, the practice of massage is likely to be respected and accepted by more people as a way to treat pain and improve overall wellness ... similarly, demand will likely increase as more healthcare providers understand the benefits of massage and these services become part of treatment plans."

CAMTC's first sunset bill required that CAMTC provide the Legislature with "a feasibility study of licensure for the massage profession." This report was prepared by an outside consulting group and delivered on December 21, 2016. The study argued that "in spite of the many benefits of regulation, and the increasing number of occupations and professions governed by such regulations, there has recently been an increasing awareness that these regulations come with a cost, both for consumers and for practitioners." It further suggested that "the certification model is likely superior to a licensure model in accomplishing the goal of distinguishing legitimate practitioners from sex workers," explaining that "the primary benefit of California's certification model as administered by CAMTC is that, because certification is voluntary, it can be revoked much more quickly and easily than can a state-granted license."

In its report, the consulting group acknowledged creating a new license category would not be logistically challenging, stating: "The primary obstacle to licensure, then, is not logistical, but rather political. Specifically, opposition from related professions as well as some elected officials can act to slow or stop efforts to create a new category of professional license." The report concluded that continuing the regulation of massage professionals through voluntary certification by a nonprofit was "the best alternative for regulation of massage therapists in California, but continued attention to accountability and due process is needed to maintain the faith in and therefor the effectiveness of this system."

However, advocates for the regulated industry have continued to characterize the state's massage therapy laws as enabling excessively burdensome local ordinances and continuing to cast a shadow on the profession as a "vice" industry. As 43 other states currently license massage therapists, certification has proven to be a barrier to allowing the practice to be fully accepted as a form of pain management alongside other nonpharmacological treatments and therapies. Additionally, some have criticized the council's nongovernmental status as falling short of the transparency, accountability, and due process required of government agencies.

It should also be noted that as long as certification remains voluntary, massage therapists will be generally afforded lower standards of due process. As the feasibility study for licensure commissioned by CAMTC pointed out, the greater property right associated with a required license would be accompanied by stronger requirements for due process in regards to how licenses are granted, denied, suspended, or revoked. While this would undeniably result in more costly application reviews and less swift and efficient enforcement actions, a reasonable argument could be made that the current model may be perceived as unfair given that many massage professionals are required to obtain a certificate to practice in a particular jurisdiction while not being afforded the same rights as professionals who possess a full license.

Transitioning from voluntary certification to a statewide license requirement would potentially elevate the profession of massage therapy and align the industry with other therapeutic practices. It would no doubt implicate questions of how to appropriately treat those professionals currently practicing massage in jurisdictions that do not require a certificate from CAMTC, and a licensing program with all the associated expectations of due process would likely be both more expensive and less efficient than what is currently operated by CAMTC. Nevertheless, the background paper concluded that the question of whether licensure would provide greater benefit than the current certification model should be discussed as the future of the profession is debated through the sunset review process.

Sunrise Review. This bill would state that it is the intent of the Legislature in extending the operation of the Massage Therapy Act until January 1, 2023, that there be subsequent consideration of legislation to create a new state board and a new category of licensed professional in accordance with the sunrise process. As laid out in Section 9148.4 of the Government Code, sunrise review is required prior to consideration by the Legislature of legislation creating a new state board or legislation creating a new category of licensed professional.

The sunrise process requires the Legislature to consider specified information when debating whether to create a new state board or a new license, including:

1) A description of the problem that the creation of the specific state board or new category of licensed professional would address, including the specific evidence of need for the state to address the problem.

2) The reasons why this proposed state board or new category of licensed professional was selected to address this problem, including the full range of alternatives considered and the reason why each of these alternatives was not selected.

3) The specific public benefit or harm that would result from the establishment of the proposed state board or new category of licensed professional, the specific manner in which the proposed state board or new category of licensed professional would achieve this benefit, and the specific standards of performance which shall be used in reviewing the subsequent operation of the board or category of licensed professional.

4) The specific source or sources of revenue and funding to be utilized by the proposed state board or new category of licensed professional in achieving its mandate.

5) The necessary data and other information required in this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard.

The intent language in this bill would effectively state that over the course of the additional year provided by the extension of CAMTC's sunset date, the Legislature should consider whether to turn CAMTC into a state board or merge it with an existing state agency, and should also consider whether to convert the voluntary certification into a state license. The intent of the bill is that this discussion follow the sunrise process, as laid out in statute. This would ensure that any major structural changes to the Massage Therapy Act are comprehensively discussed and that the ultimate impact on both the profession and consumers is sufficiently considered.

Prior Related Legislation. 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.

REGISTERED SUPPORT:

American Massage Therapy Association, California Chapter

REGISTERED OPPOSITION:

None on file.

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