California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

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AGENDA

Tuesday, April 5, 2022
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

1.	AB 1635	Nguyen	Suicide prevention: mental health provider educational loan repayment.
2.	AB 1740	Muratsuchi	Catalytic converters.
3.	AB 1758	Aguiar-Curry	Board of Behavioral Sciences: marriage and family therapists: clinical social workers: professional clinical counselors: supervision of applicants for licensure via videoconferencing.(Urgency)
4.	AB 1759	Aguiar-Curry	Board of Behavioral Sciences: licensees and registrants: marriage and family therapy, educational psychology, clinical social work, and professional clinical counseling.
5.	AB 2107	Flora	Clinical laboratory testing.
6.	AB 2196	Maienschein	Barbering and cosmetology: instructional hours.
7.	AB 2276	Carrillo	Dental assistants.
8.	AB 2407	O'Donnell	Vehicle tampering: theft of catalytic converters.
9.	AB 2574	Salas	Optometry.
10.	AB 2611	Daly	California family-owned businesses.
11.	AB 2626	Calderon	Medical Board of California: licensee discipline: abortion.
12.	AB 2728	Smith	Unlawful cannabis activity: penalties.
13.	AB 2844	Kalra	Cannabis catering.
14.	AB 2894	Cooper	Contractors: workers' compensation insurance.
15.	AB 2925	Cooper	Cannabis Control Appeals Panel: membership: California Cannabis Tax Fund: spending reports.

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1635 (Nguyen) – As Introduced January 12, 2022

SUBJECT: Suicide prevention: mental health provider educational loan repayment.

SUMMARY: This bill would create an account within the Mental Health Practitioner Education Fund and require the use of moneys in that account to fund grants to repay educational loans for specified mental health practitioners who commit to providing direct patient care for at least 24 months in a facility that provides mental health services to individuals who have been referred to that facility by a suicide prevention hotline.

EXISTING LAW:

1) Establishes the Board of Behavioral Sciences (BBS) within the Department of Consumer Affairs (DCA) to administer the Marriage and Family Therapist (LMFT) Act, the Educational Psychologist Practice Act, the Clinical Social Worker (LCSW) Practice Act, and the Professional Clinical Counselor (LPCC) Act. [Business and Professions Code (BPC) § 4990.12]

2) Establish the Health Professions Education Foundation (HPEF) within the Office of Statewide Health Planning and Development (OSHPD) to administer the Health Professions Education Fund (Fund) and related scholarship and loan programs for students from underrepresented groups. [Health and Safety Code (HSC) §§ 128330 and 128371]

3) Establishes the Licensed Mental Health Services Provider Education Program within HPEF and authorizes any licensed mental health service provider, including a mental health service provider who is employed at a publicly funded mental health facility or a public nonprofit private mental health facility that contracts with a county mental health entity or facility to provide mental health services, who provides direct patient care in a publicly funded facility or a mental health professional shortage area (MHPSA), to apply for grants under the LMH Program to reimburse his or her educational loans related to a career as a licensed mental health service provider. [HSC § 128454]

4) Defines a "LMH service provider" as a licensed psychologist, registered psychologist, postdoctoral psychological assistant, postdoctoral psychology trainee, LMFT, associate MFT, LCSW, and associate CSW. [HSC § 128454]

5) Requires the BBS to collect an additional $10 fee from an LMFT and LCSW at the time of licensure renewal for transfer to the Mental Health Practitioner Education Fund (MHPEF). [BPC §§ 4984.75 and 4996.65]

6) Requires, beginning July, 1, 2018, the BBS to collect an additional $20 fee from an LPCC at the time of licensure renewal for transfer to the MHPEF. [BPC § 4999.121]

7) Requires a LMH service provider, in order to be eligible for a grant, to be employed at a publicly funded mental health facility, a public or nonprofit private mental health facility that

contracts with a county mental health entity or facility to provide mental health services, who provides direct patient care in a publicly funded facility or a mental health professional shortage area. [HSC § 128454]

THIS BILL:

1) Contingent upon an appropriation by the Legislature, this bill would create an account within the Mental Health Practitioner Education Fund. The money in this account shall be used only for the following:

    a) Grants moneys in the account shall be used solely to fund grants, consistent with this article, to repay educational loans for an applicant who meets both of the following requirements:

        i) Commits to provide direct patient care for at least 24 months in a publicly or privately funded facility or organization that provides mental health services to individuals who have been referred to that facility or organization by either a national, state, regional, or local suicide prevention hotline.

        ii) Is a marriage and family therapist, associate marriage and family therapist, licensed clinical social worker, associate clinical social worker, licensed professional clinical counselor, or associate professional clinical counselor.

FISCAL EFFECT: Unknown at this time.

COMMENTS:

Purpose. This is an author-sponsored bill. According to the author:

> "In the midst of a widening mental health crisis, California is facing a shortage of mental health professionals amid growing demand. According to the California Health Care Foundation, 64% of respondents polled shared that their mental or emotional health had gotten 'worse' or 'a lot worse' since the start of the COVID-19 pandemic.
>
> "Additionally, 91% of providers surveyed reported an increase in patients experiencing a range of mental health concerns ranging from anxiety and depression stress-related disorders and suicidal ideation or thoughts. This bill addresses the growing demand for mental health professionals by creating a grant program within the existing Mental Health Practitioner Fund. The fund will help repay school loans for individuals pursuing a career as a mental health professional and who have committed to 24 months supporting suicide prevention hotlines or organizations that field calls received by suicide prevention hotlines."

Background.

Pipeline of Behavioral Health Workforce Trainees. A 2018 Healthforce Center at UCSF report, "California's Current and Future Behavioral Health Workforce," discovered California's behavioral health trainees are not distributed equitably or evenly throughout the state. The report also revealed that California trainees are more racially and ethnically diverse than licensed professionals. However, African Americans and Latinos remain underrepresented among graduates in the majority of professions, especially those that require a doctoral degree.

The contributions of different types of educational institutions to behavioral health workforce training varies substantially across professions. Specifically, existing data indicate:

- There are no residency programs for psychiatrists and no educational programs for psychiatric mental health nurse practitioners (PMHNPs) or psychologists north of Sacramento.
- There are no doctoral programs in psychology in the Central Coast and San Joaquin Valley regions.
- The percentages of Latinos among 2015 graduates of master's of social work and psychiatric technician education programs is at parity with the percentage in the general population, but Latinos remain underrepresented among graduates of psychiatry residency programs and clinical or counseling psychology programs at both the master's and doctoral level.
- The institutional sector in which behavioral health professionals are trained varies substantially across occupations.
- The vast majority of graduates of master's of social work and psychiatric technician programs are from public higher education institutions.
- Large percentages of graduates of doctoral programs in clinical or counseling psychology and graduates of training programs in substance abuse and addiction counseling are from private, for-profit institutions.

The Licensed Mental Health Services Provider Education Program (LMHSPEP). The Licensed Mental Health Services Provider Education Program (LMHSPEP) aims to increase the number of appropriately trained Mental Health providers in California and encourages those professionals to provide direct patient care in Medically Underserved Areas in California. This program may award up to $15,000 to repay educational loans and can be awarded up to three times. In order to be eligible, applicants must be in an eligible profession, and providing direct client care 32 hours or more per week. Applicants work in a qualified facility in California and be in good standing with the California Board of Behavioral Sciences and/or the Board of Psychology. Eligible individuals may also have outstanding educational debt from a commercial or U.S. governmental lending institution and be willing to continue working in a medically underserved area for up to twenty-four (24) months.

Eligible Geographies: Eligible sites include Publicly Funded or Public Mental Health Facilities, Non-Profit Mental Health Facilities that contract with a county entity to provide mental health services, and/or Health Professional Shortage Area- Mental Health (HPSA-MH).

Mental Health Workforce. Under the federal health professional shortage area (HPSA) designation, these areas are identified as having a shortage of mental health providers on the basis of availability of psychiatrists and other mental health professionals. Approximately 16% of Californians live in a mental health professional shortage area (MHPSA). In order to qualify as a MHPSA, the population-to-core mental health professional and/or the population-to-psychiatrist ratio meet established shortage criteria; and there is a lack of access to mental health care in surrounding areas because of excessive distance, overutilization, or access barriers. For background, core mental health providers include psychiatrists, clinical psychologists, LCSWs, psychiatric nurse specialists, and LMFTs. Mental health providers in designated MHPSAs are eligible for the National Health Services Corp/State Loan Repayment Program, improved Medicare reimbursement, and enhanced federal grant eligibility.

Rates of Suicide: Youth Suicide Rates Increased. Suicide is the act of intentionally causing one's own death. Homicide and suicide are leading causes of premature death and are significant contributors toward years of lost opportunities and daily life for our youth. In California, suicide is the second leading cause of death among adolescents and young adults 15-24 years old. Recently, the Centers for Disease Control and Prevention (CDC) released an alarming statistics on teen suicide: Emergency room visits for attempted suicide among teenage girls were up 51.6 percent in the first months of 2021, as compared to 2019. In addition to human tragedies, the CDC reported that based on medical and work-loss costs, suicide result in an estimated cost of $4.9 billion.

Suicide rates differ significantly across the state; the highest suicide rates are in Northern California and along the eastern portions of the state, which are primarily rural counties. The rate of suicide among males is over three times the rate among females. Suicide rates also peak at multiple stages throughout the lifespan, first among young adults (ages 25-29), followed by middle age (ages 50-64), and are highest at ages 85 and above. The highest suicide rate (45.1) is among older adult males, ages 85 and above. According to the Department of Public Health (DPH), the public health approach to violence prevention focuses on the following four-step process: (1) define and monitor the problem; (2) identify risk and protective factors; (3) develop and test prevention strategies; and, (4) assure widespread dissemination of effective practices.

Through its 2019 report entitled “Striving for Zero: California’s Strategic Plan for Suicide Prevention 2020-2025,” The Mental Health Services Oversight and Accountability Commission (MHSOAC) recommended the state create the Office of Suicide Prevention within (DPH), expand the California Electronic Violent Death Reporting System by allocating local assistance funding to supplement federal funding, require standardized suicide prevention training to providers in all hospital settings and expand current requirement to screen for suicide risk in health, mental health, and substance use disorder care settings, and require all hospitals to develop and implement written uniform policies for discharge after a person has received suicide-related services.

Prior Related Legislation.

AB 938 (Yee, Chapter 437, Statutes of 2003) established the Licensed Mental Health Provider Education Program (LMHPEP) and the Mental Health Practitioner Education (MHPE) Fund to increase the number of mental health professionals.

AB 1188 (Nazarian, Chapter 557, Statutes of 2017) increased from $10 to $20 the additional license renewal fee for purposes of the LMH Program, and expanded the types of professionals on whom the fee is assessed.

SB 972 (Portantino, Chapter 460, Statutes of 2018) requires schools that serve students in any of grades 7-12 and institutions of higher education that issue student identification cards to have printed on either side of the identification card the number for a suicide hotline.

AB 2639 (Berman, Chapter 437, Statutes of 2018) requires the governing board or body of a local educational agency that serves pupils in grades 7-12 to review, at minimum every fifth year, its policy on pupil suicide prevention and, if necessary, update its policy.

AB 2246 (O'Donnell, Chapter 642, Statutes of 2016) requires the governing board or body of a local educational agency, as defined, that serves pupils in grades 7-12 to adopt a policy on pupil suicide prevention, as specified, that specifically addresses the needs of high-risk groups.

AB 2877 (Thomson, Chapter 93, Statutes of 2000) establishes the California Suicide Prevention Act of 2000, which permits DHCS, contingent upon appropriation in the annual Budget Act, to establish and implement a suicide prevention, education, and gatekeeper training program to reduce the severity, duration, and incidence of suicidal behavior, as specified.

ARGUMENTS IN SUPPORT:

The California Council of Community Behavioral Health Agencies (CBHA) writes in support that the "COVID-19 pandemic and the pandemic related shutdowns of schools, businesses, and more, have had a significant impact on the mental health of many Californians. Facing the pressures of the pandemic, many people have sought the help of mental health professionals to cope with stress, depression, anxiety, or other distress symptoms...Complicating this mental health crisis is the state's shortage of behavioral health professionals amid growing demand. [This bill] helps address workforce issues by creating a grant program within the existing Mental Health Practitioner Fund. The fund will help repay school loans for individuals pursuing a career as a mental health professional and who have committed to 24 months supporting suicide prevention hotlines or organizations that field calls received by suicide prevention hotlines."

ARGUMENTS IN OPPOSITION:

The County Behavioral Health Directors Association of California (CBHDA) oppose the bill in its current form. The Association argues that "under existing law, the resources included in the Mental Health Practitioner Education Fund can already be used for mental health professionals committing to provide direct care on suicide prevention hotlines in publicly funded facilities or organizations." They argue that "[this bill] solely extends loan repayment opportunities to privately funded, for-profit facilities or organizations that operate suicide prevention hotlines including those for-profit facilities or organizations not located in a mental health shortage area."

CBHDA also points out that at a time when the behavioral health workforce shortage has reached crisis level, the entities most adversely impacted are associated with the public behavioral health delivery system, not for-profit organizations. The Association writes that "currently, the public behavioral health delivery system is experiencing a 30-40% vacancy rate for behavioral health clinicians and in a survey of county behavioral health directors, 90% expressed significant difficulty in recruiting and retaining the exact providers outlined in this bill. Unlike for-profit organizations, publicly funded organizations and non-profit entities do not have profits to supplement salaries and already face an unfair marketplace when seeking to entice behavioral health clinicians to work in the public sector. Programs such as those funded by the Mental Health Practitioner Education Fund seek to create a more equitable marketplace. [This bill] would exasperate an already critical workforce shortage for entities dedicated to public service and caring for those most in need by providing incentives for a limited workforce to work in for-profit entities that may not be located in a mental health shortage designated areas."

POLICY ISSUE(S) FOR CONSIDERATION:

Need for the bill. The author introduced this measure to address the state's current behavioral workforce shortages, but would creating a new account within an existing fund accomplish the

goal? Could this new account, as outlined under this bill, potentially diminish current efforts to ensure medically underserved communities experiencing mental health professional shortages have equal access to quality health care? The bill provides grants to mental health providers who commit to providing direct patient care for at least 24 months in either publically or privately funded facility or organization that offers mental health services to individuals referred to the facility by a suicide prevention hotline. Without prioritizing public, non-profit facilities, this bill may not address the current mental health care workforce shortage issues for the most vulnerable populations in the state.

IMPLEMENTATION ISSUES:

In its current form, the bill is silent regarding additional funding that would be required for the new account. The bill's proposed account would be the source for grants to be awarded for educational loan repayment, an incentive and effort the author proposed in hopes of closing the mental health care workforce gap.

However, the bill's language states the new account, which would be established under the existing Mental Health Practitioner Education Fund, is subject to an appropriation by the Legislature. Should this bill be approved by the Legislature and signed into law, the author may wish to consider submitting a budget request specific to the funding and implementation of this bill.

REGISTERED SUPPORT:

California Council of Community Behavioral Health Agencies (CBHA)
The Depression and Bipolar Support Alliance (DBSA)

REGISTERED OPPOSITION:

County Behavioral Health Directors Association (CBHDA)

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 1740 (Muratsuchi) – As Introduced January 31, 2022

SUBJECT: Catalytic converters.

SUMMARY: Requires a core recycler who accepts a catalytic converter for recycling shall maintain a written record that contains the year, make, model, and vehicle identification number of the vehicle from which the catalytic converter was removed. Prohibits a core recycler from purchasing or receiving a catalytic converter from a person that is not a commercial enterprise or owner of the vehicle from which the catalytic converter was removed.

EXISTING LAW:

1) Requires a core recycler who accepts a catalytic converter for recycling to maintain a written record of the following:

    a) The place and date of each sale or purchase of a catalytic converter made in the conduct of his or her business as a core recycler;

    b) The name, valid driver's license number, and state of issue, or California-issued identification number, of the seller of the catalytic converter and the vehicle license number, including state of issue of a motor vehicle used in transporting the catalytic converter to the core recycler's place of business; if the seller is a business, the written record shall include the name, address, and telephone number of the business;

    c) A description of the catalytic converters purchased or sold, including the item type and quantity, amount paid for the catalytic converter, identification number, if any, and the vehicle identification number; and

    d) A statement indicating either that the seller of the catalytic converter is the owner of the catalytic converter, or the name of the person from whom he or she has obtained the catalytic converter, including the business, if applicable, as shown on a signed transfer document. (BPC § 21610(b))

2) Requires a core recycler engaged in the selling or shipping of used catalytic converters to other recyclers or smelters to retain information on the sale that includes all of the following:

    a) The name and address of each person to whom the catalytic converter is sold or disposed of;

    b) The quantity of catalytic converters being sold or shipped;

    c) The amount that was paid for the catalytic converters sold in the transaction; and,

    d) The date of the transaction. (BPC § 21610(c))

3) Prohibits a core recycler from providing payment for a catalytic converter unless all of the following requirements are met:

    a) The payment is made by check and provided to the seller by either of the following:

        i) Mailed to the seller at the address provided;

        ii) Mailed to the seller's business address, for a seller that is a business;

        iii) Collected by the seller from the recycler on the third business day after the date of sale; or

        iv) By immediate payment by check, debit card, or credit card, if the seller is a business that has a contract with a core recycler or is a licensed auto dismantler.

    b) The core recycler obtains:

        i) A clear photograph or video of the seller at the time of sale;

        ii) A copy of the valid driver's license of the seller or the seller's agent containing a photograph and an address of the seller or the seller's agent, or a copy of a state or federal government issued identification card containing a photograph and an address of the seller or the seller's agent;

        iii) A clear photograph or video of the catalytic converter being sold; and

        iv) A written statement from the seller indicating how the seller obtained the catalytic converter. (BPC § 21610(d))

4) Specifies that if the seller prefers to have the check for the catalytic converter mailed to an alternative address, as defined, the core recycler shall obtain a copy of a driver's license or identification card and a gas or electric utility bill addressed to the seller at the alternative address, as specified. (BPC § 21610(d))

5) Exempts a core recycler that buys catalytic converters, transmissions, or other parts removed from a vehicle from the payment requirements in (3) above if the core recycler and the seller have a written agreement for the transaction. (BPC § 21610(e))

6) Specifies that core recyclers accepting catalytic converters from licensed auto dismantlers or from recyclers who hold a written agreement with a business that sells catalytic converters for recycling purposes are required to collect only the following information:

    a) Name of seller or agent acting on behalf of the seller.

    b) Date of transaction.

    c) Number of catalytic converters received in the course of the transaction.

    d) Amount of money that was paid for catalytic converters in the course of the transaction. (BPC § 21610(f))

7) Requires a core recycler to keep and maintain the information required by law for no less than two years, and to make the information available for inspection by local law enforcement upon demand. (BPC § 21610(g) and (h))

8) States that a person who makes, or causes to be made, a false or fictitious statement regarding any information required by law, or who violates a requirement of the law, is guilty of a misdemeanor. (BPC § 21610(i) and (j))

9) Sets forth the following punishments upon conviction for persons who knowingly and willfully violate the aforementioned requirements as follows:

   a) A fine of $1,000 for a first conviction.

   b) A fine of not less than $2,000 for a second conviction.

   c) A fine of not less than $4,000 for a third and subsequent conviction. (BPC § 21610(k))

10) Authorizes a court to order the defendant to cease engaging in the business of a core recycler for a period not to exceed 30 days for a second conviction, and for a period not less than one year for a third and subsequent conviction, in addition to any fines imposed. (BPC § 21610(k))

11) Specifies that the requirements of this bill apply to core recyclers and not to a subsequent purchaser of a catalytic converter who is not a core recycler. (BPC § 21610(l))

12) Specifies that the provisions of this section do not apply to a core recycler who holds a written agreement with a business or recycler regarding the transactions. (BPC § 21610(l))

13) Defines "core recycler" as a person or business, including a recycler or junk dealer, that buys used individual catalytic converters, transmissions, or other parts previously removed from a vehicle; however, a person or business that buys a vehicle that may contain these parts is not a "core recycler." (BPC § 21610(a))

THIS BILL:

1) Would require a core recycler who accepts a catalytic converter for recycling to maintain a written record that contains, in addition to the vehicle identification number under existing law, the year, make, and model of the vehicle from which the catalytic converter was removed.

2) Prohibits a core recycler from entering into a transaction to purchase or receive a catalytic converter from a person that is not a commercial enterprise or owner of the vehicle from which the catalytic converter was removed.

3) Makes other technical or nonsubstantive changes.

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, "Thefts of catalytic converters – devices used in car exhaust systems to capture pollutants from the exhaust gas – have skyrocketed since 2019. Using common tools, thieves can strip vehicles of their catalytic converters in minutes. These thefts can cost victims in the range of $1,000 to $2,000 to repair. [This bill] would prohibit the sale of catalytic converters by non-owners by requiring catalytic converter sellers to provide proof of vehicle ownership and requiring core recyclers to maintain additional records on the catalytic converter source. This brazen crime has intensified over the past two years and it's time we put an end to this illicit theft."

Background.

Catalytic converters. Catalytic converters are devices that reduce pollution-causing emissions. Since 1975, all vehicles produced in the United States must have a catalytic converter as part of the exhaust system to help reduce contaminants from the exhaust. The precious metals inside act as catalysts; when hot exhaust enters the converter, a chemical reaction occurs that renders toxic gases, such as carbon monoxide and hydrocarbons, into less harmful emissions.

According to the National Insurance Crime Bureau (NICB), rhodium was valued at $14,500 per ounce, palladium was valued at $2,336 per ounce, and platinum was valued at $1,061 per ounce of platinum, as of December 2020. Catalytic converters can be melted down to extract these precious metals, making them easy and popular targets for theft.

Vehicles that sit higher from the ground, such as trucks, pick-ups, and sports utility vehicles, are particularly vulnerable to catalytic converter theft because thieves can slide underneath without having to jack up the vehicle to gain access to the catalytic converter. With a battery-powered saw, a catalytic converter can be removed in less than a minute. Stolen catalytic converters can be worth several hundred dollars.

Based on a study of reported thefts, NCIB found that there were approximately 1,203 thefts of catalytic converters per month in 2020 compared to 108 per month in 2018. Over the three-year period, the highest number of thefts occurred in California, followed by Texas, Minnesota, North Carolina, and Illinois. The frequency of thefts has accelerated throughout the COVID-19 pandemic.

Current Related Legislation.

AB 1622 (Chen) would require the Department of Consumer Affairs to provide a licensed smog check station with a sign informing customers about strategies for deterring catalytic converter theft, including the etching of identifying information on the catalytic converter, and require the sign to be posted conspicuously in all licensed smog check stations in an area frequented by customers. The bill would also authorize stations where licensed smog check technician repairs are performed to offer and recommend to customers the etching as an optional service provided in conjunction with the smog check. *Pending in the Assembly Transportation Committee.*

AB 1659 (Patterson) would revise the definition of an "automobile dismantler" to include a person who keeps or maintains two or more used catalytic converters that are not attached to a motor vehicle on property owned by the person, or under their possession or control, for specified purposes. *Pending in the Assembly Transportation Committee.*

AB 1984 (Choi) would prohibit the purchase, sale, receipt, or possession of a stolen catalytic converter, as specified. The bill specifies that a peace officer would need not have actual knowledge that the catalytic converter is stolen to establish probable cause for arrest, and that for prosecution, circumstantial evidence may be used to prove the stolen nature of the catalytic converter. *Pending in the Assembly Transportation Committee.*

AB 2398 (Villapudua) would have made possession of a detached catalytic converter a wobbler, punishable by imprisonment in a county jail for not more than one year, or in the county jail for 16 months, or two, or three years. *Failed passage in the Assembly Public Safety Committee.*

AB 2407 (O'Donnell) would require a core recycler to report specified information about the purchase and sale of catalytic converters to the chief of police or the sheriff, as prescribed, and to request to receive theft alert notifications regarding the theft of catalytic converters from a specified theft alert system. The bill would also require a core recycler to obtain the thumbprint of a seller of a catalytic converter and to preserve the thumbprint for a period of 2 years. The bill would limit the inspection or seizure of a thumbprint to that performed by law enforcement pursuant to a criminal search warrant based upon probable cause. *AB 2407 is pending in this committee.*

AB 2682 (Gray) would require any automotive repair dealer that installs or replaces a catalytic converter on a motor vehicle to ensure that the catalytic converter is engraved, etched, or otherwise permanently marked with the last five digits of the vehicle identification number of the vehicle on which it is being installed. The bill would require a smog check station to inspect the exterior of the catalytic converter, if any, of the vehicle being tested and notify the customer whether or not the catalytic converter is engraved, etched, or otherwise permanently marked with the last five digits of the vehicle identification number. The bill would also prohibit any person, except as exempted, from removing, altering, or obfuscating the vehicle identification number engraved, etched, or otherwise marked on a catalytic converter, or from knowingly possessing a catalytic converter that has been so altered. The bill would also prohibit a dealer or retail seller from selling a motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved, etched, or otherwise permanently marked with the last five digits of vehicle identification number of the vehicle to which it is attached. *AB 2682 is pending in Assembly Transportation Committee.*

SB 919 (Jones) would prohibit a core recycler from purchasing or otherwise receiving any catalytic converter that is not engraved, etched, or otherwise permanently marked with the vehicle identification number of the vehicle that it was removed from. The bill would require a core recycler to maintain a log that includes a description of all catalytic converters purchased or received by the core recycler, as specified. The bill would prohibit a person from buying, selling, receiving, or possessing a stolen catalytic converter as well as removing, altering, or obfuscating a vehicle identification number or other unique marking that has been added to a catalytic converter. This bill would prohibit a dealer or retail seller from selling a motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved, etched, or otherwise permanently marked with the vehicle identification number of the vehicle to which it is attached. *SB 919 is pending in Senate Business, Professions and Economic Development Committee.*

SB 986 (Umberg and Portantino) would, in part, prohibit a dealer or retailer from selling a new motor vehicle equipped with a catalytic converter unless the catalytic converter has been

engraved or etched with the vehicle identification number of the vehicle to which it is attached. *SB 986 is pending in Senate Business, Professions and Economic Development Committee.*

SB 1087 (Gonzalez) would, in part, prohibit any person from purchasing a used catalytic converter except from specified sellers, including an automobile dismantler, an automotive repair dealer, or an individual possessing documentation, as specified, that they are the lawful owner of the catalytic converter. *SB 919 is pending in Senate Business, Professions and Economic Development Committee.*

Prior Related Legislation.

SB 627 (Calderon), Chapter 603, Statutes of 2009, requires core recyclers, as defined, to comply with additional recordkeeping and identification procedures and new payment restrictions when purchasing catalytic converters.

ARGUMENTS IN SUPPORT:

The *California District Attorneys Association* writes in support, "This bill makes it more difficult for people to profit from their theft by requiring core recyclers to better document the source of the catalytic convertor they are purchasing and by limiting the people core recyclers can purchase catalytic convertors from to the owners of the vehicles that the part came from."

The *City of Torrance* writes in support, "there are significant legal challenges in prosecuting catalytic converter thefts under current California law. A law enforcement agency may make arrests of individuals in possession of suspect catalytic converters, but may not be able to prove a case in court. Currently, a core recycler's obligation is to maintain a written record of specified information regarding the transaction, including the item type and quantity, the amount paid for the catalytic converter, and identification number, if any, and the vehicle identification number, for not less than 2 years. However, this is insufficient because it lacks the obligation of the core recycler to obtain the information necessary to identify the origin of the catalytic converter. Therefore, [this bill] would require core recyclers to obtain additional information that would assist law enforcement agencies in their attempts to prevent and prosecute catalytic converter thefts in California."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Impact. Existing law sets forth a series of requirements for sellers and recyclers of catalytic converters, which this bill would increase. However, an individual attempting to sell a stolen catalytic converter is unlikely to try and sell it to a core recycler where they would be required to provide detailed personal information, attest to being the lawful owner of the catalytic converter, have a photo taken, and wait for three days to pick up their payment or have their payment mailed to them. As such it is unclear to what extent this bill would have on curbing the illicit marketplace for stolen catalytic converters.

Commercial Enterprises. This bill would prohibit a core recycler from purchasing or receiving a catalytic converter from a person that is not a "commercial enterprise" or the owner of the

vehicle from which the catalytic converter was removed. The author should consider replacing the undefined term with specific entities from which a core recycler is authorized to purchase or receive a catalytic converter, such as the following: automobile dismantlers; other core recyclers, motor vehicle dealers, and automotive repair dealers, all as defined by law. Doing so would capture lawful businesses that are the most likely to generate, possess, or sell used catalytic converters.

Proof of Ownership. As previously mentioned, this bill would prohibit a core recycler from purchasing or receiving a catalytic converter from a person that is not a "commercial enterprise" or the *owner* of the vehicle from which the catalytic converter was removed. However, this bill does not provide a mechanism for the verification of ownership. Existing law only requires a seller to provide a statement attesting to ownership of the vehicle. The author may wish to consider requiring the seller to provide documentation, such as the title of the vehicle, demonstrating that the seller is the owner of the vehicle. Additionally, because it is extremely difficult to trace a detached catalytic converter back to a specific vehicle, the author may wish to consider additional measures to ensure that a catalytic converter is indeed from a vehicle owned by the seller.

IMPLEMENTATION ISSUE(S) FOR CONSIDERATION:

Chaptering out amendments. This bill is currently in conflict with AB 2407 (O'Donnell), SB 1087 (Gonzalez), and SB 986 (Umberg and Portantino) and may require chaptering out amendments to ensure that the bills, if signed in to law, to reflect the changes made by the other bills.

REGISTERED SUPPORT:

Alliance for Automotive Innovation
Auto Club of Southern California (AAA)
California District Attorneys Association
City of Torrence

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1758 (Aguiar-Curry) – As Amended March 29, 2022

SUBJECT: Board of Behavioral Sciences: marriage and family therapists: clinical social workers: professional clinical counselors: supervision of applicants for licensure via videoconferencing.

SUMMARY: This bill would allow required weekly supervision via two-way, real-time videoconferencing in all settings, if the supervisor makes an assessment that it is appropriate.

EXISTING LAW:

1) Establishes the Board of Behavioral Sciences (BBS) to administer the Marriage and Family Therapist (MFT) Act, the Educational Psychologist Practice Act, the Clinical Social Worker (CSW) Practice Act, and the Licensed Professional Clinical Counselor (LPCC) Act. (Business and Professions Code (BPC) § 4990.12)

2) Defines both an MFT intern and a professional clinical counselor (PCC) intern as an unlicensed person who has earned his or her master's or doctoral degree qualifying him or her for licensure and is registered with the BBS, as specified. (BPC §§ 4980.3, 4999.12)

3) Defines an MFT trainee and an LPCC trainee as an unlicensed person who is currently enrolled in a master's or doctoral degree program that is designed to qualify him or her for licensure, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program. (BPC §§ 4980.3, 4999.12)

4) Defines an associate clinical social worker as someone who has already completed studies and has a master's degree. (BPC § 4996.18)

5) Defines a social work intern as a person enrolled in a master's or doctoral training program in social work in an accredited school or department of social work. (BPC § 4996.15)

THIS BILL:

1) This bill proposal would allow required weekly supervision via two-way, real-time videoconferencing in all settings, if the supervisor makes an assessment that it is appropriate. This bill proposal does the following:

    i. Clarifies that face-to-face direct supervisor contact between a supervisor and a supervisee means either in-person, or via two-way, real time videoconferencing.

    ii. Requires that in all settings, a supervisor must conduct a meeting with a new supervisee within 60 days of the commencement of any supervision.

    iii. Requires that during this meeting, the supervisor must assess the appropriateness of allowing the supervisee to gain experience hours via telehealth, and the appropriateness of the supervisee to receive supervision via videoconferencing. The results of the assessment must be documented.

iv. Includes a sunset date of January 1, 2026. Unless the sunset date is deleted or extended, nonexempt settings will once again be required to have in-person supervision, as is currently the law. The BBS has committed to continuing its examination of the multi-faceted issue of telehealth into 2022, via its special Telehealth Committee. As the discussion evolves and the COVID-19 State of Emergency ends, the sunset date will allow the BBS to fine-tune the law if needed.

FISCAL EFFECT: Unknown at this time.

COMMENTS:

Purpose. This bill is sponsored by the **Board of Behavioral Sciences**.

According to the author, "the waiver to allow supervision via videoconferencing for Board registrants during the COVID-19 State of Emergency provided numerous unforeseen benefits for those seeking a mental health license, and consequently, for their clients. Allowing remote supervision has increased the supervisee's ability to gain hours and provide much-needed services in underserved settings and in rural settings. It has enabled supervisees who are disabled or who have health concerns with more opportunity to gain hours and supervision, and to provide services. And by lessening the distance barriers, it has allowed for a larger pool of supervisors, providing more access to sometimes difficult-to-find supervision.

In developing this proposal, the Board reviewed research, considered several alternatives, and built in a sunset date to allow fine-tuning in the future if needed as the field of telehealth and videoconference supervision evolves. Based on its work, the Board has ultimately concluded that allowing supervision via videoconferencing increases public access to mental health professionals, and it believes that it is imperative supervision via videoconferencing be allowed in all settings.

Background.

The COVID-19 State of Emergency dramatically shifted the landscape of mental health therapy. While telehealth and supervision via videoconferencing was used by some beforehand, the professions shifted from largely being in-person to being via electronic platforms almost overnight.

As a result of stay-at-home emergency orders, the Governor, via executive order, granted the Director of the Department of Consumer Affairs (DCA) the authority to issue law waivers in order to ensure continued public health and safety. One law waiver that was granted allows BBS supervisees to obtain their required supervision via videoconference, regardless of whether or not they are working in an exempt setting.

Although meant to be temporary, numerous unforeseen benefits of this waiver have emerged, including the following: (1) it has made it easier for pre-licensees in rural areas and underserved areas to find supervision, (2) it has enabled supervisees and supervisors with disabilities or health concerns to continue their work when they otherwise would not have been able to, (3) it has enabled supervisees to keep their supervisor if one party moves away, and (4) the increased number of supervisees able to gain hours, and the increased number of supervisors available, has reduced barriers into the profession, which will ultimately lead to more licensed mental health professionals for those in need of their services.

Current Related Legislation.

AB 2754 (Bauer-Kahan) would ensures that trainees in the field of psychology receive necessary training in a safe and timely manner by extending supervision trainings to audio and HIPAA-compliant video conferencing. This bill is currently pending before the Assembly Business and Professions Committee.

Prior Related Legislation.

AB 93 (Medina, Chapter 743, Statutes of 2018) Revises and recasts numerous provisions of law regarding applications to the Board of Behavioral Sciences (BBS) for licensure as a Licensed Marriage and Family Therapist (LMFT), Licensed Clinical Social Worker (LCSW), and a Licensed Professional Clinical Counselor (LPCC). Also authorizes an LMFT associate and trainee to provide services via telehealth.

AB 1264 (Petrie-Norris, Chapter 741, Statutes of 2019) Clarifies that the requirement for an appropriate prior examination does not need to be a synchronous interaction between a prescriber and the patient. Instead, the prior examination can be achieved using telehealth screening tools such as self-screening tools or questionnaires, provided the tools comply with the appropriate standard of care. This bill is intended to clarify that a live video chat with a prescriber is not needed to obtain self-administered hormonal contraception, or birth control, following the use of a self-screening tool.

ARGUMENTS IN SUPPORT:

The **Board of Behavioral Sciences**, the sponsor, writes in support that "individuals seeking licensure with the Board as a marriage and family therapist (LMFT), clinical social worker (LCSW) or professional clinical counselor (LPCC) must first obtain 3,000 hours of experience under the supervision of a licensed mental health professional. Currently, the law requires supervisees to meet with their supervisor weekly in-person, unless they are working in an exempt setting, such as a governmental entity, a school, college, or university, or an institution that is nonprofit and charitable. If in an exempt setting, supervision via two-way, real-time videoconferencing is allowed. This bill proposal would allow the required weekly supervision to be via two-way, real-time videoconferencing in all settings, if the supervisor makes an assessment that it is appropriate."

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

ARGUMENTS IN OPPOSITION:

No opposition on file.

POLICY ISSUE(S) FOR CONSIDERATION:

The BBS and stakeholders have worked closely with the Department of Consumer Affairs and made its case and expressed a strong preference for the waiver to continue and be extended. In order to address concerns relating to the waiver ending and causing a disruption to pre-licensees who are unable to get in-person supervision, this bill will allow a waiver extension to ensure pre-licensees are able to meet supervision requirements.

As California continues to build its behavioral health workforce, it is essential that these professionals have the necessary tools to complete the required training. The bill also contains an urgency clause to ensure a consistent, predictable process for pre-licensees to navigate.

IMPLEMENTATION ISSUES:

The bill includes a sunset date of January 1, 2026. Unless the sunset date is deleted or extended, nonexempt settings will once again be required to have in-person supervision, as is currently the law. The BBS has expressed its commitment to continuing its examination of the multi-faceted issue of telehealth into 2022, via its special Telehealth Committee. As discussions evolves, the sunset date will allow the BBS to fine-tune the law if needed.

REGISTERED SUPPORT:

Board of Behavioral Sciences (Sponsor)
California Alliance of Child and Family Services
County Behavioral Health Directors Association
California Council of Community Behavioral Health Agencies
California Dialysis Council
Fresenius Medical Care North America
Kaiser Permanente
Lyra Health
National Association of Social Workers

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1759 (Aguiar-Curry) – As Introduced February 2, 2022

SUBJECT: Board of Behavioral Sciences: licensees and registrants: marriage and family therapy, educational psychology, clinical social work, and professional clinical counseling.

SUMMARY: This bill makes two changes related to continuing education requirements for licensees under the Board of Behavioral Sciences (Board).

EXISTING LAW:

1) Establishes the Board of Behavioral Sciences (BBS) to administer the Marriage and Family Therapist (MFT) Act, the Educational Psychologist Practice Act, the Clinical Social Worker (CSW) Practice Act, and the Licensed Professional Clinical Counselor (LPCC) Act. (Business and Professions Code (BPC) § 4990.12)

2) Provides the BBS with responsibility for licensing and regulating four types of master's level mental health professionals: marriage and family therapists (LMFTs), educational psychologists (LEPs), clinical social workers (LCSWs), and professional clinical counselors (LPCCs). (BPC §§ 4990 *et seq.*)

3) Includes an associate professional clinical counselor in the definition of "health care provider" for purposes of state laws governing telehealth. (BPC § 2290.5)

4) Requires applicants and registrants under the BBS to obtain a passing score on a board-administered California law and ethics examination in order to qualify for licensure. (BPC § 4980.399; § 4992.09)

5) Requires LMFTs to complete continuing education as a condition of licensure. (BPC § 4980.54)

6) Limits the manner in which a clinical counselor trainee, associate, or applicant for licensure may perform mental health and related services as an employee or volunteer. (BPC § 4999.46.3)

THIS BILL:

1) Requires applicants for licensure and current licensees to complete 3 hours of training or coursework in the provision of mental health services via telehealth, including law and ethics related to telehealth, as a one-time requirement.

2) Requires all BBS registrants, who are working toward a license who are registered with the BBS to obtain their required post-degree supervised experience hours, to complete a 3-hour continuing education course in California law and ethics each renewal cycle.

3) Makes amendments to clarify that associate clinical social workers, associate professional clinical counselors, and clinical counselor trainees may provide services with clients via telehealth.

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

COMMENTS:

Purpose. This bill is sponsored by the **Board of Behavioral Sciences**. According to the author, "Together, the changes made by this bill take steps to both strengthen public protection and ensure clarity of law for all of the Board's stakeholders."

Background.

Currently, BBS registrants working toward licensure as a MFT, CSW, or PCC must attempt a California law and ethics exam every renewal period until passed. If the registrant fails the exam, they are still permitted to renew their registration, but must show proof of completing a 12-hour California law and ethics course in order to participate in the exam in the next renewal cycle. Due to confusion about when to take the course or failing to remember to do so, they often do not. As a result, their registration is delayed, potentially affecting their employment. Because there is no continuing education requirements for registrants, they may remain registered for many years before becoming licensed, but never have to take a refresher course in California law and ethics after they have passed the initial California law and ethics exam.

During the COVID-19 pandemic, mental health professionals were forced to transition how they provide care from in-person services to services via telehealth. Unfortunately, numerous mental health professionals were not fully prepared for this transition due to the lack of telehealth course work or training provided in their degree programs. Now that a large number of practitioners are utilizing telehealth out of necessity, it is essential that they learn current best practices, industry standards, and ethics related to its use. This bill will require all applicants for licensure, as well as current licensees, to complete three hours of coursework or training in the provision of mental health services via telehealth, including law and ethics related to telehealth, as a one-time requirement. This requirement could be satisfied if it has been included as coursework in the applicant's qualifying graduate degree program, or it could be taken as continuing education.

Additionally, current law makes it clear that associate marriage and family therapists (AMFTs) and marriage and family therapist trainees may provide services via telehealth. However, it is less clear for the BBS other license types. This bill will clarify that associate clinical social workers (ASWs), associate professional clinical counselors (APCCs), and clinical counselor trainees may provide services to clients via telehealth.

Current Related Legislation. AB 1758 (Aguiar-Curry) would allow required weekly supervision via two-way, real-time videoconferencing in all settings, if the supervisor makes an assessment that it is appropriate. This bill is currently pending before the Assembly Business and Professions Committee.

Prior Related Legislation. AB 1436 (Levine, Chapter 527, Statutes of 2018), requires Board applicants for licensure and current licensees to complete a one-time, six hour coursework or training in suicide risk assessment and intervention.

AB 93 (Medina, Chapter 743, Statutes of 2018) Revises and recasts numerous provisions of law regarding applications to the Board of Behavioral Sciences (BBS) for licensure as a Licensed Marriage and Family Therapist (LMFT), Licensed Clinical Social Worker (LCSW), and a Licensed Professional Clinical Counselor (LPCC). Also authorizes an LMFT associate and trainee to provide services via telehealth.

AB 1264 (Petrie-Norris, Chapter 741, Statutes of 2019) Clarifies that the requirement for an appropriate prior examination does not need to be a synchronous interaction between a prescriber and the patient. Instead, the prior examination can be achieved using telehealth screening tools such as self-screening tools or questionnaires, provided the tools comply with the appropriate standard of care. This bill is intended to clarify that a live video chat with a prescriber is not needed to obtain self-administered hormonal contraception, or birth control, following the use of a self-screening tool.

SB 801 (Archuleta, Chapter 647, Statutes of 2021) took a first step in clarifying in Business and Professions Code Section 2290.5 (the general telehealth code section for health care providers) that LCSW and LPCC associates can provide telehealth.

ARGUMENTS IN SUPPORT:

The **Board of Behavioral Sciences** writes in support that "public protection would be best served by requiring all registrants to annually take a three-hour continuing education refresher course in California law and ethics prior to renewal, instead of only requiring those who fail the exam to take a 12-hour course. This will ensure all registrants annually update their knowledge about the legal and ethical changes occurring in their profession. In addition, the timing of this requirement is much clearer, and trains associates to begin completing continuing education, which they will be required to do more of as a licensee."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Board of the Behavioral Sciences *(Sponsor)*
California Association of Marriage and Family Therapists
California Council of Community Behavioral Health Agencies
Govern for California
Kaiser Permanente
National Association of Social Workers

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2107 Flora – As Amended March 23, 2022

SUBJECT: Clinical laboratory testing.

SUMMARY: (1) Authorizes any adult who is appropriately trained to perform specified rapid antigen tests under the direction of a laboratory director and physician and (2) expands the clinical laboratory practice of licensed clinical genetic molecular biologists to include molecular biology within the specialty of microbiology.

EXISTING LAW:

1) Provides for the licensure, registration, and regulation of clinical laboratories and various clinical laboratory personnel by the California Department of Public Health (CDPH), with specified exceptions. (BPC § 1200-1327)

2) Defines "CLIA" as the federal Clinical Laboratory Improvement Amendments of 1988 (United States Code, title 42, § 263a; Public Law 100-578) and the regulations adopted by the federal Health Care Financing Administration (HFCA) that are effective on January 1, 1994, or later when adopted by the CDPH after being deemed equivalent to or more stringent than California laws or regulations, as specified. (BPC §§ 1202.5(a), 1208(b))

3) Defines "clinical laboratory" as any place used, or any establishment or institution organized or operated, for the performance of clinical laboratory tests or examinations or the practical application of the clinical laboratory sciences. (BPC § 1206(a)(8))

4) Prohibits any person from performing a clinical laboratory test classified as waived under CLIA unless performed under the overall operation and administration of the laboratory director and the test is performed by specified licensees or individuals outlined in statute. (BPC § 1206.5)

5) Defines "clinical chemist," "clinical microbiologist," "clinical toxicologist," "clinical genetic molecular biologist," "clinical cytogeneticist," or "oral and maxillofacial pathologist" as a person licensed by the CDPH to engage in, or supervise others engaged in, or direct clinical laboratory practice limited to the person's area of specialization. (BPC § 1207(a)).

6) Specifies the limitation of each category of specialty or subspecialty, including:

    a) For a person licensed as a clinical microbiologist, the specialty of microbiology and the subspecialties of bacteriology, mycobacteriology, mycology, parasitology, virology, molecular biology, and serology for diagnosis of infectious diseases, or other specialty or subspecialty specified by regulation adopted by the CDPH. (BPC § 1207(b)(2))

    b) For a person licensed as a clinical genetic molecular biologist, the subspecialty of molecular biology related to the diagnosis of human genetic abnormalities within the specialty of genetics or other specialty or subspecialty specified by regulation adopted by the CDPH. (BPC § 1207(b)(4))

THIS BILL:

1) Authorizes any adult who has received appropriate training and acts under the authority of a CLIA-waived laboratory director and ordering physician to perform a CLIA-waived rapid antigen test and collect anterior nasal swabs if the individual being tested is unable to self-swab.

2) Authorizes a clinical genetic molecular biologist to additionally perform clinical laboratory testing and practice in the specialty of molecular biology within the specialty of microbiology.

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

COMMENTS:

Purpose. This bill is sponsored by *Helix*. According to the author, "[This bill] will ensure that California has the appropriate workforce to prepare for and detect spikes in communicable diseases. Through the recent pandemic, the necessity for a robust workforce was highlighted, with EO N-25-20 being a sufficient temporary response. [This bill] would allow for this workforce to continue to conduct testing while also providing the necessary surveillance for future outbreaks."

Background. Federal and state laws regulate clinical laboratory testing on human specimens for diagnostic or assessment purposes, for example, blood work or biopsies. The purpose of clinical laboratory regulation is to ensure patients who undergo diagnostic testing receive accurate and timely results. Inaccurate or delayed results may prevent a patient from receiving the proper level or type of care.

To that end, all clinical laboratories and tests must comply with requirements under CLIA. CLIA establishes the minimum standards under federal law but allows states to establish more stringent requirements. Under CLIA, laboratory tests are classified based on the complexity of the laboratory tests performed. In general, the more complicated the test, the more strict the requirements relating to the test, including the requirements for training and licensing of the laboratory personnel performing the test.

The federal Food and Drug Administration (FDA) is the entity that determines the complexity of laboratory tests. Waived tests are simple tests with a low risk of incorrect results. They include tests listed in the CLIA regulations, tests cleared by the FDA for home use (such as pregnancy tests), and tests approved for a waiver by the FDA using the CLIA criteria. Tests not classified as waived are assigned a moderate or high complexity category based on seven criteria given in the CLIA regulations, including ease of use, the knowledge required, and types of materials tested. For commercially available FDA-cleared or approved tests, the test complexity is determined by the FDA during the pre-market approval process.

Under both federal and California law, any healthcare personnel providing direct patient care or any person as part of a nondiagnostic health assessment program may perform a waived test in a licensed laboratory. This bill would additionally allow any adult to perform any rapid antigen test classified as waived under CLIA if properly trained and under the authority of the laboratory director and orders from a physician. Common waived rapid antigen tests include influenza, respiratory syncytial virus, and COVID-19.

Microbiology vs. Molecular Biology. One of the areas California law goes further than federal law is where it limits the practice of clinical laboratory licensees to the specific scientific specialty associated with their license, rather than the testing technique. This bill would authorize a licensed clinical genetic molecular biologist to perform laboratory tests related to molecular biology within microbiology, which is currently limited to licensed clinical microbiologists. The specific goal of the sponsor is to allow clinical genetic molecular biologists to perform molecular tests that would ordinarily be limited to microbiologists.

Molecular testing is a technique that uses tissue, blood, or other bodily fluids to examine or detect the presence of molecules in the body. The molecules being examined or detected can include cellular proteins (e.g. antibodies or enzymes), genes or genetic material, or other molecules that might signal a disease or condition. Molecular testing is used in both genetic molecular biology and microbiology.

Genetic molecular biology is the study of the molecular structure of the genetic code (DNA), its cellular activities, and its influence in determining the overall makeup of an organism. In clinical laboratories, molecular geneticists perform molecular tests for a variety of purposes, including detection of genetic defects, identifying specific genes associated with health risks, and identification of diseases associated with changes in genes.

Microbiology is the study of microscopic organisms (pathogens), such as bacteria, viruses, archaea, fungi, and protozoa. In clinical laboratories, microbiologists perform molecular tests to detect molecules that indicate the presence of a pathogen. For example, the polymerase chain reaction (PCR) test for SARS-CoV-2, the virus that causes COVID-19, detects the presence of the virus' genetic material in a sample.

While PCR and other molecular testing techniques are used in many different types of clinical laboratories, COVID-19 and other infectious diseases are caused by pathogens that fall under the category of microbiology. Therefore, existing law only allows microbiologists to perform the molecular tests that are used to detect them.

Executive Order No-25-20. To assist with testing capacity during the COVID-19 pandemic, the Governor waived the certification and licensure requirements relating to public health microbiology and, among other things, the limitations related to specialties and subspecialties, allowing anyone qualified to perform high-complexity tests under CLIA to perform high-complexity tests within any specialty. Once that part of the order is lifted, clinical genetic molecular biologists will no longer be able to perform molecular testing ordinarily limited to microbiologists.

Current Related Legislation. SB 1267 (Pan), which is pending in the Senate, would add clinical laboratory geneticist scientists and clinical reproductive biologist scientists to the types of clinical laboratory personnel that are licensed and regulated by the CDPH and define their subspecialties and duties.

ARGUMENTS IN SUPPORT:

Helix (sponsor) writes in support:

> [This bill] will ensure that there is sufficient workforce available to continue the important testing at labs in California that have been able to do so under the terms

of Executive Order No-2520…. In California, we license scientists based on the type of specimen they are working with, instead of the type of test they are running. This is out of step with most of the country, including our neighbors in Washington, Oregon, Arizona, and leading research and diagnostic hubs like Massachusetts. California is home to the largest concentration of scientists in the United States, and one of six NIH megalabs in the country that were expanded to support national COVID-19 testing, but even pre-pandemic staffing could be a challenge for some labs.

Now that the COVID-19 response is moving from an emergency to an endemic state, the laboratories are returning to their prepandemic operations. For the large concentration of genetic microbiologists we have in California, that means leading molecular tests that are set up the same way that COVID-19 diagnostic tests are performed. To be able to quickly respond to surges and maintain baseline COVID-19 testing for employers, schools, large events, and even community based testing, codifying the executive order to allow Clinical Genetic Molecular Biological Scientists (CGMBS) to continue to have the authority to process and supervise molecular testing, is a responsible next step. CGMBS have the same academic credentials and are highly trained in all aspects of clinical molecular testing. This separates them from the pack of microbiologists and generalists in their ability to design, run and control molecular assays, which is necessary for core work in human genetics. Helix, with our labs in San Diego, works closely with the Centers for Disease Control to provide viral sequencing of COVID-19. This informs national public health policy for the entire country. To continue to fill this critical role, we have to process COVID-19 diagnostic tests. These tests provide the positive samples to sequence. This work has enabled Helix scientists to identify the earliest cases of the Delta variant, early cases of Omicron, and we just recently published a paper on our findings around a new variant that is a hybrid of the two, known as Deltacron. As a country, we need to know how and when COVID-19 evolves to inform our efforts around next generation vaccines and medical treatments, as well as immediate interventions like masking and social distancing.

Anticipating the need to perform molecular testing during surges and to continue baseline testing, without the need to maintain two separate workforces–one for COVID and one for core business lab operations is a critical part of the continued response to COVID-19. Updating the Business and Professional code to include molecular testing under the licensure of Clinical Genetic Microbiologists is a simple, yet significant step to keep us prepared and reflect the way modern lab testing is conducted.

Public Health Institute (PHI) writes in support:

PHI's Safely Opening Schools Program (SOS) has been working with school districts throughout the state, especially those with the most vulnerable children, to increase school COVID-19 rapid testing since late 2020 and to promote vaccination equity in our schools. We have witnessed first-hand the devastating effects of COVID-19 on education and on the well-being of children, as well as

witnessing barriers to increasing testing availability due to a shortage of qualified staff who can perform COVID-19 testing.

Current law requires that testing performed under a Clinical Laboratory Improvement Amendment waiver be performed by a health professional. As our Safely Opening Schools program worked to expand COVID-19 rapid testing in schools across the state, we quickly realized that current law posed an obstacle to expansion of community and school-based rapid antigen testing efforts. Although interpretations were made allowing school staff operating to protect the health of their students to perform the tests, barriers remained in place for extending this allowance to appropriately trained parents, non-school employees and volunteers. Current law does not allow non-healthcare professional staff, or even a parent, to perform the simple anterior nasal swab in the small number of children who cannot self-swab, such as some children with disabilities. School nurses, already in short supply, faced challenges to operate testing programs and still fulfill their other roles. State and district-contracted testing vendors encountered difficulties in recruiting sufficient health professionals for testing efforts, especially in rural areas of the state. This has made it very difficult for school districts and other community or employer sites to increase COVID-19 rapid testing capacity during a surge, or to maintain a trained cadre of community members or volunteers who can test.

COVID-19 rapid antigen tests are extremely simple. So much so that numerous brands, usually the same ones also sold in bulk for use under CLIA waivers by screening programs, have received emergency use authorization from the FDA for home use and are sold over the counter and sent to people's homes. Working with FEMA, the state is distributing millions of these home tests this month. It is clear from this FDA decision that an appropriately trained and supervised adult can perform the tests without being a health professional. [This bill] is also the obvious, easy solution to ensuring swabbing assistance is available to those who need it. While some school testing will move to home tests, schools and many other community locations still need to operate some testing under CLIA waivers for those who are symptomatic at work or school, or have been exposed, and where supervised testing is needed to assure the safety of members of the school community and appropriate reporting.

ARGUMENTS IN OPPOSITION:

None on file.

AMENDMENTS:

To clarify the conditions under which an adult is allowed to perform a CLIA-waived test, as well as allow other common CLIA-waived tests for pathogens, the author should amend the bill as follows:

On page 3 of the bill, lines 26-31:

(2) ~~In the specific case of~~ *For a* rapid antigen *or point-of-care polymerase chain reaction pathogen* test~~ing~~ *classified as waived under CLIA,* ~~performed under a~~

~~CLIA waiver,~~ *any adult who has received appropriate training and is acting under the direction of the laboratory director and ordering physician may do both of the following:*

(A) Collect anterior nasal swabs if the person to be tested is unable to self-swab.

(B) Perform the test on the collected sample.

~~both collection of anterior nasal swabs where the individual being tested is unable to self-swab, and performance of the rapid antigen test, may be carried out by any adult who has received appropriate training and is acting under the authority of the CLIA waiver director and ordering physician.~~

REGISTERED SUPPORT:

Helix (sponsor)
Biocom California
Primary. Health
Public Health Institute

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2196 (Maienschein) – As Introduced February 15, 2022

SUBJECT: Barbering and cosmetology: instructional hours.

SUMMARY: Increases the minimum number of hours of practical and technical instruction for applicants for licensure as cosmetologists from 1,000 to 1,200.

EXISTING LAW:

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

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

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

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

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

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

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

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

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

   g) Tinting and perming of the eyelashes and brows, or applying eyelashes to any person.

   (BPC § 7316(b))

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

5) Requires a course in cosmetology to consist of not less than 1,000 hours of practical and technical instruction in the practice of cosmetology. (BPC § 7362.5)

THIS BILL:

1) Provides that a course in cosmetology established by a school shall consist of not less than 1,200 hours of practical and technical instruction in the practice of cosmetology.

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

COMMENTS:

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

> "The recent reduction in instructional hours for cosmetology licenses poses challenges to licensure portability and the ability for California practitioners to easily become licensed in other states. Fewer than five states allow for a cosmetology license to be obtained with 1000 hours and the national average remains 1500 hours. It is necessary that California revisit the required instructional hours to obtain a cosmetology license in order to ensure students are receiving adequate education and not being placed at a disadvantage compared to other states."

Background.

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

Sunset Review. A number of reforms to the Barbering and Cosmetology Act were proposed and enacted through the BBC's most recent sunset review process. 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 DCA, 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.

Cosmetology School Hours. A number of reports in recent years have called for reforms to California's licensure scheme, criticizing the state's regulation of occupations and professions as needlessly burdensome and complex. In the Institute for Justice's summary of California—which it regarded as "the most broadly and onerously licensed state in the nation"—it was reported that obtaining a license as a barber or cosmetologist in California required $125 in fees, 350 "estimated calendar days lost," 1,500 clock hours in education, and 2 examinations.

Among issues outlined in the sunset review background paper published collaboratively by the Senate Committee on Business, Professions, and Economic Development, and the Assembly Committee on Business and Professions was the following question:

> ***ISSUE #8: (HOURS).*** *What is the continued justification for individuals to complete so many hours of training in order to safely provide beautification services? Do current requirements, and costs associated with training, benefit students and the public? Is an evaluation of risk ever part of the rationale for requiring so many hours?*[1]

As discussed in the committees' background paper, the prior 1,600-hour education requirement for cosmetology licensure, in particular, had been a discussion point for the Legislature for a number of years. During the 2012-13 sunset review oversight, Committee staff raised the issue of appropriate licensing categories, noting the need for BBC to evaluate adding specialized certificates or licensure in certain practices. The review asked whether many of the beautification services offered by BBC licensees require the mandatory schooling and training hours necessary for a cosmetologist or esthetician and noted that while there may be significant health concerns related to some practices, there may also not be a need for an individual performing specialized services to invest in a whole training program. The review found that training for many of the beautification services provided by BBC licensees is provided directly from manufacturers and likely not even reflected in BBC-approved curriculum and at BBC-approved schools.

An informal survey conducted by a licensed establishment owner found that most licensees indicated they had a lot of down time, sat around and didn't do anything, noted that working once licensed provided skills and knowledge never gained in school, and that hundreds of hours were wasted learning outdated techniques that are never utilized in day-day to practice but remain components of the practical exam.

Prior sunset review oversight of the BBC further examined the issue of the required curriculum and connection to practice. AB 181 (Bonilla, Chapter 430, Statutes of 2015), the BBC's previous sunset vehicle, required BBC to conduct a study and review of the 1,600-hour training requirement for cosmetologists, conduct an occupational analysis of the profession in California, and conduct a review of the national written examination for cosmetologists and of the California practical examination, in order to evaluate whether both examinations assess critical competencies for California cosmetologists and meet professional testing standards.

In recent years, a number of states decreased the number of hours required for cosmetology licensure. Massachusetts, New York, Texas, and Vermont currently require 1,000 hours.

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[1] A complete copy of the BBC's 2021 sunset review background paper may be found at: https://abp.assembly.ca.gov/sites/abp.assembly.ca.gov/files/BBC%20Background%20Paper%202021.pdf

Following its analysis of this information, the BBC's sunset background paper stated that "the Committees may wish to decrease the amount of hours required for licensure in order to allow individuals a swifter path to completing necessary curriculum that will lead to safe beautification services practice." The resulting sunset bill for the BBC, SB 803 (Roth, Chapter 648, Statutes of 2021) implemented that recommendation by reducing the required number of hours for courses in both barbering and cosmetology to 1,000 and codifying course content requirements to align with that change.

Prior Related Legislation. SB 803 (Roth, Chapter 648, Statutes of 2021) extended the operation of the BBC and, among other things, reduced the required number of hours for courses in both barbering and cosmetology to 1,000 hours.

AB 181 (Bonilla, Chapter 430, Statutes of 2015) extended the operation of the BBC and required the BBC to conduct a review of its current 1,600-hour curriculum requirements for the cosmetologist license.

ARGUMENTS IN SUPPORT:

Bellus Academy and **Paul Mitchell Schools** support this bill, writing: "In the 1,000 hour program, 200 hours or 20% of health/safety and disinfection/sanitation is required, which leaves only 800 hours to teach everything in theory and practical skills. This is quite the imbalance of what is needed for someone to begin and maintain a career in the beauty industry. The state wants to protect the consumer and professional, and so do Bellus and Paul Mitchell Schools, but it is also important to provide a well-rounded education to prepare graduates for quality skills to stay in this industry. Imagine paying for an education that mostly taught you to "be safe" but does not equip you with real-world knowledge and skills?"

ARGUMENTS IN OPPOSITION:

The **Future of Beauty Industry Coalition** (FBIC) opposes this bill. The FBIC writes: "Unfortunately, AB 2196 attempts to change a critical component of last year's effort just a few short months after the law taking effect and before its actual implementation. While proponents of AB 2196 will say this hour increase is needed for safety reasons, we believe it is premature to make that claim since we're yet to see any data on what has happened since SB 803 took effect. SB 803 was the result of years of work on this issue and was closely debated over many different sunset review hearings and policy committees which is why it received broad, bipartisan support."

POLICY ISSUE(S) FOR CONSIDERATION:

Increasing Hour Requirements. The Governor signed SB 803 on October 7, 2021, and the BBC is currently in the process of implementing the new hour requirements along with the other reforms made in the bill. The reduction of the hour requirement for cosmetology schools was consistently opposed by both representatives of the licensed beauty profession, who argued that allowing future applicants to obtain the same license under significantly less burdensome requirements "de-professionalized" or "devalued" the beauty industry. Also opposed were a number of schools offering courses in cosmetology.

This bill is sponsored by Bellus Academy, which still offers a 1,600-hour course in cosmetology for a total cost of $27,151.06. Bellus Academy considers its cosmetology course to be one of the

most prestigious in California, describing it as follows: "Our comprehensive course includes 5 months dedicated to extensive theoretical and hands-on training with an emphasis on cutting and hair color. This program also includes 3 months of advanced training including hair and eyelash extension training, empowering you to offer clients in-demand premium services. Refine your new skillset in our professional salon floor where you will work directly with a diverse clientele and master the art of consultation."

Nothing under current law prohibits a cosmetology school from operating and offering a program consisting of 1,600 or more in instruction and training hours. Schools like Bellus Academy can structure their programs however they believe best prepares students for licensure, and graduates of more rigorous schools can arguably use their completion of those programs as a marketing advantage to demonstrate their advanced skill and knowledge. However, it is also arguable that these schools will see fewer students interested in attending cosmetology programs that feature 600 more hours than are required for licensure in California.

Another argument against the reduction of clock hours required in cosmetology school is in regards to license portability. Currently, the BBC offers licensure reciprocity to individuals licensed and in good standing in other states, and other state boards have similar programs that would allow a California-licensed cosmetologist to receive recognition in other states. The supporters of this bill argue that in states where training hour requirements more closely resemble California's prior 1,600-hour requirement, those who received a license with only 1,000 hours may not be accepted. California law cannot dictate how reciprocity is accepted in other states. However, it is worth noting that California has historically accepted cosmetologists from states like New York and Texas that have had a 1,000-hour requirement prior to reducing its own requirement to that number. Presumably, other states can and hopefully will extend similar treatment to California.

Additionally, because the BBC has only just begun to implement SB 803, there has been no data to suggest that the 1,000-hour requirement has led to any increase in complaints against cosmetologists or has substantially created new burdens for California licensees. It is therefore arguably premature to propose increasing hours just recently decreased through SB 803 after significant deliberation by the Legislature through the sunset review process. The author may wish to instead consider resolving other identified issues with the language chaptered through SB 803 that do not represent a reversal of policy just recently established.

AMENDMENTS:

1) To remove language proposing to reverse policy decisions made very recently by the Legislature through the comprehensive sunset review process, strike Section 1 of the bill and revert all proposed changes to the minimum required hours for cosmetology programs.

Additional proposed amendments consist of minor and technical changes to clean up provisions contained in Senate Bill 803 not relating to school hours.

2) Senate Bill 803 created a hairstylist license, intended to allow only "hair-only services"; however, language in that bill inadvertently granted authority to perform services outside that scope and failed to include hairstyling in existing exemptions from licensure. To resolve these drafting errors, amend BPC § 7316 to include the practice of hairstyling in subdivision (e) and to strike paragraph (3) from subdivision (h) so that "massaging cleaning, or stimulating the scalp, face, and neck" are no longer included in the practice of hairstyling.

3) Another change made in Senate Bill 803 was to allow externs to be paid and for more clock hours to be completed through externship program; however, corresponding changes were erroneously limited to some statutes and not others. To reconcile these statutes, amend BPC § 7317 to clarify that an externship program participant can be compensated; amend BPC § 7334 to make the BBC's establishment of preapprenticeship training hours for barbering consistent with cosmetology; and amend BPC § 7395.2 regarding externships for barbering to include the same language as BPC § 7395.1 regarding externships for cosmetology.

4) Senate Bill 803 replaced statutes delegating the BBC with the responsibility to set curricula for training for most of its license types with more prescriptive delineations of coursework requirements; however, statute still delegates responsibility for establishing the curricula for courses in electrolysis. To align this statute with other statutes establishing prelicensure training program curricula, amend BPC § 7366 to codify the BBC's existing regulations for curricula in electrology.

REGISTERED SUPPORT:

Bellus Academy *(Sponsor)*
Paul Mitchell Schools

REGISTERED OPPOSITION:

Future of The Beauty Industry Coalition

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2276 (Carrillo) – As Introduced February 16, 2022

SUBJECT: Dental assistants.

SUMMARY: Authorizes unlicensed dental assistants to polish teeth and apply dental sealants.

EXISTING LAW:

1) Regulates the practice of dentistry under the Dental Practice Act and establishes the Dental Board of California (DBC) within the Department of Consumer Affairs (DCA) to administer and enforce the act. (Business and Professions Code (BPC) §§ 1600-1976)

2) Requires every board in the DCA to require its licensees to provide notice to their clients or customers that the practitioner is licensed by this state. (BPC § 138)

3) Requires the DBC to require (1) that the required notice regarding state licensure includes a provision that the DBC is the entity that regulates dentists and dental assistants and provides the telephone number and website of the DBC and (2) that the notice to be posted in a conspicuous location accessible to public view and accessible electronically for patients receiving dental services through telehealth. (BPC § 1611.3)

4) Authorizes the DBC to inspect the licensing documents, records, and premises of any dental assistant permitted under the Dental Practice Act in response to a complaint that a dental assistant has violated any law or regulation that constitutes grounds for disciplinary action by the DBC. (BPC § 1611.5)

5) Requires the DBC to keep a record of the names of all persons to whom licenses or permits have been granted by it to practice dentistry, dental assisting, or any other function requiring a permit, and other records as may be necessary to show plainly all of its acts and proceedings. (BPC § 1612)

6) Defines "direct supervision" to mean the supervision of dental procedures based on instructions given by a licensed dentist, who must be physically present in the treatment facility during the performance of those procedures. (BPC § 1741(b))

7) Defines "general supervision" as supervision of dental procedures based on instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist during the performance of those procedures. (BPC § 1741(c))

8) Defines a "dental assistant" as an individual who, without a license, may perform basic supportive dental procedures, as defined, under the supervision of a licensed dentist. (BPC § 1750(a))

9) Defines "basic supportive dental procedures" as procedures that have technically elementary characteristics, are completely reversible, and are unlikely to precipitate potentially hazardous conditions for the patient being treated. (BPC § 1750(a))

10) Specifies that the supervising licensed dentist is responsible for determining the competency of a dental assistant to perform any basic supportive dental procedures. (BPC § 1750(b))

11) Specifies that the employer of a dental assistant is responsible for ensuring that a dental assistant who has been in continuous employment for 120 days or more, has already completed, or completes, all of the following within a year of the date of employment:

    a) A DBC-approved two-hour course about the Dental Practice Act. (BPC § 1750(c)(1))

    b) A DBC-approved eight-hour course in infection control. (BPC § 1750(c)(2))

    c) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other equivalent course approved by the DBC that provides the student the opportunity to engage in hands-on simulated clinical scenarios. (BPC § 1750(c)(3))

12) Authorizes a dental assistant to perform various procedures under the direct supervision of a licensed dentist, including the application of specified topical agents, placing and removing orthodontic separators, examining and seating removable orthodontic appliances, removing post-extraction dressings, and removing sutures, among others. (BPC 1750.1(b))

13) Specifies that unprofessional conduct includes the aiding or abetting of a dental assistant to practice dentistry in a negligent or incompetent manner. (BPC § 1680(y))

THIS BILL:

1) Authorizes a dental assistant to polish the coronal surfaces of teeth or apply pit and fissure sealants when the dental assistant has completed each of the following:

    a) A DBC-approved, two-hour course about the Dental Practice Act.

    b) A DBC-approved, eight-hour course in infection control.

    c) A DBC-approved course in the procedure they seek to perform.

2) Requires the procedure to be performed under the direct supervision of a licensed dentist.

3) Requires the procedure to be performed only after the dental assistant has provided evidence to the DBC they have completed a DBC-approved course in the procedure.

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

COMMENTS:

Purpose. This bill is sponsored by the *California Dental Association*. According to the author, "[This bill] would expand the scope of work for dental assistants that have completed a course on the respective procedure and a course on infection control to perform coronal polishing and apply sealants. By making this narrow change, this bill will create more opportunities for recruiting and hiring Dental Assistants. The American Dental Association has identified a workforce need for Dental Assistants, with a 50% decline in the number of first year enrollments in training programs over the last ten years. This bill also preserves existing standards of patient

care, by requiring the supervision of a licensed dentist and only allowing procedures that are fully reversible."

Background. Dental assistants are unlicensed individuals who work in dental practices under the supervision of a licensed dentist and perform specified "basic supportive dental procedures," which are defined as "procedures that have technically elementary characteristics, are completely reversible, and are unlikely to precipitate potentially hazardous conditions for the patient being treated." Because dental assistants are unlicensed they are not registered with the DBC or directly regulated by the DBC.

Scope of Practice. Under the general supervision of a licensed dentist, meaning the dentist provides direction and is responsible for the actions of the dental assistant but does not have to be physically present, a dental assistant may perform the following:

1) Extra-oral duties or procedures specified by the supervising licensed dentist, provided that the duties or procedures meet the definition of a "basic supportive dental procedure."

2) Operate dental radiography equipment for oral radiography if the dental assistant has complied with additional radiography requirements.

3) Perform intraoral and extraoral photography.

Under the direct supervision of a licensed dentist, meaning the dentist provides direction and is physically on the premises and available, a dental assistant may perform the following:

1) Apply nonaerosol and noncaustic topical agents.

2) Apply topical fluoride.

3) Take intraoral impressions for all nonprosthodontic appliances.

4) Take facebow transfers and bite registrations.

5) Place and remove rubber dams or other isolation devices.

6) Place, wedge, and remove matrices for restorative procedures.

7) Remove postextraction dressings after inspection of the surgical site by the supervising licensed dentist.

8) Perform measurements for orthodontic treatment.

9) Cure restorative or orthodontic materials in an operative site with a light-curing device.

10) Examine orthodontic appliances.

11) Place and remove orthodontic separators.

12) Remove ligature ties and archwires.

13) After adjustment by the dentist, examine and seat removable orthodontic appliances and deliver care instructions to the patient.

14) Remove periodontal dressings.

15) Remove sutures after inspection of the site by the dentist.

16) Place patient monitoring sensors.

17) Monitor patient sedation, limited to reading and transmitting information from the monitor display during the intraoperative phase of surgery for electrocardiogram waveform, carbon dioxide and end-tidal carbon dioxide concentrations, respiratory cycle data, continuous noninvasive blood pressure data, or pulse arterial oxygen saturation measurements, for interpretation and evaluation by a supervising licensed dentist who is at the patient's chairside during this procedure.

18) Assist in the administration of nitrous oxide when used for analgesia or sedation, except they may not start the administration of the gases or adjust the flow of the gases unless instructed to do so by the supervising licensed dentist present at the patient's chairside.

This bill would additionally allow a dental assistant under direct supervision to perform polishing of the coronal surfaces of the teeth and apply pit and fissure sealant. Currently, Registered Dental Assistants (RDAs) and Registered Dental Hygenists (RDHs) are the only non-dentists who may polish teeth and apply sealants (besides a dentist). Both professions are licensed and have significantly more training than a dental assistant.

Training. Dental assistants have minimal training requirements. Within one year of employment, dental assistants must complete the following:

1) A DBC-approved two-hour course in the Dental Practice Act.

2) A DBC-approved eight-hour course in infection control.

3) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or other equivalent course approved by the DBC.

In addition, dental assistants must practice under supervision, and the supervising dentist is responsible for determining the competency of the dental assistant to perform the basic supportive dental procedures. If the dentist allows the dental assistant to practice incompetently, the dentist is subject to disciplinary action by the DBC, up to revocation of their license.

Dental assistants may also perform additional procedures if they obtain additional training in orthodontics and sedation. The additional training requirements include 12 months of work experience as a dental assistant and completion of a DBC-approved course for the relevant topic after at least 6 months of work as a dental assistant.

This bill would additionally require dental assistants to complete DBC-approved courses in tooth polishing and application of pit and fissure sealant and submission of proof of completion to the DBC to perform the procedures authorized under this bill.

Coronal Polishing. Coronal (towards the crown of the tooth) polishing is a procedure that removes plaque and stains from exposed tooth surfaces, utilizing a rotary instrument with a rubber cup or brush and a polishing agent. The goals of polishing are to clean and create a smooth tooth surface that is less likely to stain, retain buildup, enhance fluoride absorption, and prepare teeth for other dental procedures.

To accomplish that goal, abrasive polishing agents are used to both remove material that has adhered to the surface of a tooth and smooth the surface of the teeth. Smoothing is accomplished by causing microabrasions that eventually even out larger scratches and other features that cause roughness.

Pit and Fissure Sealant. The application of sealant to teeth is a procedure that creates a physical barrier and is commonly used for pits and fissures. Pits and fissures are more prone to cavities and the enamel in pits and fissures does not benefit as well as smooth surfaces from fluorides.

The process for applying sealant starts with cleaning the areas to be sealed and then using acidic substances to create an acid etch, which is a rough patch at the microscopic level in the enamel of the teeth. The etch helps the sealant bond with the tooth.

Other States. Many states require additional training for an unlicensed dental assistant to provide these procedures, some requiring the equivalent of an RDA in California and some requiring training similar to this bill or additional supervision limitations. There are also at least three states that prohibit any type of dental assistant, licensed or otherwise, from performing the procedures under this bill. Four states are completely silent on polishing and two states are silent on sealants.

ARGUMENTS IN SUPPORT:

The *California Dental Association (sponsor)* writes in support:

> Dentistry, like many other professions, was hit hard by the onset of COVID-19. This unprecedented public health emergency led to approximately 97% of dental offices closing completely during the initial months of the 2020 shelter-in-place orders. Even though dental offices are operating at a capacity near pre-pandemic levels, preexisting workforce shortages, particularly dental assistant (DA) positions, have been exacerbated by the pandemic.
>
> In November 2021, 87% of dental offices nationally reported that when compared to pre-pandemic, it is extremely challenging to recruit and hire dental assistants. In the same survey, 44% of providers identified trouble filling vacant staff positions have limited their practice's ability to treat more patients. Lastly, according to the American Dental Association, over the last 10 years there has been a nearly 50% decline in the number of first-year enrollment in dental assistant programs.
>
> Dental assistants are often trained on the job and play a vital role in supporting the entire dental team. Currently, dental assistants can enroll and complete courses to receive certificates through programs approved by the [DBC] to perform coronal polishing and apply sealants, but they cannot perform these tasks until [they] receive [RDA] licensure.

> [This bill] would expand the scope of practice of unlicensed dental assistants to include coronal polishing and placement of sealants under direct supervision once they have successfully obtained the appropriate certifications. This bill will help alleviate some of the dental assisting workforce issues that dental practices throughout California have been facing in three primary ways. First, this bill allows unlicensed dental assistants to perform duties to the limits of their certifications without needing to complete a costly RDA program and exam. Second, this bill provides DAs additional opportunities to learn about the dental assisting career ladder. Lastly, this bill balances the needs of dental practices who are struggling to hire dental team members that expand the ability to provide care while also protecting patients by ensuring DAs are appropriately trained and supervised to perform these new duties.

ARGUMENTS IN OPPOSITION:

The *California Dental Assisting Alliance*, which includes the *California Association of Dental Assisting Teachers*, *California Dental Assistants Association*, *Dental Assisting Educators Group*, and *RDAEF Association*, writes in opposition:

> The California Dental Association is seeking a statutory change to have an unlicensed dental assistant perform more advanced procedures. These more advanced procedures are currently performed by [an RDA]. To become an RDA, an individual must either complete a 9- to 11-month full-time program offered by a community college or private sector school approved by the [DBC] or may use a work-based pathway and complete 18 months of work experience and three additional short-term courses. In addition, the RDA must complete continuing education, maintain licensure through a renewal process with the [DBC] every two years and be under the complete jurisdiction of the DBC and all its regulatory powers.
>
> In contrast, the Dental Assistant (DA) is an entry-level individual that must complete two courses within 12 months after employment that total 10 hours. These courses are not reported to the [DBC] and are often not completed for many months or not at all. The DBC has no legal authority over this category of assistant since they are unlicensed. In a tracking process, these individuals are basically non-existent. This unlicensed dental assistant can literally have been a waitress, hotel worker, or just graduated from high school and (if this bill passes) be performing these technically advanced procedures within weeks of employment with little oversight. Moving these duties to an unlicensed dental assistant provides no accountability with the [DBC] or protection to the consumers of California.
>
> This bill is in direct conflict with the very definition of the role of an unlicensed dental assistant. In [BPC § 1750], a dental assistant is one who provides "basic supportive dental procedures . . . that have technically elementary characteristics, are completely reversible . . . ". Neither of these two duties fit into the category of completely reversible, basic, or supportive in nature and they include the use of dental handpieces and the use of acid etch (a 37% concentration of phosphoric acid) on the patient's teeth. It is also in contradiction with the intent of the original

> legislation as stated in [BPC § 1740] that provides "the continual advancement of persons to successively higher levels of licensure with additional education and training."
>
> Their stated purpose for this bill is to address the "issue with RDA shortages due to the licensure of the registered dental assistants." We would agree that there is a shortage of RDAs - as well as dental assistants and hygienists - but would assert that it is not licensing that is causing the shortage. In fact, data from the [DBC] shows that the number of RDA's has remained stable over the past six years.

The *California Dental Hygienist's Association (CDHA)* writes in opposition that "(1) dentists are not in agreement that the procedures are reversible, some believe the procedures are irreversible, (2) there is no data to support the claim that there is a shortage of DAs/RDAs, and (3) that unlicensed DAs earn minimum wage, often without benefits and RDAs are paid more and expect benefits." Specifically:

> This bill would allow dental assistants to perform coronal polishing and to place dental sealants. Both duties are now under the scope of practice of only licensed individuals: [RDAs], [RDHs], and licensed Dentists.
>
> Both procedures are irreversible. Coronal polish uses abrasives, which remove enamel. Dental sealants require an acid etch with phosphoric acid, which creates pores in the tooth to allow the sealant material to adhere.
>
> CDHA has met with the bill's sponsor, the California Dental Association (CDA), and Assembly Member Carrillo's office. In reviewing the fact sheet and in discussion with CDA and the author's office, we must alert members of the following:
>
> 1. Allowing unlicensed dental personnel to perform these duties with only a certification course and no formal education will compromise patient safety as these individuals would have no background knowledge of anatomy of the tooth, medical emergencies that could arise and/or corrective procedures that need to take place.
>
> 2. Parents of children needing these procedures would not be aware that the person performing these procedures was licensed or unlicensed, setting up two standards of care.
>
> 3. Coronal polish/placement of dental sealants are not reversible procedures.
>
> 4. Both procedures if done incorrectly could result in discomfort and, in the case of dental sealants, pain due to the child's bite being affected.
>
> 5. Direct supervision by the dentist does not mean dentists will oversee the procedure or watch that the procedure is being done correctly. Direct supervision merely requires the dentist to be in the office.

6. Dental assistants cannot currently "enroll and complete courses to receive certificates through programs approved by the Dental Board to perform coronal polish and place sealants." Section 1073.3 and 1074 (b) of the California Code of Regulations state: Each student must possess the necessary requirements for application for RDA licensure or currently possess an RDA license. The requirements for licensure include completion of a board approved RDA educational program or 18 months of work experience.

7. There is not a documented shortage of dental assistants in California. The data presented in the fact sheet is national data. [DBC] statistics indicate that there has not been a decrease in the number of [RDAs]. The lack of unlicensed dental assistants in California is anecdotal only. Arguably, pay and employee compensation likely have a greater impact.

8. Of the states allowing dental assistants to perform these procedures, all but two states (Nevada and Arizona) require either some form of licensure or a minimum two years of work experience prior to taking certification courses for these procedures.

9. If this bill passes, [RDAs] will lose their jobs. The existing career ladder will cease to exist as these are two of the primary duties allowed to [RDAs]. Dentists would no longer need to employ RDAs when a cheaper under educated workforce was available.

10. Notably, the RDA license already provides a very accessible entry into the oral healthcare profession. Currently, RDAs may become licensed either through an education/training program or two years of on the job training alone. If this bill passes, [RDAs] will lose their jobs.

CDHA strongly supports the existing career ladder for RDAs. As part of a dental team, we believe that these procedures can only be performed safely by licensed dental professionals. Our patients, especially the children, deserve to have licensed professionals doing irreversible procedures.

The *Foundation for Allied Dental Education (FADE)* writes in opposition:

We have seen many legislative initiatives over the years, however, none with such detrimental impact to the dental consumers of California as [this bill]. As written, this bill allows for an unlicensed, uneducated and unregulated population of entry-level workers to perform intra-oral functions that have historically been delivered safely and proficiently by licensed personnel who shall be directly impacted by the depletion of duties and functions within their licensed category.

First and foremost, we all recognize that the pressure for allied healthcare personnel across medical and dental disciplines has been greatly impacted by the global pandemic, however, the reality is that the workforce shortage rationale used to defend legislative change over the past 40 years has resulted in nothing more than a decrease in state and national numbers of qualified personnel. We continue to experience a lack of general interest, recruitment and retention in dental assisting careers without research to identify the root cause. Meanwhile,

organized dentistry continues to believe that removal of educational standards, licensure and regulated duties will result in a dramatically different outcome. In reality, every effort to address access-to-care and workforce shortages have led to nothing more than depletion of qualified personnel, lack of enforcement, and an exponential increase in the aiding and abetting of the illegal practice of dentistry.

Additionally, current [BPC § 1750] defines a dental assistant as "an individual who, without a license, may perform basic supportive dental procedures [which] are those procedures that have technically elementary characteristics, are completely reversible, and are unlikely to precipitate potentially hazardous conditions for the patient being treated." Unless and until the author and the sponsors of [this bill] can demonstrate how the two procedures proposed to become legally allowable for an unlicensed person to perform meets the statutory definition of basic, technically elementary, completely reversible and unlikely to cause harm to a patient, we ask that the Committee vote against passage of [this bill].

Lastly, it should be noted that the American Dental Association's Commission on Dental Accreditation for Dental Assisting considers the performance of coronal polishing and the application of pit and fissure sealants to be expanded functions and not included in the Standards for Accreditation for programs nationwide.

We thank you for your time and attention to our opposition and the relevant positions justifying our opposition. We fully recognize the need for comprehensive review and revision of the dental assisting career ladder, the pathways for licensure, mandatory education and the educational regulations for programs, courses and providers – [this bill] is not in any way a comprehensive approach to addressing the needs of the dental office and will only serve to continue to deplete the most valued and trusted personnel we have in our profession – the [RDA].

POLICY ISSUES FOR CONSIDERATION:

Reversible Procedures. There is disagreement between the sponsor of this bill and the opposition as to whether the procedures under this bill are "reversible." There is no set definition of reversible, although it is generally understood to mean that the tooth can be restored to the state it was in before the procedure.

The sponsor argues that a properly performed polish does not alter teeth in a significant way, and therefore the term "reversible" is not applicable. The opposition argues that the micro abrasions caused by the polish are not reversible.

The sponsor also argues that sealant can be removed, and is therefore reversible. The opposition argues that the acid etch preparation for the sealant is not reversible, and if improperly performed, can result in severe injury.

Arguably, any procedure improperly performed can result in irreversible harm, and unlicensed dental assistants are currently allowed to perform a number of procedures that, if improperly executed, can result in permanent damage. This includes application of topical agents, placing and removing orthodontic separators, examining and seating removable orthodontic appliances,

removing post-extraction dressings, and removing sutures, among other things. Ultimately, existing law required the supervising dentist to ensure these procedures are performed properly. If this bill passes this Committee, the author may wish to work with the DBC and stakeholders on the definition of "reversible."

Regulation of Dental Assistants. The opposition to this bill argues that the DBC has no control over unlicensed dental assistants. While dental assistants are not specifically licensed, every dental assistant must operate under a supervising dentist who is responsible for ensuring the competency of the dental assistant. The supervising dentist has a license, and if they allow a dental assistant to perform incompetently, their license would be subject to discipline. If this bill passes this Committee, the author may wish to work with the DBC and stakeholders on the liability of a supervising dentist relative to an incompetent dental assistant.

RDA Workforce Pipeline. The opposition points out that the procedures under this bill are procedures that RDAs and RDHs perform, and only after significantly more training than required under this bill. They also point out that RDAs who only perform coronal polishing or apply sealants may no longer have a reason to renew their license.

If this bill passes this Committee, the author and sponsors may wish to work with the DBC on a more comprehensive reform to the dental assisting career ladder. One avenue may be working with the Office of Professional Examination Services (OPES) within the Department of Consumer Affairs to perform additional occupational analyses of the dental assistant and RDA profession specific to the procedures outlined under this bill.

IMPLEMENTATION ISSUES:

Board-Approved Course. The DBC currently approves certificate courses for both of the procedures under this bill. However, they are currently tailored to RDAs who have completed one of the traditional RDA licensure pathways. If this bill passes this Committee, the author and sponsors may wish to work with the DBC and educators to ensure the courses for unlicensed dental assistants fulfill the relevant knowledge and training gaps.

Proof of Course Completion. This bill requires a dental assistant to submit proof of completion of the DBC-approved courses to the DBC. Since dental assistants are unlicensed nor registered in any way with the DBC, it is unclear whether the DBC currently has a way to utilize or store these documents. If this bill passes this Committee, the author and sponsor may wish to work with the DBC to ensure it aligns with the DBC's operations.

Duplicative Requirements. This bill requires, among the other requirements, that dental assistants complete a two-hour course covering the Dental Practice Act and an eight-hour course in infection control. However, these courses are already required for all dental assistants. It is unclear whether these courses are in addition to or duplicative of the existing requirements. Further, because this provision is similar to the existing dental assistant enacting statutes (BPC § 1750) but is not identical and contains no cross-references, it is unclear whether this bill would create a separate pathway to dental assisting.

AMENDMENTS:

To ensure there is a responsible supervising dentist of record, proof of compliance with the requirements of the bill, and additional oversight from the supervising dentist, the author should amend the bill as follows:

On page 2 of the bill, after line 10, insert:

> *(c) The supervising dentist and dental practice where the procedures are performed shall be responsible for determining the competency of the dental assistant, consistent with subdivision (y) of Section 1680.*
>
> *(e) The dental practice where the procedures are performed shall maintain a record of compliance with the training requirements under this section.*
>
> *(d) The supervising dentist shall be listed in the record. If there is more than one supervising dentist, each supervising dentist shall be listed. For a pit and fissure sealant performed by a dental assistant, the supervising dentist must review all completed procedures.*
>
> *(e) The dental practice shall maintain the record for a minimum of two years after the dental assistant leaves the practice.*
>
> ~~(c)~~ *(f)* The procedure shall be performed only after the dental assistant has provided evidence to the board they have completed a board-approved course in the procedure.

REGISTERED SUPPORT:

California Dental Association (sponsor)

REGISTERED OPPOSITION:

California Dental Assistants Association
California Dental Hygienists Association
Foundation for Allied Dental Education (FADE)
4 individuals

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 2407 (O'Donnell) – As Amended March 10, 2022

SUBJECT: Vehicle tampering: theft of catalytic converters.

SUMMARY: Requires a core recycler to report specified information about the purchase and sale of catalytic converters to the chief of police or the sheriff, as prescribed, and to request to receive theft alert notifications regarding the theft of catalytic converters from a specified theft alert system. Requires a core recycler to obtain the thumbprint of a seller of a catalytic converter and to preserve the thumbprint for 2 years.

EXISTING LAW:

1) Requires a core recycler who accepts a catalytic converter for recycling to maintain a written record of the following:

    a) The place and date of each sale or purchase of a catalytic converter made in the conduct of his or her business as a core recycler;

    b) The name, valid driver's license number, and state of issue, or California-issued identification number, of the seller of the catalytic converter and the vehicle license number, including state of issue of a motor vehicle used in transporting the catalytic converter to the core recycler's place of business; if the seller is a business, the written record shall include the name, address, and telephone number of the business;

    c) A description of the catalytic converters purchased or sold, including the item type and quantity, amount paid for the catalytic converter, identification number, if any, and the vehicle identification number; and

    d) A statement indicating either that the seller of the catalytic converter is the owner of the catalytic converter, or the name of the person from whom he or she has obtained the catalytic converter, including the business, if applicable, as shown on a signed transfer document. (BPC § 21610(b))

2) Requires a core recycler engaged in the selling or shipping of used catalytic converters to other recyclers or smelters to retain information on the sale that includes all of the following:

    a) The name and address of each person to whom the catalytic converter is sold or disposed of;

    b) The quantity of catalytic converters being sold or shipped;

    c) The amount that was paid for the catalytic converters sold in the transaction; and,

    d) The date of the transaction. (BPC § 21610(c))

3) Prohibits a core recycler from providing payment for a catalytic converter unless all of the following requirements are met:

    a) The payment is made by check and provided to the seller by either of the following:

        i) Mailed to the seller at the address provided;

        ii) Mailed to the seller's business address, for a seller that is a business;

        iii) Collected by the seller from the recycler on the third business day after the date of sale; or

        iv) By immediate payment by check, debit card, or credit card, if the seller is a business that has a contract with a core recycler or is a licensed auto dismantler.

    b) The core recycler obtains:

        i) A clear photograph or video of the seller at the time of sale;

        ii) A copy of the valid driver's license of the seller or the seller's agent containing a photograph and an address of the seller or the seller's agent, or a copy of a state or federal government issued identification card containing a photograph and an address of the seller or the seller's agent;

        iii) A clear photograph or video of the catalytic converter being sold; and

        iv) A written statement from the seller indicating how the seller obtained the catalytic converter. (BPC § 21610(d))

4) Specifies that if the seller prefers to have the check for the catalytic converter mailed to an alternative address, as defined, the core recycler shall obtain a copy of a driver's license or identification card and a gas or electric utility bill addressed to the seller at the alternative address, as specified. (BPC § 21610(d))

5) Exempts a core recycler that buys catalytic converters, transmissions, or other parts removed from a vehicle from the payment requirements in (3) above if the core recycler and the seller have a written agreement for the transaction. (BPC § 21610(e))

6) Specifies that core recyclers accepting catalytic converters from licensed auto dismantlers or from recyclers who hold a written agreement with a business that sells catalytic converters for recycling purposes are required to collect only the following information:

    a) Name of seller or agent acting on behalf of the seller.

    b) Date of transaction.

    c) Number of catalytic converters received in the course of the transaction.

    d) Amount of money that was paid for catalytic converters in the course of the transaction. (BPC § 21610(f))

7) Requires a core recycler to keep and maintain the information required by law for no less than two years, and to make the information available for inspection by local law enforcement upon demand. (BPC § 21610(g) and (h))

8) States that a person who makes, or causes to be made, a false or fictitious statement regarding any information required by law, or who violates a requirement of the law, is guilty of a misdemeanor. (BPC § 21610(i) and (j))

9) Sets forth the following punishments upon conviction for persons who knowingly and willfully violate the aforementioned requirements as follows:

   a) A fine of $1,000 for a first conviction.

   b) A fine of not less than $2,000 for a second conviction.

   c) A fine of not less than $4,000 for a third and subsequent conviction. (BPC § 21610(k))

10) Authorizes a court to order the defendant to cease engaging in the business of a core recycler for a period not to exceed 30 days for a second conviction, and for a period not less than one year for a third and subsequent conviction, in addition to any fines imposed. (BPC § 21610(k))

11) Specifies that the requirements of this bill apply to core recyclers and not to a subsequent purchaser of a catalytic converter who is not a core recycler. (BPC § 21610(l))

12) Specifies that the provisions of this section do not apply to a core recycler who holds a written agreement with a business or recycler regarding the transactions. (BPC § 21610(l))

13) Defines "core recycler" as a person or business, including a recycler or junk dealer, that buys used individual catalytic converters, transmissions, or other parts previously removed from a vehicle; however, a person or business that buys a vehicle that may contain these parts is not a "core recycler." (BPC § 21610(a))

THIS BILL:

1) Would require a core recycler to report specified information collected about the purchase and sale of catalytic converters to the chief of police or the sheriff, as prescribed, and to request to receive theft alert notifications regarding the theft of catalytic converters from a specified theft alert system.

2) Would require a core recycler to obtain the thumbprint of a seller of a catalytic converter and to preserve the thumbprint for 2 years. The bill would limit the inspection or seizure of a thumbprint to that performed by law enforcement pursuant to a criminal search warrant based upon probable cause.

3) Would encourage local law enforcement agencies to report thefts of catalytic converters that have occurred within their jurisdiction to a specified theft alert system.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "[This bill] strengthens the laws governing the sale of used catalytic converters, making it more difficult for thieves to profit from selling stolen converters. Specifically, this bill requires anyone buying a catalytic converter to share the written information they are required to collect about the seller with local law enforcement, obtain the seller's thumbprint, and request to receive notifications about catalytic converter theft. It also adds catalytic converter theft to the list of crimes that law enforcement is encouraged to report to the theft alert notification system. Taken together, these new requirements will make it more difficult for thieves to profit off stolen catalytic converters, make it easier for law enforcement to catch thieves, and discourage them from committing the crime in the first place."

Background.

Catalytic converters. Catalytic converters are devices that reduce pollution-causing emissions. Since 1975, all vehicles produced in the United States must have a catalytic converter as part of the exhaust system to help reduce contaminants from the exhaust. The precious metals inside act as catalysts; when hot exhaust enters the converter, a chemical reaction occurs that renders toxic gases, such as carbon monoxide and hydrocarbons, into less harmful emissions.

According to the National Insurance Crime Bureau (NICB), rhodium was valued at $14,500 per ounce, palladium was valued at $2,336 per ounce, and platinum was valued at $1,061 per ounce of platinum, as of December 2020. Catalytic converters can be melted down to extract these precious metals, making them easy and popular targets for theft.

Vehicles that sit higher from the ground, such as trucks, pick-ups, and sports utility vehicles, are particularly vulnerable to catalytic converter theft because thieves can slide underneath without having to jack up the vehicle to gain access to the catalytic converter. With a battery-powered saw, a catalytic converter can be removed in less than a minute. Stolen catalytic converters can be worth several hundred dollars.

Based on a study of reported thefts, NCIB found that there were approximately 1,203 thefts of catalytic converters per month in 2020 compared to 108 per month in 2018. Over the three-year period, the highest number of thefts occurred in California, followed by Texas, Minnesota, North Carolina, and Illinois. The frequency of thefts has accelerated throughout the COVID-19 pandemic.

Current Related Legislation.

AB 1622 (Chen) would require the Department of Consumer Affairs to provide a licensed smog check station with a sign informing customers about strategies for deterring catalytic converter theft, including the etching of identifying information on the catalytic converter, and require the sign to be posted conspicuously in all licensed smog check stations in an area frequented by customers. The bill would also authorize stations where licensed smog check technician repairs are performed to offer and recommend to customers the etching as an optional service provided in conjunction with the smog check. *Pending in the Assembly Transportation Committee.*

AB 1659 (Patterson) would revise the definition of an "automobile dismantler" to include a person who keeps or maintains two or more used catalytic converters that are not attached to a

motor vehicle on property owned by the person, or under their possession or control, for specified purposes. *Pending in the Assembly Transportation Committee.*

AB 1984 (Choi) would prohibit the purchase, sale, receipt, or possession of a stolen catalytic converter, as specified. The bill specifies that a peace officer would need not have actual knowledge that the catalytic converter is stolen to establish probable cause for arrest, and that for prosecution, circumstantial evidence may be used to prove the stolen nature of the catalytic converter. *Pending in the Assembly Transportation Committee.AB 2407 (O'Donnell)* would require a core recycler to report specified information about the purchase and sale of catalytic converters to the chief of police or the sheriff, as prescribed, and to request to receive theft alert notifications regarding the theft of catalytic converters from a specified theft alert system. The bill would also require a core recycler to obtain the thumbprint of a seller of a catalytic converter and to preserve the thumbprint for a period of 2 years. The bill would limit the inspection or seizure of a thumbprint to that performed by law enforcement pursuant to a criminal search warrant based upon probable cause. *AB 2407 is pending in this committee.*

AB 2682 (Gray) would require any automotive repair dealer that installs or replaces a catalytic converter on a motor vehicle to ensure that the catalytic converter is engraved, etched, or otherwise permanently marked with the last five digits of the vehicle identification number of the vehicle on which it is being installed. The bill would require a smog check station to inspect the exterior of the catalytic converter, if any, of the vehicle being tested and notify the customer whether or not the catalytic converter is engraved, etched, or otherwise permanently marked with the last five digits of the vehicle identification number. The bill would also prohibit any person, except as exempted, from removing, altering, or obfuscating the vehicle identification number engraved, etched, or otherwise marked on a catalytic converter, or from knowingly possessing a catalytic converter that has been so altered. The bill would also prohibit a dealer or retail seller from selling a motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved, etched, or otherwise permanently marked with the last five digits of vehicle identification number of the vehicle to which it is attached. *AB 2682 is pending in Assembly Transportation Committee.*

SB 919 (Jones) would prohibit a core recycler from purchasing or otherwise receiving any catalytic converter that is not engraved, etched, or otherwise permanently marked with the vehicle identification number of the vehicle that it was removed from. The bill would require a core recycler to maintain a log that includes a description of all catalytic converters purchased or received by the core recycler, as specified. The bill would prohibit a person from buying, selling, receiving, or possessing a stolen catalytic converter as well as removing, altering, or obfuscating a vehicle identification number or other unique marking that has been added to a catalytic converter. This bill would prohibit a dealer or retail seller from selling a motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved, etched, or otherwise permanently marked with the vehicle identification number of the vehicle to which it is attached. *SB 919 is pending in Senate Business, Professions and Economic Development Committee.*

SB 986 (Umberg and Portantino) would, in part, prohibit a dealer or retailer from selling a new motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved or etched with the vehicle identification number of the vehicle to which it is attached. *SB 986 is pending in Senate Business, Professions and Economic Development Committee.*

SB 1087 (Gonzalez) would, in part, prohibit any person from purchasing a used catalytic converter except from specified sellers, including an automobile dismantler, an automotive repair dealer, or an individual possessing documentation, as specified, that they are the lawful owner of the catalytic converter. *SB 919 is pending in Senate Business, Professions and Economic Development Committee.*

Prior Related Legislation.

SB 627 (Calderon), Chapter 603, Statutes of 2009, requires core recyclers, as defined, to comply with additional recordkeeping and identification procedures and new payment restrictions when purchasing catalytic converters.

AB 2398 (Villapudua) of 2022 would have made possession of a detached catalytic converter a wobbler, punishable by imprisonment in a county jail for not more than one year, or in the county jail for 16 months, or two, or three years. *Failed passage in the Assembly Public Safety Committee.*

ARGUMENTS IN SUPPORT:

The California Police Chiefs Association writes in support, "We support [this bill] because its provisions will establish a more robust reporting system for the sale and transfer of these auto parts, while helping to ensure the continued protection of Californians' valuable property."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Impact. Existing law sets forth a series of requirements for sellers and recyclers of catalytic converters. An individual attempting to sell a stolen catalytic converter is unlikely to try and sell it to a core recycler where they would be required to provide detailed personal information, attest to being the lawful owner of the catalytic converter, have a photo taken, and wait for three days to pick up their payment or have their payment mailed to them. As such it is unclear to what extent this bill would have on curbing the illicit marketplace for stolen catalytic converters.

Thumbprint requirement. This bill would require a core recycler to obtain the thumbprint of a seller of a catalytic converter and to preserve the thumbprint for two years, although inspection or seizure of a thumbprint would be limited to law enforcement pursuant to a criminal search warrant based on probable cause. Existing law similarly requires a junk dealer or recycler to obtain the thumbprint of a seller of nonferrous material, meaning copper, copper alloys, stainless steel, or aluminum (aside from beverage containers). However, automobile dismantlers are exempt. The author may wish to exempt automobile dismantlers; core recyclers, motor vehicle dealers, and automotive repair dealers, as defined by law, from the requirement to provide a thumbprint.

IMPLEMENTATION ISSUE(S) FOR CONSIDERATION:

Chaptering out amendments. This bill is currently in conflict with AB 1740 (Muratsuchi), SB 1087 (Gonzalez), and SB 986 (Umberg and Portantino) and may require chaptering out

amendments to ensure that the bills, if signed in to law, to reflect the changes made by the other bills.

REGISTERED SUPPORT:

Auto Club of Southern California (AAA)
California Police Chiefs Association

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2574 (Salas) – As Introduced February 18, 2022

SUBJECT: Optometry.

SUMMARY: Corrects an erroneous cross-reference between the clinical laboratory director definition related to optometrists and the Optometry Practice Act and re-authorizes and requires an optometrist to, in an emergency, stabilize, if possible, and immediately refer any patient who has an acute attack of angle-closure glaucoma to an ophthalmologist.

EXISTING LAW:

1) Regulates the practice of optometry under the Optometry Practice Act and establishes the California State Board of Optometry to administer and enforce the Act. (Business and Professions Code (BPC) §§ 3000-3167)

2) Defines the practice of optometry as including the diagnosis, prevention, treatment, and management of disorders and dysfunctions of the visual system, as authorized under the Optometry Practice Act. (BPC § 3041)

3) Authorizes an optometrist to treat specified glaucomas using antiglaucoma agents if the optometrist has obtained a therapeutic pharmaceutical agents certification and completed specified glaucoma coursework. (BPC §§ 3041(a)(C), 3041(c), 3041.3)

4) Provides for the licensure, registration, and regulation of clinical laboratories and various clinical laboratory personnel by the California Department of Public Health (CDPH). (BPC §§ 1200-1327)

5) Authorizes an optometrist to serve as the laboratory director for a laboratory classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) (42 U.S.C. Sec. 263a; Public Law 100-578) that only performs clinical laboratory tests authorized under the Optometry Practice Act. (BPC § 1209(a)(2)(D))

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

COMMENTS:

Purpose. This bill is sponsored by the *California Optometric Association*. According to the author, "Last year, the Governor signed my legislation AB 407, to expand the optometric scope of practice. In that revision, there were two unintended changes. This bill is needed to restore the law in two areas to what was allowed before AB 407. Specifically, this bill: 1) restores the authority for an optometrist to direct waived labs performing CLIA waived testing; and 2) restores the ability of an optometrist to stabilize a patient with acute angle closure glaucoma. The authority to direct CLIA waived labs needs to be restored immediately so that optometrists can continue to use point-of-care testing to diagnose many kinds of eye conditions. Additionally, an acute attack of angle-closure glaucoma is sight-threatening, and someone can lose their sight if

an optometrist hesitates to treat them because they were worried about the statutory authority to intervene."

Background. Optometry is a healthcare profession that deals with eye health, including sight testing and correction, diagnosis, treatment, and management of vision changes and other eye conditions, such as glaucoma. Optometrists are regulated by the California State Board of Optometry. In Fiscal Year 2019-20, the board reported a total of 7,486 active optometry licensees.

Clinical Laboratory Tests. Federal and California law requires any facility that performs laboratory tests on human specimens for diagnostic or assessment purposes must be certified under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA). All laboratories must have a designated and qualified laboratory director, and California law specifies who may direct a laboratory, which differs based on the complexity of the testing performed. In order of test difficulty and risk of harm resulting from an incorrect result, the classifications are high complexity, moderate complexity, and waived. Waived testing is generally simple and carries a low risk of error (for example, at-home pregnancy tests).

Optometrists are authorized to direct a laboratory that performs waived testing. However, the clinical laboratory laws require an update to correct a cross-reference that is out-of-date due to recent legislation. This bill makes that update.

Acute Closed Angle Glaucoma. Acute angle-closure glaucoma is an ocular emergency that results from a rapid increase in pressure due to a blockage or obstruction of the outflow of aqueous humor (clear fluid in the space towards the front of the eye). The rapid increase in pressure (glaucoma) can damage the optic nerve and eventually lead to blindness.

Initial treatment for acute angle-closure glaucoma can include the application of medications or other procedures to reduce intraocular pressure, but ultimately it may require the use of lasers or surgery. This bill would reinsert the authority for optometrists to stabilize the condition and reinsert the requirement that the optometrist immediately refers the patient to an ophthalmologist.

Prior Related Legislation. AB 407 (Salas), Chapter 652, Statutes of 2021, expanded and revised the scope of practice for qualified optometrists and optometric assistants to diagnose and treat specified disorders and dysfunctions of the visual system and authorized optometric assistants to perform preliminary subjective refraction procedures under specified conditions.

AB 1467 (Salas and Low) of 2019 would have authorized an optometrist to provide services outlined in a delegation of services agreement between the optometrist and an ophthalmologist. That bill died in the Senate Committee on Business, Professions, and Economic Development.

AB 761 (Hernández), Chapter 714, Statutes of 2012, included optometrists among those who may perform clinical laboratory tests or examinations that are classified as waived and serve as the laboratory director for a facility that performs those tests.

SB 1406 (Correa), Chapter 352, Statutes of 2008, expanded the scope of practice for optometrists, including establishing requirements for glaucoma certification and the requirement related to an acute closed-angle attack.

ARGUMENTS IN SUPPORT:

The *California Optometric Association* (sponsor) writes in support:

> [This bill] addresses two provisions that were inadvertently dropped out when AB 407 was enacted.
>
> The bill reinstates the ability of an optometrist to be a lab director for CLIA waived testing. Without this authority, optometrists will not be able to diagnose certain eye diseases with point-of-care testing. They also will not be able to detect/rule out other conditions that affect the eye, like diabetes. The authority to direct CLIA waived labs needs to be restored immediately so that optometrists can continue to use point-of-care testing that they have been doing since 2012.
>
> The bill also reinstates the ability to stabilize a patient with an acute attack of angle closure glaucoma. The authority to stabilize a patient with acute angle-closure was added in 2008 with SB 1406 (Correa) and there have been no reported issues or concerns. The authority was accidentally deleted in the end-of-session amendments to AB 407.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Optometric Association (sponsor)

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2611 (Daly) – As Amended March 24, 2022

SUBJECT: California family-owned businesses.

SUMMARY: Defines a "California family-owned business."

EXISTING LAW:

1) Defines a "small business" to mean an independently owned and operated business that is not dominant in the field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of fifteen million dollars ($15,000,000) or less over the previous three years, or is a manufacturer, as defined, with 100 or fewer employees. (Government Code (GC) § 14837)

2) Defines a "microbusiness" to mean a small business which, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars ($5,000,000) or less over the previous three years or is a manufacture, as specified, with 25 or fewer employees. (GC § 14837)

3) Defines a "disabled veteran business enterprise" to mean an enterprise that has been certified as meeting the qualifications established by Section 999 of the Military and Veterans Code. (GC § 14837)

4) Defines a "minority business enterprise" to mean a business concern which is all of the following: at least 51 percent owned by one or more minorities, or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities; managed by, and the daily business operations are controlled by, one or more minorities; and a domestic corporation with its home office located in the United States." (GC § 14533.6)

5) Defines a "Women business enterprise" to mean a business concern which is all of the following: at least 51 percent owned by a woman or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women; managed by, and the daily business operations are controlled by, one or more women; and A domestic corporation with its home office located in the United States. (GC § 14533.6)

THIS BILL:

1) Defines a "California family-owned business" to mean a business that meets all of the following requirements:

   a) Is organized as a privately held business by one individual or two or more related persons, or is a partnership of business entities owned by related persons;

   b) Maintains its principal executive office in California;

   c) Has been in business for more than 10 continuous years;

d) One of the following applies:

   i) Is owned by a sole proprietorship;

   ii) Is a business entity owned by one individual or two or more related persons domiciled in California who hold a majority of the equity interests; or

   iii) Is a partnership of business entities owned by related persons domiciled in California who hold a majority of the equity interests.

e) The business is controlled by one individual or two or more related persons who exhibit strategic influence and control of the business by holding the business as a sole proprietorship or by holding at least 30 percent of the voting interest; and

f) Demonstrates an intent to continuously operate as a family-owned business in the future through any of the following:

   i) Present ownership by two or more related persons;

   ii) A previous transfer of ownership or equity interests between related persons; or

   iii) Is subject to a written agreement providing for a future transfer between related persons provided that the agreement was executed in good faith.

2) Specifies that a "related person" includes a person who is related by a common ancestor, pursuant to state or federal law, up to four generations. Any person related by greater than four generations is included if that person's ownership or operational involvement arose from an exercise of continuity across generations as described in (f) above. "Related persons" also includes a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, adopted person, stepchild, foster child, uncle, aunt, niece, nephew, first cousin, and any person denoted by the prefix "grand" or "great." A spouse, domestic partner, and the spouse or domestic partner of any person that qualifies as a person related by a common ancestor, pursuant to state or federal law, up to four generations, is also included within the definition of "related persons" and shall continue to be included in the event of the legal relationship being terminated by death or dissolution.

3) Provides that the definition for "California family-owned business" created by this bill only applies to provisions that explicitly cross-reference it.

4) States that it is the intent of the Legislature that this act will aid, counsel, assist, and protect the interests of California family-owned businesses in order to preserve free competitive enterprise and support family-owned enterprises.

5) Makes legislative findings and declarations relative to the unique and valuable characteristics of California family owned businesses.

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

COMMENTS:

Purpose. This bill is sponsored by the *Family Business Association of California.* According to the author, "Family businesses are the backbone of the economy, both nationally and in California. According to the Family Business Association, family businesses generate 57% of the nation's Gross Domestic Product, employ 63% of the workforce, and create 75% of all new jobs. In total, California's 1.4 million family businesses employ 7 million Californians. Family owned businesses have unique characteristics that distinguish them from other businesses. Right now, there is no standardized definition of a family owned business. In fact, there are at least six definitions of small business across California code. Creating a standard is essential to provide clarity for policymakers when making economic development decisions such as tax policies, grant programs, and employee training incentives."

Background.

Family-Owned Businesses. According to SCORE, a nonprofit organization dedicated to mentoring entrepreneurs and small businesses, 19% of the country's 28.8 million small businesses are family-owned. They employ 60% of workers in the United States, produce 78% of new jobs, and generate 64% of the gross domestic product.

Prior Related Legislation.

SB 483 (Pan) of 2019 would have defined a "California family owned business." *Amended into a different bill on the Assembly Floor.*

AB 1430 (Cooper) of 2015 would have defined a "California family owned business." *Died on the Senate Floor Inactive File.*

AB 1260 (Medina) of 2014 would have defined a "California family owned business." *Vetoed.*

ARGUMENTS IN SUPPORT:

Capital Planning Advisors, *Carriere Family Farms*, *the Family Business Association of California*, *Holt of California*, the *Sacramento River Cats, Lloyd Pest Control, Quality Telecom Consultants, and the Rue & Forsman Ranch* each write in support of this bill:

"[This bill] is a necessary bill that codifies for the first time in state statute, a definition of a family-owned business. A statutory definition of a family-owned business is important for California because a family-owned business is distinct in many ways from other businesses…

"A uniform definition of a family-owned business will provide many benefits including one definition that can be referenced across codes in California including Tax and Government codes and it provides one definition that can be referenced by local municipalities that want to promote family-owned businesses within their local jurisdictions.

"The definition of family-owned business as proposed in [this bill] would be added to the statutes covering the Governor's Office of Business and Economic Development (GO-Biz) program. The successful GO-Biz program offers a range of services to business owners including attraction, retention and expansion services, site selection, permit streamlining, clearing of

regulatory hurdles, small business assistance, international trade development, assistance with state government, and much more.

"Importantly, [this bill] would let California lead the nation by being the first to statutorily recognize a family-owned business in a way that decision makers are able to consider the unique strengths and challenges of operating these businesses when considering future actions."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Usefulness of definition at this time. AB 1260 (Medina) of 2014 was substantively identical bill vetoed by Governor Brown, who stated in his veto message, "Family-owned businesses have an important role in our state and local economies and I am supportive of efforts that recognize their vital contributions. I am concerned, however, that adding a definition of 'California Family Owned Business' in statute with no legal or programmatic purpose will not achieve the bill's intended purpose."

The Committee may wish to consider whether or not it would be premature to enact a definition into statute without also codifying the expected use of that definition. Data gathering by parties other than the State would not require a statutory definition *per se*, and any definition put into statute now might need to be altered later depending on whether it is applied to tax incentives, contracting preferences, hiring goals, or other economic development uses. Moreover, while state law currently recognizes a variety of business types, including small businesses, microbusinesses, disabled veteran business enterprises, and minority, women, and disadvantaged business entities, which may directly benefit, this bill, by itself, does not provide tangible benefits to California family-owned businesses.

REGISTERED SUPPORT:

Capital Planning Advisors
Carriere Family Farms
Family Business Association of California
Holt of California
Sacramento River CATS
Lloyd Pest Control
Quality Telecom Consultants
Rue & Forsman Ranch

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2626 (Calderon) – As Amended March 17, 2022

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

SUBJECT: Medical Board of California: licensee discipline: abortion.

SUMMARY: Prohibits the Medical Board of California (MBC) from suspending or revoking the certificate of a physician and surgeon who performs an abortion in accordance with the provisions of the Medical Practice Act and the Reproductive Privacy Act.

EXISTING LAW:

1) Enacts the Medical Practice Act, which provides for the licensure and regulation of physicians and surgeons. (Business and Professions Code (BPC) §§ 2000 *et seq.*)

2) Establishes the MBC, a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members, subject to repeal on January 1, 2022. (BPC § 2001)

3) States that protection of the public shall be the highest priority for the MBC 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 § 2001.1)

4) Provides that unless otherwise expressly provided, the term "board" as used in the Medical Practice Act means the MBC. (BPC § 2002)

5) Among other duties, provides the MBC with the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act, the administration and hearing of disciplinary actions, the carrying out of disciplinary actions appropriate to findings made by a panel or an administrative law judge, and suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions. (BPC § 2004)

6) Provides that failure to comply with the Reproductive Privacy Act constitutes unprofessional conduct. (BPC § 2253(a))

7) Authorizes licensed nurses and physician assistants to perform abortions by medication or aspiration techniques in the first trimester of pregnancy under certain conditions. (BPC § 2253(b); § 2725.4; § 3502.4)

8) Establishes the Reproductive Privacy Act. (Health and Safety Code (HSC) §§ 123460 *et seq.*)

9) Finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions, including whether to choose to bear a child or to choose to obtain an abortion. (HSC § 123462)

10) Defines "abortion" as any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth. (HSC § 123464)

11) Forbids the state from denying or interfering with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman. (HSC § 123466)

12) Prohibits the performance of an abortion if either of the following is true:

    a) The person performing the abortion is not a health care provider authorized to perform an abortion.

    b) The abortion is performed on a fetus that is viable in the good faith medical judgment of the physician and the continuation of the pregnancy posed no risk to life or health of the pregnant woman.

    (HSC § 12348)

THIS BILL:

1) Prohibits the MBC from suspending or revoking the certificate of a physician and surgeon who performs an abortion in accordance with the provisions of the Medical Practice Act and the Reproductive Privacy Act.

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:

> "With 26 states actively seeking to ban abortion, the Guttmacher Institute expects an increase of up to 1.4 million out-of-state individuals of reproductive age finding their nearest clinic in California. Many states across the country are specifically targeting providers by authorizing state officials to revoke, suspend, or restrict a license for performing an abortion. AB 2626 protects California providers by preventing the Medical Board of California from revoking or suspending a medical license of a licensee for providing or coordinating abortion care in other states and to Californians or any out-of-state patients seeking care in California."

Background.

Abortion Access in California. Like most states, California's early laws prohibited and criminalized abortion. However, these laws evolved over time, with access to abortion care increasing significantly during the 1960s and 1970s. In 2002, the Legislature enacted the Reproductive Privacy Act, which expressly granted every woman in California with the fundamental right to choose to bear a child or to choose and to obtain an abortion.

Under the Reproductive Privacy Act, the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman. The only restriction on abortion is when, in the good faith medical judgment of a physician, the fetus is viable and there is no risk to the life or health of the pregnant woman associated with the continuation of the pregnancy.

The Reproductive Privacy Act essentially codifies the right to choose whether to have an abortion as a form of exercising the implicit right to privacy under the Fourteenth Amendment of the United States Constitution, as was famously affirmed by the Supreme Court of the United States in *Roe v. Wade*, which found that Texas's criminal abortion statute violated the Due Process Clause. The Court in *Roe* ruled that during the first trimester, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." The Court ruled that during the second trimester, a state may only choose to "regulate the abortion procedure in ways that are reasonably related to maternal health," but that states may ban abortion altogether during the third trimester, "except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

Recent judicial action in the United States has cast uncertainty on the security of the protections memorialized in *Roe*. In 2021, the Texas Legislature passed Senate Bill 8, referred to as the Texas Heartbeat Act. This bill criminalized abortion after the detection of embryonic or fetal cardiac activity, essentially banning abortion after approximately six weeks. The constitutionality of this bill was challenged in *Whole Woman's Health v. Jackson*, which sought to enforce the *Roe* precedent and overturn Senate Bill 8. However, the Court declined to enjoin the law, which many pro-choice advocates viewed as portents of a future decision by the Court to overturn or seriously diminish the protections outlined in *Roe*.

While California law unambiguously protects a pregnant person's right to choose in a manner consistent with *Roe*, the author cites statistics indicating that approximately 26 states would likely seek to ban abortion if *Roe* were to be overturned or diluted. Were this to occur, many in the medical profession may nevertheless choose to provide abortions, including those licensed in California who may travel to other states to provide these services. The author contends that were this to happen, those activities should be considered lawful for purposes of California in recognition of the state's substantial interest in protecting the right to choose.

By reiterating that a physician shall not be subjected to serious discipline by the MBC for performing an abortion that is legal under California law, this bill would essentially grant immunity to physicians who provide abortions in states that have banned abortion or to patients who have traveled from those states to California to seek care. While the MBC does not typically have jurisdiction over care provided in other states, it would be notified if a licensee was either convicted of a crime in another state or subjected to discipline by another state's licensing board. In either event, the MBC would have discretion whether to take disciplinary action. This bill is intended to clarify that the MBC should not bring an accusation against a physician under those circumstances unless the abortion services were provided in conflict with California law.

Current Related Legislation. AB 1666 (Bauer-Kahan) would declare another state's law authorizing a civil action against a person or entity that receives or seeks, performs or induces, or aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, to be contrary to the public policy of this state. *This bill is pending in the Assembly Committee on Health.*

ARGUMENTS IN SUPPORT:

NARAL Pro-Choice California supports this bill. According to NARAL, "Should the Court overturn Roe, over 36 million women and other people who may become pregnant will lose access to abortion care nationwide. Furthermore, 26 states are certain or more likely to ban

abortion, increasing the number of out-of-state individuals of reproductive age who would find their nearest clinic in California from 46,000 to 1.4 million – a nearly 3,000 percent increase. AB 2626 remedies these issues by prohibiting the removal or suspension of medical licenses for performing abortions within California or out-of-state."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Limited Application of Protections. As drafted, the restrictions on disciplinary action in this bill would be limited to the MBC. However, other licensees are authorized to provide abortion care in California. Physicians and surgeons regulated by the Osteopathic Medical Board of California possess the same scope of practice as those regulated by the MBC; however, they do not appear to be covered by this bill. Additionally, registered nurses and physician assistants can provide certain abortion services under specified conditions. The author may wish to consider whether the bill's protections should be expanded to cover any of these professions as well.

AMENDMENTS:

To clarify language prohibiting the MBC from suspending or revoking the certificate of a physician, subdivision (d) in Section 1 of the bill should be amended as follows:

> *The board shall not suspend or revoke the certificate of a physician and surgeon solely for performing an abortion so long as they performed the ~~who performs an~~ abortion in accordance with the provisions of this chapter and the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).*

REGISTERED SUPPORT:

Access Reproductive Justice
American College of Obstetricians and Gynecologists (ACOG) District IX
Advancing New Standards in Reproductive Health
California Nurse Midwives Association
California Women's Law Center
NARAL Pro-Choice California
Planned Parenthood Affiliates of California
Women's Foundation California

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2728 (Smith) – As Introduced February 18, 2022

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

SUBJECT: Unlawful cannabis activity: penalties.

SUMMARY: Imposes an additional civil penalty on an unlicensed person engaging in commercial activities involving various cannabis products, including cannabis plants, cannabis concentrate, cannabis biomass, and cannabis flower, as specified.

EXISTING LAW:

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

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)

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

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

5) 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)

6) Requires that all advertisements and marketing accurately and legibly identify the licensee responsible for its content, by adding, at a minimum, the licensee's license number, and prohibits a technology platform from displaying an advertisement by a licensee on an Internet Web page unless the advertisement displays the license number. (BPC § 26151)

7) Prohibits a licensee from publishing or disseminating advertisements or marketing of cannabis and cannabis products while the licensee's license is suspended. (BPC § 26152)

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

9) Allows for cannabis associated with an aiding and abetting violation to be destroyed, and that the person in violation shall be responsible for the cost of the destruction of cannabis associated with their violation. (BPC § 26038(a)(4))

10) Provides for a three-year statute of limitations for an action for civil penalties from the date of discovery of the violation by a licensing authority or a participating agency. (BPC § 26038(b))

11) Requires civil penalties imposed and collected to be deposited into the General Fund, except that actions brought by the Attorney General, a district attorney, or a county counsel are first used to reimburse the prosecuting agency. (BPC §§ 26038(c), 26038(e))

THIS BILL:

1) Subjects a person engaging in commercial cannabis activity without a license that involves the following cannabis products, in addition to existing penalties, to the following civil penalties:

    a) A fine up to $50 per package of cannabis product.

    b) A fine up to $50 per gram of cannabis concentrate.

    c) A fine up to $50 per pound of cannabis biomass.

    d) A fine up to $250 per pound of cannabis flower.

    e) For 6 to 200 plants:

        i) A fine not exceeding $1,000 for a first violation.

        ii) A fine not exceeding $1,500 for a second violation within one year of the first violation.

        iii) A fine not exceeding $3,000 for each additional violation within one year of the first violation.

    f) For more than 200 plants:

        i) A fine not exceeding $3,000 for a first violation.

        ii) A fine not exceeding $6,000 for a second violation within one year of the first violation.

        iii) A fine not exceeding $10,000 for each additional violation within one year of the first violation.

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

COMMENTS:

Purpose. This bill is sponsored by the *County of San Bernardino*. According to the author, "When voters supported Proposition 64, they did so on the promise that the industry created would balance consumer desire and public safety in a similar way to other industries such as liquor. Unfortunately, that balance wasn't executed in a sustainable or effective way. Penalties for noncompliance were designed to be minor. Directly as a result of public opinion and a fear of another war on drugs. As a result of this light-footed approach, an untested and unregulated market now exists in way not seen before. In San Bernardino County alone, there has been a 200% increase in the seizures of illegal marijuana plants since the passing of Prop 64. Therefore, these penalties need to be readdressed. [This bill] would do so by creating a gradation in the civil penalty structure for unlicensed cannabis activity. Allowing these penalties to be tied to the size and scale of the unlicensed cannabis operation, with number of plants, number of previous infractions, amount of product, and other extenuating factors all taken into account when assessing the fine."

Background. The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), approved as Proposition 64 in 2016, authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity under that license and applicable local ordinances.

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

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

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

The sponsors report that they are struggling with numerous illicit cannabis farms in the desert. The issue is especially acute in the Mojave Desert, where they say illegal cannabis sites number in the thousands, producing hundreds of thousands of pounds of cannabis. They also report that illegal cannabis cultivators frequently engage in human trafficking, water theft, and environmental pollution as part of their operations. The use of toxic pesticides at illegal cannabis farms, like carbofuran, can be lethal to humans and wildlife as well as pollute limited groundwater supplies.

San Bernardino's Operation Hammerstrike, an inter-agency operation to curb illegal cultivation, has reported that after seven months they closed 4503 greenhouses and seized 820,917 plants, 116,115.50 pounds of processed cannabis, and 12,509 grams of cannabis concentrate. They estimate the value would have been approximately $300 million had it gone to market.

Civil Penalties. A person engaging in commercial cannabis activity without a license is subject to a civil penalty of up to 3 times the amount of the license fee for each violation. Each day of operation without a license is a separate violation. Currently, depending on the size and type of business, license fees can range from $1,205 to $77,905.

However, the sponsor reports that the current fines are insufficient to dissuade larger, industrial-scale operations. Therefore this bill would establish an increasing scale of the fines based on the size of the operation and the amount of product found.

Current Related Legislation. AB 2102 (Jones-Sawyer), which is pending in this Committee, would establish additional civil penalties, injunctive relief, and associated mechanisms for a person who violates the prohibition on renting, leasing, or making available a building, room, space, or enclosure for the purpose of unlawfully manufacturing, distributing, or selling cannabis.

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

ARGUMENTS IN SUPPORT:

The *San Bernardino County Board* (sponsor) writes in support:

> When voters enacted Proposition 64 to legalize recreational cannabis, they did so with the assumption that the state would balance consumer desire and public safety. Unfortunately, penalties for illegal cannabis activity were reduced before the legal market was firmly established. As a result, California has had a massive increase in illegal cannabis farms across the wilderness areas of the state. State law already permits civil penalties against unlicensed cannabis dealers however, the current civil fine structure makes no distinction between small unlicensed growers with a few plants over the legal limit and industrial-scale operations with hundreds or thousands of plants. State law should provide heavier penalties to deter major illegal cannabis production that undermine the legal market and law-abiding businesses and entrepreneurs.
>
> [This bill] enacts a graduated civil penalty structure for unlicensed cannabis activity. These penalties are tied to the size and scale of the illegal cannabis operation, to allow a variety of factors to be considered when assessing the fine. This creates a better public safety environment to allow these criminal operations to be better addressed.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

San Bernardino County (sponsor)

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2844 (Kalra) – As Introduced February 18, 2022

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

SUBJECT: Cannabis catering.

SUMMARY: Authorizes the Department of Cannabis Control (Department) to issue a state caterer license that authorizes the licensee to serve cannabis at a private event approved by a local jurisdiction for the purpose of allowing event attendees to consume the cannabis.

EXISTING LAW:

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

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

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

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

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

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

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

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

9) Authorizes the Department to issue a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature, provided that the activities comply with the following:

   a) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older, cannabis consumption is not visible from any public place or nonage-restricted area, and the sale or consumption of alcohol or tobacco is not allowed on the premises.

   b) All participants who are engaged in the onsite retail sale of cannabis or cannabis products at the event are licensed to engage in that activity.

   c) The activities are otherwise consistent with regulations promulgated and adopted by the Department governing state temporary event licenses.

   d) A state temporary event license shall only be issued in local jurisdictions that authorize such events.

   e) A licensee who submits an application for a state temporary event license shall, 60 days before the event, provide to the department a list of all licensees that will be providing onsite sales of cannabis or cannabis products at the event.

   (BPC § 28200(e))

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

THIS BILL:

1) Includes acting as a cannabis caterer for a private event to the definition of "commercial cannabis activity."

2) Authorizes the Department to issue a state caterer license that authorizes the licensee to serve cannabis at a private event approved by a local jurisdiction for the purpose of allowing event attendees to consume the cannabis.

3) Allows for a cannabis caterer licensee to serve cannabis at a private event that the caterer brought to, but did not serve at, a prior event.

4) Permits the consumption of alcohol or tobacco consumption on the premises of an event approved to be catered.

5) Exempts applicants for licensure as a caterer from various requirements that cannabis license applicants provide information regarding the location or premises where they intend to engage in regulated activity.

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

COMMENTS:

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

> "Despite recreational cannabis consumption becoming an integral part of the California experience for visitors and residents alike, the state has yet to regulate cannabis catering at hotels and throughout the travel industry. Safety is paramount for not only California's hospitality workforce but the visitors to the state so that there may be controlled, mindful consumption of cannabis at hospitality group gatherings like weddings. AB 2844 would authorize the Department of Cannabis Control (DCC) to issue cannabis catering licenses to allow licensees to serve cannabis or cannabis products at private events."

Background.

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

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

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

Cannabis Consumption and Temporary Events. Proposition 64 made it generally lawful for persons 21 years of age or older to smoke or ingest cannabis or cannabis products. There are few restrictions on adults consuming cannabis on private property; for example, MAUCRSA does not generally prohibit the co-consumption of cannabis and alcohol in a private setting. However, Proposition 64 did not permit any person to smoke or ingest cannabis products in a public place; in a location where smoking tobacco is prohibited; within 1,000 feet of a school, day care center, or youth center while children are present; or while driving, operating, or riding in a vehicle.

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

MAUCRSA also authorizes the Department to approve temporary event licenses to current cannabis licensees, which authorize onsite cannabis sales to, and consumption by, persons 21 years of age or older. These temporary events can take place at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding temporary events of this nature. Local jurisdictions must authorize these events for them to be approved by the Department.

Both consumption lounges on retail premises and temporary events place additional restrictions on where cannabis or cannabis premises may be consumed. Access to the area where cannabis consumption is allowed must be restricted to persons 21 years of age or older. Cannabis consumption may not visible from any public place or nonage-restricted area. Finally, the sale or consumption of alcohol or tobacco on the premises is strictly prohibited.

Cannabis Catering for Private Events. This bill seeks to create a regulatory environment specifically intended to allow for cannabis catering at private events such as weddings. The intent of the author is to allow for a new category of licensee to bring pre-purchased cannabis to an event location where it can be provided for free to guests, similar to how an "open bar" for alcoholic beverages functions at similar events. The caterer would not themselves be licensed as a retailer.

This model would be distinct from the existing temporary event license in several ways. First, only those already licensed by the Department under MAUCRSA, such as retailers and microbusinesses, may receive a temporary event license; this bill would allow individuals not otherwise licensed to serve as caterers if approved by the Department. Second, this bill would allow cannabis to be provided free of charge to event guests, prepaid by the event host; temporary events only allow for individual sales to take place on the premises. Finally, while alcohol and tobacco are prohibited at temporary events, this bill would allow for the consumption of both at private catered events.

Current Related Legislation. AB 2210 (Quirk) would authorize the Department to issue a state temporary event license for an event held at a venue that is licensed by the Department of Alcoholic Beverage Control under certain conditions. *This bill is pending in the Assembly Committee on Government Organization.*

AB 2691 (Wood) would require the Department to issue temporary cultivator event retail licenses that authorize the license holder to sell cannabis or cannabis products, containing cannabis cultivated by that licensee, at cannabis events in the state. *This bill is pending in the Assembly Committee on Government Organization.*

Prior Related Legislation. AB 2020 (Quirk, Chapter 749, Statutes of 2018) authorized a state temporary event license to be issued to a licensee for an event to be held at any other venue expressly approved by a local jurisdiction for events.

ARGUMENTS IN SUPPORT:

This bill is sponsored by the **United Cannabis Business Association** (UCBA). According to the UCBA, "currently, DCC can issue a state temporary event license to allow for onsite cannabis sales and consumption limited to county fair events, district agricultural association events, or other venues that have been approved by the local jurisdiction and adhere to certain restrictions as required by state law. However, the state has yet to regulate cannabis catering at hotels and throughout the travel industry. Safety is paramount for not only California's hospitality workforce but the visitors to the state that drive tourism dollars to spur local economic growth. AB 2844 would help bring needed regulations and clarity so that visitors to our state can enjoy mindful consumption of cannabis at hospitality group gatherings like weddings and private wellness retreats."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Definition of Private Event. This bill does not define "private event" for purposes of its subdivision, which could potentially result in overbroad application to events that are beyond the intent of the author. Similar rules and regulations enforced by the Department of Alcoholic Beverage Control (ABC) add greater specificity to what distinguishes a "public event" from a "private event." In its guidance relating to Precedential Decision 19-07-E, ABC states that "a private event or private function does not include one to which members of the general public may invite themselves, or for which the licensee solicits invitations from members of the general public." Considering the substantial similarity between alcohol catering at private events and what is proposed in this bill, this may be a helpful resource for potential clarifying language.

Reuse of Cannabis and Cannabis Products. This bill would allow a cannabis caterer to serve cannabis at a private event that was previously brought to another event but not served. While this may have policy merit to prevent waste and make catering cost-effective, there may be safety concerns relating to cannabis and cannabis products that have been opened and removed from their packaging and are subsequently repackaged and reused. The author may wish to specify that unused cannabis must still be in its original packaging to be served at a later event.

Lack of Age Restrictions. This bill does not specifically include any age restrictions to prevent consumption by or near underage event guests. Private events and consumption lounges are both required to limit cannabis consumption to areas restricted to persons 21 years of age or older. The author may wish to require private events authorized by this bill to comply with those provisions as well.

Co-Consumption of Alcohol and Cannabis. Numerous provisions within MAUCRSA restrict the sale and consumption of alcohol and cannabis in regulated settings. This bill would expressly permit co-consumption, presumably so guests at events like weddings could both consume alcohol and cannabis in a social setting, as would currently be allowed at private events not featuring activities regulated by the Department. This is arguably a major deviation from current law and may not be desired by all jurisdictions otherwise interested in allowing for cannabis catering. The author may wish to clarify that co-consumption may still be locally prohibited.

Number of Events Held on a Single Premises. Alcohol catering regulated by the ABC restrict the number of catering permits approved to take place on any one premises to no more than 36 events in one calendar year. This would presumably prevent a specific venue from essentially operating as a permanent business for purposes of that activity. The author may wish to mirror this language for cannabis catering to close any analogous loopholes.

AMENDMENTS:

1) To clarify terms used in the bill based on guidance published by the ABC for similar events where alcohol catering occurs, add a paragraph defining "private event" as "an event that is not open to the general public and is not hosted, sponsored, or advertised by the caterer."

2) To ensure the health and safety of guests at private events where a cannabis caterer serves cannabis previously brought to another event, require that the cannabis have not been removed from its original packaging.

3) To restrict underage consumption of cannabis and provide that all consumption at private events should be separate and hidden from underage guests, require cannabis consumption at a catered private event to comply with the same age restrictions as consumption lounges and licensed temporary events.

4) To ensure that local governments may continue to prohibit cannabis and alcohol at private events, provide that co-consumption of cannabis, alcohol, and tobacco is permitted only to the extent authorized by the local jurisdiction.

5) To mirror language provided in statute limiting the number of events where alcohol catering can take place on the same premises, provide that a caterer shall not be approved to serve cannabis and cannabis products at any one premises for more than 36 events in one calendar year, except when the local jurisdiction determines additional events may be catered to satisfy substantial public demand.

REGISTERED SUPPORT:

United Cannabis Business Association *(Sponsor)*
Angeles Emeralds
Cannabis Travel Association
Coachella Valley Cannabis Alliance Network
Long Beach Collective Association
Orange County Advocacy Alliance
The Parent Company
San Francisco Cannabis Retailers Alliance
Silicon Valley Cannabis Alliance
Social Equity LA

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2894 (Cooper) – As Introduced February 18, 2022

NOTE: *This bill is double referred to the Assembly Insurance Committee.*

SUBJECT: Contractors: workers' compensation insurance.

SUMMARY: Requires an applicant or licensee to inform the Contractors State License Board (CSLB) of its workers' compensation classification code as a condition of licensure.

EXISTING LAW:

1) Establishes the Division of Labor Standards Enforcement (DLSE), also known as the Labor Commissioner's Office, within the Department of Industrial Relations, which is required to enforce the state's labor laws. (Labor Code (LAB) §§ 79-107)

2) Requires an employer to carry workers' compensation insurance. (LAB §§ 3700-3709.5)

3) Establishes the CSLB within the Department of Consumer Affairs (DCA) to license and regulate contractors and home improvement salespersons. (Business and Professions Code (BPC) § 7000 *et seq*.)

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

5) Requires as a condition of initial licensure, reinstatement, reactivation, renewal or continued maintenance of a license, a current and valid certificate of workers compensation insurance or certification of Self-Insurance, as specified, unless the applicant or licensee meets both of the following conditions:

   a) Has no employees and filed a statement with the CSLB certifying that they do not employ any person in any manner, as specified; and

   b) Does not hold a C-39 license, as specified. (BPC § 7125(a)(b))

6) Requires an insurer, including the State Compensation Insurance Fund, to report to the registrar the name, license number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if applicable, for any policy required under specified workers' compensation insurance provisions of the Contractors State License Law. (BPC § 7125(d)).

7) Requires a workers' compensation insurer to report to the registrar a licensee whose workers' compensation insurance policy is canceled by the insurer, if specified conditions are met. (BPC § 7125(2))

8) States that willful or deliberate disregard and violation of workers' compensation insurance laws constitutes a cause for disciplinary action by the registrar against the licensee. (BPC § 7125(d)(3))

9) Requires the registrar to remove the C-39 classification from a license unless a valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance is received by the registrar, for any license on or after January 1, 2013, as specified. (BPC § 7125(e)(1))

10) Requires a license to be automatically suspended for a license that is a C-39 Classification removed as specified in (9) above and has been found by the registrar to have employees and to lack a valid Certificate of Workers Compensation of Self-Insurance, for any licensee who is licensed after January 1, 2013. (BPC § 7125(e)(2)).

11) Specifies that the filing of an exemption certificate for workers' compensation that is false, or the employment of a person subject to coverage requirements without maintaining coverage is cause for disciplinary action, as specified. (BPC § 7125.4(a))

12) Specifies that any qualifier for a license who is responsible for assuring that a licensee complies with the License Law is also guilty of a misdemeanor for committing or failing to prevent the commission of any of the acts that are cause for disciplinary action under this section. (BPC § 7125.4(b))

13) Establishes an enforcement division, within the CSLB, which is required to enforce the prohibition against unlicensed contracting activity and authorizes CSLB's enforcement representatives to issue a written notice to appear in court for a misdemeanor violation under the provisions related to citations for misdeameanors under the Penal Code. (BPC § 7011.4(a) and (b))

14) Grants investigators for the Special Investigations Unit within the CSLB the authority of peace officers to investigate or prosecute a violation of the laws administered by the CSLB. (BPC § 7011.5)

THIS BILL:

1) Requires CSLB to require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee inform CSLB, in the form and manner prescribed by CSLB, of their workers' compensation classification code developed by the Workers' Compensation Insurance Rating Bureau or otherwise approved by the Insurance Commissioner.

2) Requires CLSB to post this information on its website.

3) Provides that (1) above does not apply to an applicant or licensee that is exempt from the existing requirement to have on file a Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, including:

a. Licensees that have no employees or are otherwise exempted from the workers' compensation laws and are not licensed as roofing contractors.

b. The license is inactive.

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

COMMENTS:

Purpose. This bill is sponsored by *District Council of Iron Workers of California*. According to the author, "[This bill] will protect workers by requiring contractors to provide information to CSLB to ensure employees are properly insured and will prevent unscrupulous contractors from purchasing less expensive coverage."

Background.

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

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

Workers' Compensation Insurance. As a condition of licensure, applicants and licensees (both active and inactive licensees) must carry workers' compensation insurance if they have any employees. Applicants and licensees are required to submit to CSLB a valid Certificate of Workers' Compensation Insurance, a valid Certification of Self-Insurance from the Department of Industrial Relations (DIR), or a signed exemption certifying that they do not have any employees. Existing law currently requires all C-39 roofing contractors to have workers' compensation insurance regardless of whether or not they have any employees. Willful or deliberate disregard and violation of workers' compensation insurance laws constitutes a cause for disciplinary action against the licensee.

Employers can either buy workers' compensation insurance from a licensed insurance company or through the State Compensation Insurance Fund. Self-insurance is also an option but requires state approval, a net worth of $5 million minimum, net income of $500,000 annually, and posting of a security deposit. The state does not regulate workers' compensation insurance premium rates. The Workers' Compensation Insurance Rating Bureau (WCIRB) recommends rates, and insurance companies must disclose their rates to the California Department of Insurance, but rates can vary among insurance companies. Annual premiums are determined by a variety of factors, including industry classification.

Classifications for specific occupations, industries, or businesses are assigned by WCIRB and approved by the Insurance Commissioner. Insurance companies have to option to create their own classification system and submit it to CDI for approval, but typically use the WCIRB's classifications when writing workers' compensation policies. Insurance companies do, however, assign a specific rate to each classification code, subject to approval by the Insurance Commissioner. The classification code and related rate are used to calculate the base rate of the workers' compensation insurance premium. The assigned rate is expressed as a dollar value and multiplied by each $100 of payroll per classification. The following example has been provided by the author: if the base rate for Iron Workers is $18.75 and the employer spends $1 million on payroll, the base rate of the employer's workers' compensation insurance premium would be $187,500.

Insurance companies are required to provide CSLB specific information about the applicant or licensee's workers' compensation insurance policy, including the name, license number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if applicable. This information is available on CSLB's website.

Current Related Legislation.

SB 216 (Dodd) would, until January 1, 2025, require a Concrete contractor (C-8), a Warm-Air Heating, Ventilating and Air-Conditioning contractor (C-20), and a Tree Service contractor (D-49) to carry workers' compensation insurance regardless of whether or not they have any employees. Beginning January 1, 2025, this bill would extend that requirement to all licensure classifications under the jurisdiction of CSLB. *Currently at the Assembly Desk.*

Prior Related Legislation.

AB 2705 (Holden) Chapter 323, Statutes of 2018, subjects an unlicensed person acting as a contractor to the existing criminal penalties that apply to licensed contractors for not securing the required workers' compensation insurance, and makes this crime subject to the same two-year statute of limitations as for licensees.

AB 996 (Cunningham and Brough) of 2018 would have required the CSLB to adopt an enhancement feature on its website to allow consumers to monitor the status and progress of a workers' compensation certification, as specified, and view the time elapsed from when the CSLB received the certification until a final disposition has been approved.

*SB 560 (Monning), Chapter 389, Statutes of 201*5, authorizes CSLB Enforcement Representatives to issue a written notice to appear (NTA) to individuals who fail to secure workers' compensation insurance. (An NTA is a court order mandating an individual's presence at a hearing to answer to a misdemeanor charge.)

AB 878 (Berryhill), Chapter 686, Statutes of 2011, requires a workers' compensation insurer to report to the CSLB a licensed contractor whose insurance policy it cancels, as specified.

AB 397 (Monning) Chapter 546, Statutes of 2011, requires a licensed contractor with an exemption for workers' compensation insurance to recertify the exemption upon license renewal or provide proof of workers' compensation insurance coverage.

AB 881 (Emmerson and Sharon Runner), Chapter 38, Statutes of 2006, required all licensed roofers to have workers' compensation insurance, authorizes the Registrar to remove the roofing classification from a contractor license for failure to maintain workers' compensation insurance, and required insurers who issue workers' compensation policies to roofing contractors to perform annual audits of these policyholders.

ARGUMENTS IN SUPPORT:

The *Bridge, Structural, Ornamental and Reinforcing Iron Workers*, *District Council of Iron Workers of the State of California and Vicinity*, *International Union of Operating Engineers, Cal-Nevada Conference*, and *State Building & Construction Trades Council of California* each write in support of this bill, "Unfortunately, some unscrupulous contractors do not purchase the appropriate workers compensation policies for the type of work they are performing. This allows for unfair competition as law-abiding contractors carry the burden of this unfunded liability on the workers' compensation program and puts in jeopardy the ability for a worker to be properly compensated if an injury or illness at work debilitates them and takes them off the job. Listing the classification code alongside the CSLB license number and the policy number will help prevent fraud and stress on the workers compensation system."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Enforcement. The author, sponsor, and supporters of this bill contend that unscrupulous contractors intentionally misclassify employees. In an effort to curb that unlawful practice, this bill would require CSLB to collect an applicant or licensee's workers' compensation insurance classification code. However, CSLB does not verify applicant or licensees' workers' compensation information, nor is CSLB the primary entity responsible for enforcing appropriate employee classification. The Department of Industrial Relations Division of Labor Standards Enforcement (DSLE) is the primary entity responsible for enforcing employee misclassification and CSLB supports their efforts as part of a Joint Enforcement Strike Force and Labor Enforcement Task Force. This bill is double referred to the Assembly Insurance Committee, which may wish to further opine on merit of CSLB collecting and posting on its website applicant and licensees' workers' compensation insurance classification codes.

IMPLEMENTATION ISSUE(S) FOR CONSIDERATION:

Chaptering out amendments. This bill is currently in conflict with SB 216 (Dodd) and may require chaptering out amendments to ensure that both bills, if signed in to law, reflect the changes made by the other bill.

REGISTERED SUPPORT:

Bridge, Structural, Ornamental and Reinforcing Iron Workers
District Council of Iron Workers of the State of California and Vicinity
International Union of Operating Engineers, Cal-Nevada Conference
State Building & Construction Trades Council of California

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2925 (Cooper) – As Amended March 21, 2022

SUBJECT: Cannabis Control Appeals Panel: membership: California Cannabis Tax Fund: spending reports.

SUMMARY: Adds two additional legislative appointees to the Cannabis Control Appeals Panel (CCAP) and requires the Department of Health Care Services (DHCS) to provide a spending report to the Legislature regarding funds from the Youth Education, Prevention, Early Intervention and Treatment Account derived from cannabis tax revenue.

EXISTING LAW:

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

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

3) Establishes CCAP within the Business, Consumer Services, and Housing Agency, which consists of one member appointed by the Senate Committee on Rules, one member appointed by the Speaker of the Assembly, and three members appointed by the Governor; requires the Governor's appointees to each reside in a different county; and specifies that each member of the panel may be removed by their appointing authority. (BPC § 26040)

4) Specifies the process by which CCAP provides quasi-judicial administrative review of licensing decisions issued by the DCC. (BPC §§ 26042 – 26047)

5) Imposes a 15% excise tax upon purchasers of cannabis or cannabis products sold in this state in addition to the sales and use tax imposed by the state and local governments. (Revenue and Tax Code (RTC) § 34011)

6) Imposes a cultivation tax on all harvested cannabis that enters the commercial market at a rate of $9.25 per dry-weight ounce for cannabis flowers and $2.75 per dry-weight ounce for cannabis leaves. (RTC § 34012)

7) Provides the Department of Tax and Fee Administration (CDTFA) with responsibility for administering and collecting taxes on cannabis businesses. (RTC § 34013)

8) Establishes the California Cannabis Tax Fund (Tax Fund) in the State Treasury wherein cannabis tax revenues are deposited. (RTC § 34018)

9) Specifies that money in the Tax Fund shall be disbursed by the Controller in the following order of funding priority:

   a) Funds sufficient to reimburse departments for any reasonable costs incurred through the implementation of the state's cannabis laws that are not otherwise reimbursed.

   b) $10 million to a public university in California annually to research and evaluate the implementation and effect of the state's cannabis laws, including the impact of legal cannabis on public health; the public safety implications of legal cannabis; the effectiveness of certain drug treatment programs; whether additional antitrust protections are needed in the recreational cannabis market; the economic impacts of the state's cannabis laws; and how to best tax cannabis based on potency, and the structure and function of licensed cannabis businesses; among other topics of study.

   c) $3 million to the Department of the California Highway Patrol annually to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired by the use of cannabis.

   d) $10 million beginning with the 2018-19 fiscal year, then increasing by $10 million each year until reaching $50 million annually, to the Governor's Office of Business and Economic Development to award community reinvestments grants to local health departments and at least 50% to qualified community-based nonprofit organizations to support job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care for communities disproportionately affected by past federal and state drug policies.

   e) $2 million annually to the University of California San Diego Center for Medicinal Cannabis Research to further its objectives.

   f) Remaining funds deposited into sub-trust accounts as follows:

      i) 60% into the Youth Education, Prevention, Early Intervention and Treatment Account, disbursed to the DHCS for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use. The programs shall emphasize accurate education, effective prevention, early intervention, school retention, and timely treatment services for youth, their families, and their caregivers.

      ii) 20% into the Environmental Restoration and Protection Account, disbursed to the Department of Fish and Wildlife and the Department of Parks and Recreation to fund activities related to the natural resources and wildlife implications of legal cannabis.

      iii) 20% into the State and Local Government Law Enforcement Account, disbursed to the California Highway Patrol to fund education regarding cannabis-impaired driving and to the Board of State and Community Corrections to award grants to local law enforcement to address the public health and safety implications of locally legalized cannabis.

   (RTC § 34019)

10) Prohibits the Legislature from changing the cannabis tax revenue funding allocations before July 1, 2028. (RTC § 34019(h))

11) Requires the Controller to periodically audit the Tax Fund to ensure that funds are used and accounted for in a manner consistent with what is required by law. (RTC § 34020)

THIS BILL:

1) Increases the number of appointees to CCAP allotted to the Senate Committee on Rules and the Speaker of the Assembly from one each to two each, therefore increasing the overall number of members from five to seven.

2) Requires the DHCS to provide to the Legislature, on or before July 10, 2023, a spending report of funds from the Youth Education, Prevention, Early Intervention and Treatment Account for the 2021–22 and 2022–23 fiscal years.

3) Beginning on or before July 10, 2024, requires the DHCS to annually provide the Legislature with a spending report of funds from the Youth Education, Prevention, Early Intervention and Treatment Account for the prior fiscal year.

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, "Assembly Bill (AB) 2925 increases Legislative representation on the California Cannabis Control Appeals Panel and increases Legislative oversight of expenditures from the California Cannabis Tax Fund."

Background.

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

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

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

Cannabis Control Appeals Panel. CCAP is a quasi-judicial entity charged with reviewing licensing decisions issued by the DCC. CCAP currently consists of five members: three appointed by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly. Each member appointed by the Governor is required to be a resident of a different county from the other two at the time of their initial appointment. Each member of CCAP may be removed by their appointing authority.

CCAP meets as needed. The panel has met 13 times since it first convened August 13, 2018; however, it does not appear as though CCAP has actually heard any cases, as no appeals have been filed by annual license holders with the Office of Administrative Hearings. CCAP's executive director has stated that they did not expect the panel to receive its first case "until the first quarter of 2022 at the earliest."

This bill would expand the membership of CCAP to include two additional members appointed by the Legislature. Each CCAP member receives a full annual salary as prescribed by statute, which is currently calculated at $227,178 per year. The author believes that while there have been no specific examples of actions by CCAP that would have been improved with a different membership composition, increased legislative representation would result in better activities in the future.

Youth Account Reporting Requirements. Under MAUCRSA, a 15% excise tax is imposed on sales of cannabis and a tax on cannabis cultivation is imposed at a rate of $9.25 per dry-weight ounce of cannabis flowers and $2.75 per dry-weight ounce of cannabis leaves that are harvested and brought to market. These taxes are distinct from state sales and use taxes, which apply to recreational cannabis, as well as any taxes imposed by local governments. One of the principal arguments made by the proponents of Proposition 64 was that legalizing cannabis would result in significant tax revenue for use by state and local governments. In its analysis of Proposition 64, the Legislative Analyst's Office (LAO) stated that the initiative's fiscal effects were "subject to significant uncertainty." However, the LAO suggested in the Proposition 64 voter guide that over time, the legal sale of legalized cannabis could result in state and local tax revenues the LAO said "could eventually range from the high hundreds of millions of dollars to over $1 billion annually."

Excise tax and cultivation tax revenues are deposited into a special fund referred to as the California Cannabis Tax Fund and are then allocated for a variety of purposes in order of priority. First, expenditures incurred by state agencies responsible for implementing cannabis laws are to be paid for through the Tax Fund. This includes reasonable costs incurred by the CDTFA for administering and collecting the taxes, not to exceed 4% revenue; reasonable costs incurred by the DCC and other licensing agencies for licensing and enforcement programs; reasonable costs incurred by the Department of Fish and Wildlife, the State Water Resources Control Board, and the Department of Pesticide Regulation for carrying out their environmental protection duties under the state's cannabis laws; and other state agencies. Allocations to reimburse these state entities shall only be made to the extent the entities are not otherwise reimbursed for their costs.

After state agency cost reimbursement, Tax Fund revenue is next allocated to fund a series of specific programs designated under Proposition 64. These programs are to be provided with precise amounts of funding totaling $25 million and are to be appropriated annually until the 2028-29 fiscal year. This includes $10 million to a public university to research and evaluate the implementation and effect of legal cannabis and make recommendations to the Legislature and Governor regarding possible changes to the law; $3 million to the California Highway Patrol to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired; $10 million to the Governor's Office of Business and Economic Development (GO-Biz), which subsequently increases by an additional $10 million each fiscal year until reaching a total disbursement of $50 million annually beginning in the 2022-23 fiscal year, to administer a community reinvestments grants program; and $2 million to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the center, including the enhanced understanding of the efficacy and adverse effects of cannabis as a pharmacological agent.

After each of the above allocations have been made in sequential order, totaling $25 million, any remaining revenue in the Tax Fund is divided into sub-trust accounts according to a percentage outlined by Proposition 64. The division is as follows:

1) 60% of the remaining revenue is deposited in the Youth Education, Prevention, Early Intervention and Treatment Account, and disbursed by the Controller to the DHCS for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use.

2) 20% of the remaining revenue is deposited in the Environmental Restoration and Protection Account, and disbursed by the Controller as follows:

    a. To the Department of Fish and Wildlife and the Department of Parks and Recreation for the cleanup, remediation, and restoration of environmental damage in watersheds affected by cannabis cultivation and related activities including, but not limited to, damage that occurred prior to enactment of Proposition 64, and to support local partnerships for this purpose. The Department of Fish and Wildlife and the Department of Parks and Recreation may distribute a portion of the funds they receive from the Environmental Restoration and Protection Account through grants.

    b. To the Department of Fish and Wildlife and the Department of Parks and Recreation for the stewardship and operation of state-owned wildlife habitat areas and state park units in a manner that discourages and prevents the illegal cultivation, production, sale, and use of cannabis and cannabis products on public lands, and to facilitate the investigation, enforcement, and prosecution of illegal cultivation, production, sale, and use of cannabis or cannabis products on public lands.

    c. To the Department of Fish and Wildlife to assist in funding the watershed enforcement program and multiagency taskforce to facilitate the investigation, enforcement, and prosecution of these offenses and to ensure the reduction of adverse impacts of cannabis cultivation, production, sale, and use on fish and wildlife habitats throughout the state.

3) 20% of the remaining revenue is deposited in the State and Local Government Law Enforcement Account and disbursed by the Controller as follows:

    a. To the CHP for conducting training programs for detecting, testing and enforcing laws against driving under the influence of alcohol and other drugs, including driving under the influence of cannabis.

    b. To the CHP to fund internal programs and grants to qualified nonprofit organizations and local governments for education, prevention, and enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis; programs that help enforce traffic laws, educate the public in traffic safety, provide varied and effective means of reducing fatalities, injuries, and economic losses from collisions; and for the purchase of equipment related to enforcement of laws related to driving under the influence of alcohol and other drugs, including cannabis.

    c. To the Board of State and Community Corrections (BSCC) for making grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of Proposition 64. The BSCC shall not make any grants to local governments which have banned the cultivation, including personal cultivation or retail sale of cannabis.

    d. The Department of Finance shall determine the allocation of revenues between the agencies; provided, however, beginning in the 2022–23 fiscal year the amount allocated to CHP for training programs shall not be less than $10 million annually and the amount allocated to the CHP for grants shall not be less than $40 million.

This bill would require the DHCS to provide the Legislature with a spending report on how it has distributed the 60% of the remaining "tier 3" revenue that is deposited in the Youth Education, Prevention, Early Intervention and Treatment Account. These funds are intended to be used to support programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm from substance use. The author's intent is to ensure that this funding is being spent appropriately and to ensure the Legislature has a complete understanding of how much money has been available for these purposes.

POLICY ISSUE(S) FOR CONSIDERATION:

Separation of Powers Doctrine. The Constitution of California provides that "the powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." This is broadly interpreted to prevent each branch of government from inappropriately dictating the actions of another branch outside what is authorized by the Constitution.

By expanding the number of appointments made to CCAP by the Assembly and the Senate, this bill would create a panel consisting of four legislative appointees and three gubernatorial appointees. This would mean that the legislative branch would have the authority to appoint and subsequently remove a majority of CCAP's members. This could potentially be interpreted to violate the separation of powers clause of the California Constitution.

In *Marine Forests Society v. California Coastal Commission*, the Supreme Court of California considered whether a commission in which two-thirds of its membership were comprised of

legislative appointments rendered it a "legislative body" and was therefore prohibited from engaging in executive or judicial functions. In this case, the Court concluded the "as in other contexts in which one branch's actions potentially impinge upon the domain of a coordinate branch, the separation of powers clause of the California Constitution imposes limits upon the legislative appointment of executive officers." The Court further concluded that "the California separation of powers clause precludes the adoption of a statutory scheme authorizing the legislative appointment of an executive officer or officers whenever the statutory provisions as a whole, viewed from a realistic and practical perspective, operate to defeat or materially impair the executive branch's exercise of its constitutional functions."

This precedent would potentially invoke constitutionality issues with CCAP's membership composition if it is determined that the Legislature was empowered with too much influence over the functions of the panel through its appointment and approval authority. While it is unclear who would bring such a challenge, the author should consider whether the potential risks are justified by the policy merits of the proposal. It may ultimately be determined that CCAP should continue to have a majority of its membership appointed by the Governor.

Inconsistent Reporting Requirements. This bill would require the DHCS to report to the Legislature on how funds are being spent from the Youth Education, Prevention, Early Intervention and Treatment Account. However, this is only 60% of the remaining revenue after the initial $25 million in allocations are made. There would arguably be equal value in receiving similar reports from the Department of Fish and Wildlife and the Department of Parks and Recreation regarding expenditures from the Environmental Restoration and Protection Account, as well as from the CHP and BSCC for expenditures from the State and Local Government Law Enforcement Account. The author may wish to consider adding reports from these agencies as this bill moves through the process.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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