California State Assembly

BUSINESS AND PROFESSIONS

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AGENDA

Tuesday, April 6, 2021
9 a.m. -- State Capitol, Assembly Chamber

BILLS HEARD IN FILE ORDER

1.	AB 1287	Bauer-Kahan	Price discrimination: gender.
2.	AB 1407	Burke	Nurses: implicit bias courses.
3.	AB 359	Cooper	Physicians and surgeons: licensure: examination.(Urgency)
4.	AB 224	Daly	Department of Consumer Affairs: Bureau of Household Goods and Services: household movers.(Urgency)
5.	AB 225	Gray	Department of Consumer Affairs: boards: veterans: military spouses: licenses.
6.	AB 1305	Lackey	The Medicinal and Adult-Use Cannabis Regulation and Safety Act: exemption for DEA-approved commercial cannabis activity.
7.	AB 465	Nazarian	Professional fiduciaries: prelicensing and renewal or restoration: education.
8.	AB 913	Smith	Collateral recovery.

ONE

9.	AB 690	Arambula	Marriage and family therapists: clinical social workers: professional clinical counselors.
10.	AB 298	Irwin	Accountancy: California Board of Accountancy.
11.	AB 435	Mullin	Hearing aids: locked programming software: notice.

TWO

12.	AB 562	Low	Mental health services for health care providers: Frontline COVID-19 Provider Mental Health Resiliency Act of 2021.
13.	AB 1084	Low	Gender neutral retail departments.

COVID FOOTER

SUBJECT:

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

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

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1287 (Bauer-Kahan) – As Amended March 25, 2021

SUBJECT: Price discrimination: gender.

SUMMARY: Prohibits the charging of different prices for any two goods that are substantially similar, if those goods are priced differently based on the gender of the individuals for whom the goods are marketed and intended.

EXISTING LAW:

1) Entitles all Californians to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments, thus prohibiting discrimination on any arbitrary basis, including but not limited to sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. (The Unruh Civil Rights Act, Civ. Code § 51.)

2) Prohibits business establishments from charging different prices for services of similar or like kind based on the consumer's gender. (Gender Tax Repeal Act, Civ. Code § 51.6(b).)

3) Allows price differences based specifically upon the amount of time, difficulty, or cost of providing the services. (Civ. Code § 51.6(c).)

4) Requires specified business establishments, including tailors, barbers or hair salons, and dry cleaners, to clearly and conspicuously disclose to customers, in writing, the pricing for each of the 15 most frequently requested services provided by the business. (Civ. Code § 51.6(f)(1), (2), (6).)

5) Requires specified business establishments, including tailors, barbers or hair salons, and dry cleaners, to provide customers with a complete written price list upon request and to display a sign indicating that gender-based pricing discrimination for services is prohibited in a conspicuous place. (Civ. Code § 51.6(f)(3)-(4).)

6) Provides that, aside from a specified civil penalty for price list and signage violations, the remedies for a violation of the Gender Tax Repeal Act are the remedies that are generally available for an Unruh Civil Rights Act violation. (Civ. Code § 51.6(d).)

7) Provides that any person who denies, aids or incites a denial, or makes any discrimination or distinction contrary to the Unruh Civil Rights Act or to the Gender Tax Repeal Act, is liable for each and every offense for the actual damages and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage, but in no case less than $4,000, and any attorney's fees that may be determined by the court. (Civ. Code § 52(a).)

THIS BILL:

1) Prohibits businesses from assigning different prices for identical goods because of the gender the goods are marketed to.

2) In order to price products differently, a business would have to prove there was substantial difference in the time or cost of production.

3) If the business was found to have assigned a price based solely on the gender of the intended consumer, the business would be fined increasing amounts for each violation.

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

COMMENTS:

Purpose. This bill is Author sponsored. According to the Author, "Unequal pricing based on gender, especially for necessities, augments existing inequalities in pay and wealth. Gender should not determine the price you pay for a good. Paying higher prices because of your gender is simply unjust. It hurts women in a market and at a time when they are deeply vulnerable."

Background. *The Gender Tax Repeal Act of 1995*. California enacted the Gender Tax Repeal Act in response to reports that businesses were charging women more than men for things like dry-cleaning a shirt or getting a haircut, even when the cost of providing the service was the same regardless of the customer's gender. The Act outlawed such gender-based price discrimination, but it applied only to services, not to the sale of goods. There are studies showing that women pay, on average, seven percent more for products marketed to women, than men pay for a similar product marketed to them. Over time, this adds up. This gender tax, or the "pink tax" as it is sometimes known, has been estimated to cost women over $1,000 per year. Combined with the wage gap, the pink tax acts as a double-whammy working systematically against the financial success of women. To address this problem, this bill would extend the Gender Tax Repeal Act's prohibition on gender-based price discrimination to the sale of goods.

Evidence of the problem of gender-based price discrimination. When the Gender Tax Repeal Act was first enacted in 1995 (AB 1100 (Speier, Ch. 866, Stats. 1995)), proponents relied in part on data gathered in conjunction with a 1994 interim hearing on gender discrimination in the pricing of products and services conducted by the Assembly Consumer Protection, Governmental Efficiency & Economic Development Committee. That hearing documented that "adult women effectively pay a gender tax which costs each woman approximately $1,351 annually, or about $15 billion for all women in California. The gender tax is the additional amount women pay for similar goods and services due to gender-based discrimination in pricing." (Sen. Judiciary Com., analysis of AB 1100 (1995-1996 Reg. Session), Aug. 22, 1995, p. 5.) Several other studies, books, and reports further documented gender-based discrimination in pricing. A survey of businesses in five major California cities by the Assembly Office of Research (AOR) in 1994, *Survey of Haircuts & Laundry Services in Californi*a," found that "women in California pay on the average $5 more for a haircut and $1.71 more to have a shirt laundered. The AOR survey also found that 64 percent of those establishments surveyed in five major California cities charged more to launder a woman's white cotton shirt than a man's." (*Ibid*.)

In a report from December report by the New York City Department of Consumer Affairs, entitled "*From Cradle to Cane: The Cost of Being a Female Consumer*." As summarized by the author, after looking at nearly 800 products with clear male and female versions from more than 90 brands sold at two dozen New York City retailers, both online and in stores, the 2015 report came to the following conclusions:

42 percent of the time, women's products cost more than similar products for men and on average cost 7 percent more. Specifically:

- 7 percent more for toys and accessories
- 4 percent more for children's clothing
- 8 percent more for adult clothing
- 13 percent more for personal care products
- 8 percent more for senior/home health care products.

In all but five of the 25 product categories analyzed, products for female consumers were priced higher than those for male consumers.

Some of the highest price differences were for products that are arguably necessities. Women's shampoo and hair conditioner cost an average of 48 percent more. Supports and braces cost 15 percent more, personal urinals cost 21 percent more, and canes cost 12 percent more. Often times the price differences were egregious. A red scooter labeled for boys was 25 dollars, while an identical pink scooter labeled for girls was 50 dollars, a 100 percent price difference.[1]

A 2018 study by the federal Government Accountability Office (GAO) came to a more mixed conclusion. Of 10 categories of personal care products that the GAO studied, it found significantly higher prices for women in five of those categories, but higher prices for men in two others (shaving gel and non-disposable razors), and mixed results or no difference for the remainder.[2] The GAO concluded that "the target gender for a product AB 1576 (Levine, 2017) would have prohibited a business from discriminating with respect to the price charged for the same, or substantially similar, goods because of the gender of the targeted user of the good, as specified. The bill would have limited enforcement of its terms to the Attorney General, a district attorney, or a city attorney through prosecution of a civil action for preventive relief. AB 1576 was gutted and amended, while pending before the Assembly Judiciary Committee, to address other matters.

Unruh Civil Rights Act arguably makes gender-based price discrimination unlawful. California law, the Unruh Civil Rights Act, prohibits business establishments from discriminating against any individual on the basis of certain characteristics such as sex, race, and national origin. (Civ. Code § 51.) The Act has been interpreted to prohibit all forms of "arbitrary discrimination" by a business establishment in the provision of goods and services and the offering of

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[1] *From Cradle to Cane: The Cost of Being a Female Consumer* (Dec. 2015) New York City Department of Consumer Affairs https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Study-of-Gender-Pricing-in-NYC.pdf (as of Apr. 28, 2019).
[2] *Gender-Related Price Differences for Goods and Services* (Aug. 2018) U.S. Government Accountability Office https://www.gao.gov/assets/700/693841.pdf (as of Apr. 27, 2019).

accommodations. (*O'Connor v. Village Green Owners Assn*. (1983) 33 Cal.3d 790; *Harris v. Capitol Growth Investors XIV* (1991) 52 Cal.3d 1142.)

With respect to gender discrimination, specifically, in *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, the California Supreme Court held that two specific acts of gender price discrimination constituted arbitrary discrimination under the Unruh Act: a "Ladies Day" at a car wash during which women paid less for a car wash than men, and a "Ladies' Night" at a bar, during which women could be admitted to the bar for free, but men had to pay a cover charge. The *Koire* court concluded its opinion with a broad statement about the illegality of gender price discrimination, stating that: "[t]he plain language of the Unruh Act mandates equal provision of advantages, privileges and services in business establishments in this state. Absent a compelling social policy supporting sex-based price differentials, such discounts violate the Act." (*Id*. at 38.)

It could be argued that a car wash involves services, and that a cover charge involves access to a business establishment generally, rather than the price of specific goods. The text of the Unruh Act does not mention goods specifically. It says that "[a]ll persons within the jurisdiction of this state are […] entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Code § 51(b).) Yet, "[t]he Unruh Civil Rights Act […] is to be liberally construed with a view to effectuating the purposes for which it was enacted and to promote justice." (*Rotary Club of Duarte v. Board of Directors* (1986), 178 Cal. App. 3d 1035, 1046, cert. den. (1987), 481 U.S. 537.)

It is hard to see how a customer could obtain full and equal advantage from a business selling goods if the pricing is discriminatory. While there does not appear to be a recorded case that is directly on point, at least two of the cases interpreting the Unruh Act suggest that goods or products are covered as well, by making reference to them in the context of the Act's protections. (*See*, *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal. 3d 493, "there is no indication that the Legislature intended to broaden the scope of CC § 51, requiring equal accommodations in all business establishments, to include discriminations other than those made by a business establishment in the course of furnishing *goods*, services or facilities to its clients, patrons or customers"; *Surrey v. TrueBeginnings, LLC* (Cal. App. 4th Dist. Nov. 18, 2008), 168 Cal. App. 4th 414, 416, "a person must tender the purchase price for a business's services *or products* in order to have standing to sue it for alleged discriminatory practices relating thereto." Emphasis added.)

Accordingly, the Unruh Civil Rights Act may already prohibits gender-based price discrimination, irrespective of the Gender Tax Repeal Act, not only with respect to services, but with respect to goods and other business accommodations as well.

When the Senate Committee on Judiciary first reviewed and approved the Gender Tax Repeal Act's enabling legislation, AB 1100 (Speier, Ch. 866, Stats. 1995), the Committee analysis noted that the "clear statement by the [*Koire*] Court about the illegality of gender price discrimination" made it "difficult to claim that the persistence of gender discrimination is because of an ambiguity in present law. Rather, it appears clear that there is inadequate enforcement of existing law, and inadequate education efforts to inform businesses and consumers about the illegality of this practice." (Sen. Judiciary Com., analysis of AB 1100 (1995-1996 Reg. Session), Aug. 22, 1995, p. 6.) That being said, proponents asserted that an explicit prohibition against gender-based pricing discrimination was needed to clarify the Unruh Civil Rights Act and to try to address the persistent problem of gender-based discrimination in the sale of services, particularly in relation

to haircuts, laundry, dry cleaning, and alterations. (*Id*. at 5. *See also* Comment 2 for more about the documented prevalence of gender-based price discrimination at the time AB 1100 was enacted.)

Burden on Business. In referencing *Koire v. Metro Car Wash,* the state Supreme Court determined that sex-based price discounts were illegal. However, the 1995 law focusing on services made consumer goods a de-facto free zone for gendered pricing. This, and the fact that the "Pink Tax" still exists exemplifies that the precedent does not seem sufficient to ensure gender equity in pricing.

This bill does not include the private right of action from the 1995 law to preclude any significant damage based on misunderstandings and the many gray areas that come with defining a product's intended market.

Prior Related Legislation. SB 320 (Jackson, 2019) returned to Secretary of Senate pursuant to Joint Rule 56 would have extended the Gender Tax Repeal Act's prohibition on gender-based price discrimination. The Act currently prohibits businesses from charging men different prices than women, and vice versa, for services.

AB 1607(Boerner Horvath Ch. 293, Stats. 2019) requires local governments to provide businesses with information on the law prohibiting gender discrimination in the prices charged for certain services.

SB 899 (Hueso, 2016) would have prohibited a business from discriminating with respect to the price charged for the same, or substantially similar, goods because of the gender of the targeted user of the good, as specified. SB 899 died in the Senate Appropriations Committee.

AB 1088 (Jackson, Ch. 312, Stats. 2001) required specified business establishments to disclose in writing the pricing for each standard service, to display a sign stating that it is illegal to base pricing on gender and that a complete price list is available upon request, and to provide the customer with a copy of the complete price list upon request. The bill made a business establishment failing to correct a violation of these requirements within 30 days of receiving written notice of a violation liable for a civil penalty of $1,000.

AB 1100 (Speier, Ch. 866, Stats. 1995) specifically prohibited businesses from engaging in price discrimination based on gender with respect to services of a like or similar kind, while also clarifying that the prohibition does not apply to price differentials based upon the amount of time, difficulty, or cost of providing the service.

AB 2418 (Speier, 1994) would have prohibited gender-based pricing discrimination for both goods and services. AB 2418 was vetoed by then-Governor Pete Wilson.

SB 1288 (Calderon, Ch. 535, 1994): (1) directed the Department of Consumer Affairs (DCA) to provide notices to licensed barbers and cosmetologists to remind them that the Unruh Civil Rights Act prohibits gender-based pricing practices; (2) required DCA to prepare a summary of gender price discrimination-related complaints received by its licensing boards; (3) required DCA to make available to the public consumer information on gender-based pricing; and (4) quadrupled the minimum amount of punitive damages awardable to a plaintiff in a claim under

the Unruh Civil Rights Act "did not have sufficient information to determine the extent to which these gender-related price differences were due to gender bias as opposed to other factors, such as different advertising costs."[3]

ARGUMENTS IN SUPPORT:

According to the *Women's Foundation of California* (WFC), "The WFC is a statewide, publicly supported foundation dedicated to achieving racial, economic, and gender justice by centering the experience and expertise of communities most impacted by systemic injustice. We were proud co-sponsors of last year's SB 873 (which was shelved due to COVID-19, as was many other pieces of legislation), and we are in support of this year's effort to right an economic wrong.

A December 2015 report by the New York City Department of Consumer Affairs, entitled "From Cradle to Cane: The Cost of Being a Female Consumer," found that 42 percent of the time, women's products cost more than similar products for men and cost 4 - 13% more for toys and accessories, children's clothing, adult clothing, personal care products, and senior/home health care products. In 1995, California elaborated on the Unruh Act by enacting the "Gender Tax Repeal Act" by specifically prohibiting businesses from charging women higher prices than men for services."

REGISTERED SUPPORT:

The Women's Foundation of California (WFC)

REGISTERED OPPOSITION:

None on file.

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

[3] *Ibid.*

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 359 (Cooper) – As Amended March 22, 2021

NOTE: This bill contains an urgency clause.

SUBJECT: Physicians and surgeons: licensure: examination.

SUMMARY: Authorizes applicants who took more than four tries to pass Step 3 of the United States Medical Licensing Examination but have a license in another state, as specified, to qualify for a California physician's and surgeon's license if they meet existing requirements for out-of-state licensed applicants and loosens restrictions on continuing medical education to allow for courses that include practice and office management, coding, reimbursement, and education methodology.

EXISTING LAW:

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

2) Prohibits the practice of medicine without a physician's and surgeon's license issued by the MBC. (BPC § 2052)

3) Establishes the requirements for education, training, and examination required for a physician's and surgeon's license, including applicants who graduate from schools outside of the United States or obtained their license from another state or Canada. (BPC §§ 2080-2099, 2105-2113, 2135-2153, 2170-2186)

4) Requires the MBC to issue a physician's and surgeon's license to an applicant who holds an out-of-state license and meets the following:

    a) Is licensed in another state or a Canadian province and meets the following: (BPC § 2135(a))

    b) Completed an MBC approved educational program. (BPC § 2135(a)(1))

    c) Passed an examination determined by the MBC to be equivalent to what is required in California. (BPC § 2135(a)(2))

    d) Held their license for a period of at least four years. (BPC § 2135(b))

    e) The MBC determined that there are no outstanding disciplinary actions or adverse judgments or settlements that suggest a pattern of negligence or incompetence. (BPC § 2135(c))

f) Completed one of the following:

i) At least one year of approved postgraduate training and certified by a specialty board approved by the American Board of Medical Specialties or approved by the MBC. (BPC § 2135(d)(1))

ii) At least two years of MBC-approved postgraduate training. (BPC § 2135(d)(2))

iii) At least one year of approved postgraduate training and pass the clinical competency written examination. (BPC § 2135(d)(3))

g) Has not committed any acts or crimes constituting grounds for denial. (BPC § 2135(e))

5) Authorizes the MBC to issue a license to an applicant who holds a license as a physician and surgeon in another state and meets the following:

a) Has held the license continuously for a minimum of four years before the date of application. (BPC § 2135.5(a))

b) Has completed at least 36 months of MBC-approved postgraduate training and is certified by a specialty board that is a member board of the American Board of Medical Specialties. (BPC § 2135.5(b))

c) Are not subject to denial of licensure. (BPC § 2135.5(c))

d) Have not been the subject of disciplinary action by a medical licensing authority or of an adverse judgment or settlement resulting from the practice of medicine that, as determined by the MBC, constitutes a pattern of negligence or incompetence. (BPC § 2135.5(d))

6) Provides that an applicant for a physician's and surgeon's license must obtain a passing score on all parts of Step 3 of the United States Medical Licensing Examination (USMLE) within not more than four attempts. (BPC § 2177(c)(1))

7) Authorizes an applicant for a physician's and surgeon's license who completed Step 3 of the USMLE after more than four attempts who meets the requirements for an out-of-state application under BPC § 2135.5 to be eligible for a physician's and surgeon's certificate.

8) Establishes the requirements for post-licensure continuing medical education (CME) requirements. (BPC §§ 2190-2196.9)

9) Prohibits educational activities that are not directed toward the practice of medicine, or are directed primarily toward the business aspects of medical practice, including, but not limited to, medical office management, billing and coding, and marketing from meeting the CME standards for physicians and surgeons. (BPC §2190.1(f))

10) Specifies that educational activities that meet the specified content standards and are accredited by the California Medical Association or the Accreditation Council for Continuing

Medical Education may be deemed by the MBC's Division of Licensing to meet its CME standards. (BPC § 2190.1(g))

THIS BILL:

1) Authorizes a person who has a physician's and surgeon's license in another state, who took more than four tries to pass Step 3 of the United States Medical Licensing Examination (USMLE) to qualify for a California physician's and surgeon's license if they meet existing requirements for all out-of-state licensed applicants, rather than those who only meet the post-graduate experience requirements under BPC § 2135.5.

2) Expands continuing medical education (CME) to include educational activities which serve to maintain, develop, or increase the knowledge, skills, and professional performance and relationships, that a physician and surgeon uses to provide care, to provide services for patients, the public, or the profession, and also includes activities that promote recommendations, treatment, or manners of practicing medicine.

3) Allow for CME courses that teach the following:

    a) Practice management content designed to provide better service to patients, including, but not limited to, the use of technology or clinical office workflow.

    b) Management content designed to support managing a health care facility, including, but not limited to, coding or reimbursement in a medical practice.

    c) Educational methodology for physicians and surgeons teaching in a medical school.

4) Contains an urgency clause, declaring the necessity for the provisions to into effect immediately.

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

COMMENTS:

Purpose. This bill is co-sponsored by the *Choice Medical Group* and the *California Medical Association*. According to the author, "Californians deserve access to safe and appropriate medical care, regardless of their socioeconomic background or geographic location, and should have the option to see a physician for their medical needs if they so choose. [This bill] will increase access to physician and surgeons and will ensure physicians in California receive CME credit for the professional work they do to improve patient care, and will create an equivalent framework in California with the requirements for CME nationally."

Background. This bill makes two changes to requirements for physician and surgeon licensure. The first change involves the number of times an applicant who holds a license out of state may take the third step of the USMLE, the final step of the licensing examination for physicians and surgeons.

USMLE. Existing law prohibits an applicant who does not pass the Step 3 of the United States Medical Licensing Examination (USMLE) within four tries from qualifying for licensure unless

they hold a license from out of state, have held the license for at least four years, have completed at least 36 months of MBC-approved postgraduate training, are certified by a specialty board that is a member board of the American Board of Medical Specialties, and are not otherwise subject to denial of licensure.

This bill would also allow applicants with an out-of-state license who do not meet the 36-month postgraduate requirement but otherwise meet specified California educational requirements to also qualify even if they took more than four tries to pass Step 3 of the USMLE.

In terms of USMLE Step 3 pass rates, they are relatively high overall. The out-of-state license provisions require an applicant to have held their license for at least 4 years (notwithstanding post-graduate training), and the 2015 first-time pass rate for Step 3 of the USMLE for graduates from a U.S./Canadian school was 98% (out of 17,296 examinees). The pass rate for repeat takers was 74% (out of 568 exams administered, which could include the same examinees multiple times). It is unclear how many of the repeat examinations were administered to examinees who are on their fifth try. The non-U.S./Canadian school pass rates were lower. The first-time pass rate was 89% (out of 7,637 examinees). The pass rate for repeat takers was 57% (out of 1,344 exams administered).

In 2018, the U.S./Canadian first-time pass rate was 97% (out of 20,595 examinees). The pass rate for repeat takers was 73% (out of 647 exams administered). The non-U.S./Canadian school first-time pass rate was 90% (out of 8,913 examinees). The pass rate for repeat takers was 59% (out of 1,419 exams administered).

In 2019, the first-time pass rate was 98% (out of 20,611 examinees from US/Canadian Schools). The pass rate for repeat takers was 74% (out of 588 exams administered). The non-U.S./Canadian school first-time pass rate was 92% (out of 9,111 examinees). The pass rate for repeat takers was 64% (out of 1,235 exams administered).

Continuing Medical Education. The second change relates to physician continuing medical education (CME). Physicians are required to complete no less than 50 hours of approved CME every two years. Upon renewal, physicians are required to self-certify under penalty of perjury that they have met each of the CME requirements, that they have met the conditions exempting them from all or part of the requirements, or that they hold a permanent CME waiver.

AB 3635 (Polanco), Chapter 331, Statutes of 1992 established initial clarifications to the CME requirements, including that education not directed toward the practice of medicine, or are directed primarily toward the business aspects of medical practice, such as medical office management, billing and coding, and marketing do not meet the CME standards for licensed physicians and surgeons. The purpose of the prohibition is to ensure that the requirements contribute to patient care rather than financial gain.

At the time, the California Medical Association, which is a CME provider accredited by the Accreditation Council for Continuing Medical Education (ACCME), stated that AB 3635 would strengthen the existing law as well as remove ambiguities regarding new and emerging topics in CME. Specifically, CMA stated that AB 3635 would, “for the first time, clarify in statute that courses must have a bearing on quality patient care but cannot be directed toward the business aspects of medical practice such as office management, billing, and marketing.”

This bill would modify that prohibition, allowing three categories of business practice courses to qualify, so long as the courses relate to "the knowledge, skills, and professional performance and relationships that a physician and surgeon uses to provide care, to provide services for patients, the public, or the profession, or to improve the quality of care provided to patients." The three categories are 1) practice management designed to provide better service to patients, including technology and office workflow; 2) management of a healthcare facility, including coding and billing; 3) and educational methodology for physicians teaching in medical schools.

In addition to statutory requirements, CME providers with ACCME accreditation are required to seek results articulated in terms of changes in physician competence, performance, or patient outcomes and present learners with "only accurate, balanced, scientifically justified recommendations, and (2) [protect] learners from promotion, marketing, and commercial bias."

Current Related Legislation. SB 806 (Roth), which is pending in the Senate Committee on Business, Professions and Economic Development, is the vehicle intended to contain the changes that result from the sunset review of the MBC.

Prior Related Legislation. AB 2435 (Obernolte) of 2020 proposed the provisions under this bill relating to the number of USMLE step 3 attempts.

AB 3635 (Polanco), Chapter 331, Statutes of 1992 established the first CME requirments modified under this bill, including the prohibition against educational activities not directed toward the practice of medicine, or are directed primarily toward the business aspects of medical practice, including, but not limited to, medical office management, billing and coding, and marketing.

ARGUMENTS IN SUPPORT:

The *California Medical Association* (co-sponsor) writes in support:

> [This bill] gives California expanded tools in facing the effects of the current pandemic. This bill addresses issues brought forward by physicians where a physician who is licensed in another state, but passed step 3 of the USMLE on their 5th or 6th try, cannot be licensed in California because our laws require that the physician pass their USMLE step 3 in 4 attempts or less. There are physicians who would like to come practice in California, and passed the USMLE in 5 tries, but because of California law they cannot. Under this law, as long as someone meets all other licensure requirements and is licensed in another state, they can practice here in California. This bill would prove to be helpful, in bringing in a number of physicians that may want to come practice in California but can't under our current requirement for passing USMLE step 3 in 4 tries.
>
> [This bill] would expand the definition of content qualifying for CME because practice management education provides better services to patients, and increases the efficacy of the professional work physicians do to improve patient health outcomes. Removing the restrictions on practice management courses qualifying for CME will allow physicians in California to receive CME credit for the

> professional work they do to improve patient care, and will create an equivalent framework in California with the requirements for CME nationally.

The *Choice Medical Group of Apple Valley* (co-sponsor) writes in support,

> Many counties throughout California suffer from an acute shortage of primary care physicians and have been designated as Health Professional Shortage Areas (HPSA). The Federal Government recommends 60-80 primary care physicians per 100,000 people, but California has fewer than 50. A third of our doctors are over 55, thus the shortage is expected to grow.
>
> The Legislature has moved to address the shortage, expanding the number of international medical schools whose graduates are recognized as qualifying for practice in California and by reducing the supervision requirements of nurse practitioners. [This bill] would take the next step by adopting a more liberalized standard for passing the USMLE that many other states have already adopted. [This bill] rightly requires that applicants that are licensed in other states be free of disciplinary actions and adverse judgments.

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

California Medical Association (co-sponsor)
Choice Medical Group (co-sponsor)
California Orthopedic Association

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 224 (Daly) – As Amended March 26, 2021

NOTE: This bill contains an urgency clause.

SUBJECT: Department of Consumer Affairs: Bureau of Household Goods and Services: household movers.

SUMMARY: Exempts motor carriers that may transport used household goods but do not load or unload the containers from the Household Movers Act and exempts brokers that utilize exempted motor carriers if they do not otherwise advertise, solicit, offer, or arrange for the full service moving of used household goods by motor carrier for compensation.

EXISTING LAW:

1) Regulates the business of the transportation of used household goods under the Household Movers Act, and establishes requirements related to identifying symbols, liability protection, rates, reports, records, inspections, delivery and claims, subhauling agreements, estimates, fines, and penalties, among others. (Business and Professions Code (BPC) §§ 19225-19294)

2) Declares that the transportation of used household goods and personal effects in any truck or trailer for compensation over any public highway in this state is a highly specialized type of truck transportation and specifies that the act is enacted for the limited purpose of providing necessary regulation for this specialized type of truck transportation only, and is not to be construed for any purpose as a precedent for the extension of that regulation to any other type of truck transportation not currently restricted. (BPC § 19227)

3) Establishes the Bureau of Household Goods and Services (BHGS) within the Department of Consumer Affairs to administer and enforce the Electronic and Appliance Repair Dealer Registration Law, the Home Furnishings and Thermal Insulation Act, and the Household Movers Act, (BPC §§ 9810-9814.5, 19030-19034.5, 19225.5-19234.1)

4) Defines "broker" as a person engaged by others in the act of arranging, for compensation, the intrastate transportation of used household goods by a motor vehicle over the highways of this state for, or on behalf of, a shipper, a consignor, or a consignee. (BPC § 19225.5(a))

5) Defines "household mover" as every corporation or person, their lessees, trustee, receivers, or trustees appointed by any court whatsoever, engaged in the permitted or unpermitted transportation for compensation or hire as a business utilizing a motor vehicle or motor vehicles being used in the transportation of used household goods and personal effects over any public highway in this state. A broker, as defined, is considered a household mover. "Household mover" has the same meaning as "household goods carrier" in the former Section 5109 of the Public Utilities Code, as that section read on June 30, 2018. (BPC § 19225.5(h))

6) Prohibits a household mover from engaging in the business of transportation of used household goods and personal effects for compensation by motor vehicle over any public highway in this state, unless the mover has a permit or is otherwise authorized under the Household Movers Act. (BPC § 19235)

7) Regulates and licenses the business of transporting property using a commercial motor vehicle under the Motor Carriers of Property Permit Act, and establishes requirements related to vehicle maintenance, liability insurance, workers compensation insurance, controlled substance and alcohol testing, identification, fines, and penalties, among others. (Vehicle Code (VEH) §§ 34600-34672)

8) Defines "motor carrier of property" as any person who operates any commercial motor vehicle used to transport property for compensation, as defined. Provides that "motor carrier of property" does not include a household goods carrier, as defined. (VEH § 34601(a))

THIS BILL:

1) Exempts from the definition of a "household mover":

   a) A motor carrier that provides transportation of household goods in containers or trailers where the household goods are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier.

   b) A broker that utilizes the services of a motor carrier that meets the definition under this bill and does not otherwise advertise, solicit, offer, or arrange for the full service moving of used household goods by motor carrier for compensation.

2) Contains an urgency clause, declaring the necessity for the provisions to into effect immediately.

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

COMMENTS:

Purpose. This bill is co-sponsored by the *California Trucking Association* and the *Teamsters*. According to the author, "Self-moving services have grown over the decades to differ significantly from traditional full-service movers and target a different segment of the consumer market. The primary distinction between these two types of service involves whether service features are offered inside the residence (as is the case with traditional full-service moves) or whether the motor carrier is merely offering the availability of its equipment and transportation service. This bill provides needed clarification in current law to allow the self-moving service segment of the trucking industry to continue operating without unrelated regulatory requirements imposed on traditional full-service movers."

Background. The transportation of goods over state highways is regulated in several ways. The Department of Motor Vehicles regulates most types of transport, including the transport of property using commercial vehicles under the Motor Carriers of Property Permit Act. The

Bureau of Household Goods and Services regulates moving companies, which transport used household goods and personal effects under the Householder Movers Act

The reason for the distinction is that household goods and personal effects reside within a household and may tend to have higher personal and sentimental value than other types of goods. For example, they may include family heirlooms, antique furniture, or funeral urns. As a result, they may be more fragile, unique, or less replaceable and therefore may require specialized services, such as entry into the home or the use of specific equipment. They may also be more susceptible to theft or targeted for use in extortion schemes, such as holding items hostage for ransom.

To that end, BPC § 19227 specifies that the transportation of used household goods and personal effects "is a highly specialized type of truck transportation." BPC § 19229.1 also specifies that the purpose of the Household Movers Act is to preserve the highways and prevent predatory and fraudulent practices by businesses that offer to move household goods. Specifically, the purpose includes:

1) Preserving for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon those highways.

2) Securing reasonable and nondiscriminatory rates for transportation by household movers operating upon the highways.

3) Securing the full and unrestricted flow of traffic by motor carriers over the highways that will adequately meet reasonable public demands by providing for the regulation of rates of all household movers so that adequate and dependable service by all necessary household movers is maintained and the full use of the highways is preserved to the public.

4) Promoting fair dealing and ethical conduct in the rendition of services involving or incident to the transportation of household goods and personal effects.

As a result, state law places higher burdens on businesses that offer to provide moving and transportation services to consumers looking to move their household goods. The culmination of these requirements is known as the Maximum Rate Tariff 4,[1] which includes regulations surrounding estimates, notices to consumers, rates, charges, collections, claims, valuation, and numerous other requirements and forms.

However, the Household Movers Act also specifies that the limited purpose of the act is the "necessary regulation for this specialized type of truck transportation only, and is not to be construed for any purpose as a precedent for the extension of that regulation to any other type of truck transportation not presently so restricted."

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[1] Bureau of Household Goods and Movers, *Maximum Rates and Rules For The Transportation of Used Property, Namely: Household Goods and Personal Effects Over the Public Highways Within the State of California By Household Movers*, February 15, 2019.

This bill seeks to exempt companies that offer transportation services that may include household goods but do not include any of the specialized services, such as packing, loading, binding, storage, or other services traditionally associated with a full-service mover.

Administration of the Household Movers Act. The Household Movers Act is administered and enforced by the BHGS within the Department of Consumer Affairs (DCA), which was previously known as the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation (BEARHFTI).

The act was previously administered by the Public Utilities Commission (PUC). However, due to ongoing issues with the PUC's ability to complete its regulatory functions, SB 541 (Hill), Chapter 718, Statutes of 2015, required the PUC to hire an independent entity to, in consultation with trade carrier associations for the industries under the jurisdiction of the PUC, assess the PUC's capabilities to carry out its various programs, such as the transportation of passengers and property by transportation companies and report to the Legislature no later than January 1, 2017.

The report found that the PUC has had difficulty implementing many of the provisions of the prior Household Goods Carrier's Act. As a result, SB 19 (Hill), Chapter 421, Statutes of 2017, required that BEARHFTI would assume licensing and enforcement of the Household Movers Act as of July 1, 2018.

Federal Regulation of Household Movers. The federal Safe, Accountable, Flexible, Efficient Transportation Equity Act established, among other things, regulation for the interstate transport of household goods. While similar to the state requirements discussed under this bill, it provides a limited services exemption, which excludes motor carriers that do not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier). The goal of this exemption is to exclude companies that offer containers and transport of goods but do not provide any moving services related to that transport.

While the federal law contains some federal preemption provisions, it specifically exempts from preemption state regulation of "the intrastate transportation of household goods" (49 U.S. Code §14501(c)(2)(B)).

Prior Related Legislation. AB 2460 (Daly) of 2020 would have created the same exemptions to the Household Movers Act proposed under this bill. AB 2460 died pending hearing in the Senate Committee on Business, Professions, and Economic Development.

SB 19 (Hill), Chapter 421, Statutes of 2017 made numerous changes to the PUC, including moving the household movers program to the BHGS (then called the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal insulation).

SB 541 (Hill), Chapter 718, Statutes of 2015, required the CPUC to hire an independent entity to, in consultation with trade carrier associations for the industries under the jurisdiction of the commission, assess the commission's Transportation Enforcement Branch capabilities to carry out specified activities and report to the Legislature.

ARGUMENTS IN SUPPORT:

The *California Trucking Association* (co-sponsor) writes in support:

> [This bill] would harmonize the state and federal definition of "household goods mover." This measure will update California's outdated definition of "household goods mover" to recognize the intent of Congress to exclude motor carriers operating under a "limited services exclusion" (LSE) from that definition.
>
> California has never required motor carriers who fall under this exclusion to obtain household goods permits and operate as household goods movers; however, recently, the Bureau has notified our members that they must obtain these permits. In doing so, the clear conflict between State and Federal statute has come to light….
>
> One exception provided by [federal law] is for the intrastate transportation of household goods… and allows states to exercise jurisdiction over intrastate household goods movers; however, considering that the legislative intent behind this exception must be understood consistent with the household goods definition (and the LSE exclusion contained within it), the Bureau does not have jurisdiction over LSE operations since those are categorically excluded from household goods motor carrier operations.
>
> Furthermore, in light of the nation's ongoing COVID-19 pandemic, the self-moving industry allows for moves which involve little to no face to face interaction, allowing for social distancing and reducing the likelihood of transmittal from an asymptomatic carrier.

The *Teamsters* (co-sponsor) writes in support:

> [This bill] would align California and federal law by ensuring that the limited service exclusion for motor carriers applies here to trucking companies that move household goods for self-movers. This clarification is necessary to prevent California's extensive regulatory scheme for moving companies from being applied unnecessarily to motor carriers who are simply moving a load of goods from point A to point B.
>
> The Teamsters have thousands of members throughout the country and throughout the state who perform the work that this bill contemplates. They drive trucks that may have consumer self-loaded containers of household goods on one day and may haul a container of packaged goods going to a retailer on another day. It would be unfair and burdensome to regulate their work as household movers. That's not what they do. They don't go into homes and move furniture. They don't touch the household goods that they haul. The limited service exclusion makes good policy sense and should be applied here in California as well. We certainly support vigorous consumer protection, but it should be aimed with some precision.

ARGUMENTS IN OPPOSITION:

The *California Moving & Storage Association (CMSA)* writes in opposition:

> [This bill] seeks to weaken BHGS' oversight, increase state enforcement costs, subject consumers to mistreatment & fraud, and create a path for unregulated movers to operate in California.
>
> In their reasoning for seeking an exemption, the bill's sponsors state that California has never required motor carriers who fall under the limited services exclusion to obtain permits and that federal law clearly preempts motor carriers from needing a BHGS permits to limit state enactment & enforcement of laws & regulations affecting prices, routes, and services provided by motor carriers.
>
> In 2018, pursuant to SB 19 (Hill), Chapter 421, Statutes of 2017, jurisdiction for the oversight and enforcement of household movers, as well as the transport and storage of household goods, was transferred from the California Public Utilities Commission (CPUC) to BHGS. CMSA strongly supported SB 19 because it relieved the CPUC of certain regulatory functions related to the industry and recognized that the CPUC's enforcement had been lacking for decades. It was understood that, when BHGS absorbed the moving and storage industry, oversight and enforcement would improve. Since transitioning to BHGS, we have seen an increase in activities against unlicensed, illegal movers, including several actions against businesses that this bill would exempt. Essentially, we knew the additional oversight was coming and the opportunity to discuss role & responsibility of BHGS presented itself very recently in SB 19.
>
> Federal law does provide a very limited exemption from the definition of a household goods motor carrier – for motor carriers that provide transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier. However, federal law recognizes that states are free to further regulate the transport of household goods within their borders. Per federal law (49 U.S.C. 14501(c)(2)(B)), federal preemption "does not apply to the intrastate transportation of household goods." As such, we do not agree with the assertion that federal law preempts states from enacting and enforcing laws affecting prices, routes, and services by motor carriers of household goods.
>
> Bottom line, we fear that removing motor carriers involved in transporting household goods, or brokers arranging for these services from BHGS permitting will adversely impact consumers and the regulated moving industry. For example, a company, like PODS (which advertises itself as a moving company, employing its own drivers in PODS-branded trucks and uniforms) delivers a large box (essentially a small shipping container) to a customer, the customer loads it (or hires a third party), and then PODS picks it up and moves it to the customer's desired location. Moreover, PODS can also act as a broker, arranging for "packers and loaders" to assist customers with their move. For all intents and purposes, this is a moving company. However, this bill would exempt companies like PODS

from BHGS permitting and oversight and would create a significant marketplace for unregulated, unlicensed movers.

For traditional moving companies, consumer protection is enhanced by consistent contracts and forms set out in both the Business and Professions Code and the MAX 4 Tariff (which regulates household movers in California). This paperwork sets out, among many things, the estimated cost, a "not-to exceed" price, details the labor and equipment to be used, provides dates of service, provides for storage-in-transit charges at the customer's request, clearly explains the responsibilities of the mover, and is clear about payment for services. A company exempted by this bill, but still essentially providing or arranging moving services, would not be subject to any of these requirements. Finally, it is worth noting that the BHGS permit applies to the company, and not the individual employees. In the above example, PODS would hold the BHGS permit and it would cover all employees. The permit costs $500, requires knowledge of the Max 4 Tariff, participation in the DMV Employer Pull-Notice System (if required), information to show that vehicles will be maintained and operated in safe condition, fingerprinting for a criminal background check and evidence of insurance coverage.

POLICY ISSUES FOR CONSIDERATION:

Lack of Definitions. This bill would exempt brokers that utilize motor carriers that meet the requirements under this bill but do not advertise for the “full service moving” of household goods. However, “full service moving” is not currently defined.

Because the BHGS has only had authority over the Household Movers Act since July 1, 2018, several code sections likely need regulations to clarify various terms and establish a system for the issuance of citations. The BHGS rulemaking proposal was submitted in July 2019 and is still going through the review process.

Overbroad Scope of Practice. While not established by this bill, the current scope of practice of household movers is any transportation of used household goods over a state highway for compensation. As a result, there is no basis to include or exclude the ancillary services associated with the transportation of household goods, such as packing, loading, providing estimates, or entry into a home.

Federal law is more easily able to distinguish between motor carriers of property that may transport household goods by excluding those that are not included within the federal scope of practice under 49 U.S. Code §13102(12):

> (A) In general.—The term “household goods motor carrier” means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:
>
> (i) Binding and nonbinding estimates.
>
> (ii) Inventorying.

(iii) Protective packing and unpacking of individual items at personal residences.

(iv) Loading and unloading at personal residences.

(B) Inclusion.—

The term includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

Many types of motor carriers may move household goods incidentally as part of their overall business model. For example, a consumer shipping company that accepts a contract to ship, as part of an overall shipment that includes other consumer orders, a package that is identified as a funeral urn, could technically violate the Household Movers Act.

The sponsors of this bill argue that the household mover regulations are too onerous for companies that simply offer container services where a consumer loads and unloads a package or container on their own and the company simply moves the container from one point to another. Specifically, the sponsors raise that a trucking company that accepts contracts to haul freight, whether home goods or not, and was not involved in the loading, inventorying, or storage of a container, would not pose as high of a risk as a company that advertised and offered to assist in the move of home goods.

The opposition argues that the transportation of household goods, which are a unique type of goods, should always be subject to the Household Movers Act regulations. If this bill passes this committee, the author may wish to continue to work with the opposition and the BHGS to determine what types of business models may pose a high risk to consumers while skirting the regulations surround household movers.

Unlicensed Activity. Currently, there is a lack of clarity as to who is subject to regulation by the BHGS and who is not. Due to the insufficiency of the PUC's licensing and enforcement activities, it is unclear how many non-compliant household movers were in business. The following is the BHGS complaint data as of July 1, 2018:

Complaints:

- Total processed: 371
- Unlicensed mover: 244
- Percentage of unlicensed activity: 66%
- Involving Tariff disputes (overcharging, no contract, missing/damages items, etc.): 245
- Involving inter-state movers: 136
- Involving unlicensed inter-state movers: 118
- Involving restoration companies: 5
- Involving unlicensed restoration companies: 5
- Complaints referred to Investigations Unit for field investigation: 252

Investigations:

- Total: 525 (these include 252 referrals from Complaint Unit, tips of unlicensed activity, and proactive enforcement)
- Unlicensed mover: 502
- Percentage of unlicensed activity: 96%
- Hold hostages: 85
- Hold hostage involving an unlicensed mover: 77
- Involving restoration companies: 8
- Involving unlicensed restoration companies: 8

As noted above, there is a significant number of "hold hostage" cases. These are cases related to goods that are being transported but are held hostage to extort an additional fee from a consumer.

AMENDMENTS:

To further narrow the exemption to motor carriers that only move freight that may contain household goods but are not advertising as household movers or otherwise arranging the primary transport of household goods, the author should amend the bill as follows:

> Between page 2, lines 29-31 and page 3, lines 1-3:
>
> (2) "Household mover" does not include either of the following:
>
> (A) A motor carrier of property, as ~~that term is~~ defined in Section ~~13102~~ *34601* of ~~Title 49 of the United States Code,~~ *the Vehicle Code,* that *meets both of the following:*
>
> *(1) The motor carrier only* provides transportation of household goods in containers or trailers ~~where~~ *when* the household goods are entirely loaded and unloaded by an individual ~~other than~~ *who is not* an employee or agent of the motor carrier.
>
> *(2) The motor carrier does not otherwise advertise as a household mover in compliance with Section 19279.3.*
>
> (B) ~~A broker that utilizes the services of a~~ *A* motor carrier ~~described in~~ *that meets the requirements of* subparagraph (A) *that utilizes the services of another motor carrier that meets the requirements of subparagraph (A).* ~~and does not otherwise advertise, solicit, offer, or arrange for the full service moving of used household goods by motor carrier for compensation.~~

REGISTERED SUPPORT:

California Teamsters Public Affairs Council (co-sponsor)
California Trucking Association (co-sponsor)

REGISTERED OPPOSITION:

California Moving and Storage Association

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

Date of Hearing:

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 225 (Gray) – As Introduced January 11, 2021

SUBJECT: Department of Consumer Affairs: boards: veterans: military spouses: licenses.

SUMMARY: Expands the duration of temporary licenses currently issued by licensing boards to spouses and partners of active duty members of the military who are actively licensed in another state, and requires all boards that do not offer those temporary licenses to instead issue a full permanent license to any military spouse or partner, or any honorably discharged veteran, who are actively licensed in another state and who submit a signed affidavit stating that they meet all the requirements for licensure to the best of their knowledge.

EXISTING LAW:

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

2) Requires that any licensee or registrant of any board, commission, or bureau within the DCA whose license expired while the licensee or registrant was on active duty as a member of the California National Guard or the United States Armed Forces, may, upon application, reinstate their license or registration without examination or penalty. (BPC § 114)

3) Requires every board within the DCA to waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard. (BPC § 114.3)

4) Requires every board within the DCA to inquire in its license applications if the applicant is serving in, or has previously served in, the military, and if a board's governing law authorizes veterans to apply military experience and training towards licensure requirements, to post information on the board's website about the ability of veteran applicants to apply military experience and training towards licensure requirements. (BPC § 114.5)

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

6) Requires a board under the DCA to expedite the licensure process for an applicant who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders; and who holds a current license in another state, district, or territory of the United States in the profession or vocation for which they are seeking a license from the board. (BPC § 115.5)

7) Requires seven boards within the DCA to grant temporary licenses to applicants who are married to, or in a domestic partnership or other legal union with, an active duty member of

the Armed Forces and who holds a current, active, and unrestricted license in another state. (BPC § 115.6)

THIS BILL:

1) Extends the expiration date for temporary licenses currently offered by boards within the DCA to military spouses and partners from twelve months after issuance to thirty months after issuance.

2) Requires boards within the DCA that do not currently grant temporary licenses to active duty military spouses and partners to issue licenses to applicants that meet all of the following requirements:

   a) The applicant is an honorably discharged veteran of the Armed Forces of the United States or is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

   b) The applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a license from the board.

   c) The applicant submits an application to the board that includes a signed affidavit attesting to the fact that the applicant meets all of the requirements for the license and that the information submitted in the application is accurate, to the best of the applicant's knowledge; this application must also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.

   d) The applicant has not committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed.

   e) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

   f) The applicant, upon request by a board, has furnished a full set of fingerprints for purposes of conducting a criminal background check.

3) Authorizes boards to adopt regulations necessary to administer the provisions of the bill.

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

COMMENTS:

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

> California routinely lags other states in our treatment and accommodation of veterans and their families despite being home to more veterans than any other state. The US Department of Labor ranks California's military spouse licensure recognition in the bottom third of states,

while California has been found to be one of the least veteran-friendly states as measured by veterans' economic conditions (46th), veteran homelessness (48th), and affordable housing (50th). While California has passed several reforms to expedite licensure for veterans and military spouses, we have stopped short of creating true license portability. Thirty-seven other states have license recognition laws veteran-friendly than California and fifteen other states, including Oregon, Utah, and Michigan have laws requiring even greater license portability than AB 3045 proposes. AB 3045 requires most licensing boards under the Department of Consumer Affairs to honor the out-of-state professional license of a veteran or activity duty military spouse to create license portability for this vulnerable community.

Background.

According to the National Conference of State Legislatures (NCSL), there are approximately 18.5 million veterans and 478,963 active duty military spouses or partners living in the United States today. In recognition of the tremendous sacrifices made by both military service members and their families, policymakers have routinely pursued opportunities to help provide these individuals with economic opportunity. In recent years, this has included examination of the potential to remove barriers to entry into professions and vocations requiring licensure in California through the DCA.

The United States Department of Defense provides training to many members of the Armed Forces in numerous disciplines that are directly relevant to professions requiring licensure. The NCSL states that as of 2017, approximately 30,322 active-duty enlisted personnel were trained in construction; 68,365 were trained in health care; 129,209 were trained in electronic and electrical equipment repair; 161,571 were trained as engineers; and 160,690 were trained as mechanics. Despite this substantial education, training, and experience, many veterans report having difficulty finding employment upon honorable discharge.

Meanwhile, the Syracuse University Institute for Veterans and Military Families found that up to 35 percent of military spouses are employed in fields requiring licensure. Because each state possesses its own licensing regime for professional occupations, military family members are required to obtain a new license each time they move states, with one-third of military spouses reportedly moving four or more times while their partner is active duty. Because of the barriers encountered by military family members who seek to relocate their licensed work to a new state, it is understood that continuing to work in their field is often challenging if not impossible.

Currently, statute provides for several accommodations of both military family and veteran license applicants. Boards are required to inquire about the military status of each of their applicants so that military experience may potentially be applied toward licensure training requirements. Boards are also required to expedite licensure for military veterans as well as the spouses and partners of active duty military.

Statute also provides that temporary licenses be provided to military spouses and partners in a handful of occupations and professions. Specifically, the following licenses may be granted temporarily to military family members pending determination that the applicant qualifies for a permanent license:

1) Registered nurses licensed by the Board of Registered Nursing.

2) Vocational nurse licenses issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

3) Psychiatric technician licenses issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

4) Speech-language pathologist licenses issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

5) Audiologist licenses issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

6) Veterinarian licenses issued by the Veterinary Medical Board.

7) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.

8) All licenses issued by the Medical Board of California.

9) All licenses issued by the Podiatric Medical Board of California.

These temporary licenses are available to applicants who supply evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders. The applicants are required to hold a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the board. Currently, these temporary licenses are valid for 12 months; this bill would expand that to 30 months.

To qualify for temporary licensure, the military family member submits an application to the board that includes a signed affidavit attesting to the fact that the applicant meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of the applicant's knowledge. The application also includes written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction. The applicant may not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license, and the applicant cannot have been disciplined by a licensing entity in another jurisdiction or have been the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

This bill would seek to expand opportunities to military family members and Armed Forces veterans beyond what is currently provided for in the law. The bill would not apply to licenses issued by boards that are subject to existing temporary license provisions. The same standards and qualifications would be required of applicants; however, the privileges granted would be in the form of full permanent licensure. Whereas temporary licenses expire 12 months after issuance, licenses granted under this bill would be indefinite. Furthermore, while temporary

licensure currently only applies to military spouses and partners, this bill would treat similarly both military family members and veterans.

Current Related Legislation. AB 107 (Salas) would expand the temporary licensure program for military spouses and partners to include every board and bureau under the DCA. *This bill is pending in the Assembly Committee on Military and Veterans Affairs.*

Prior Related Legislation. AB 3045 (Gray) was substantially similar to this bill. *This bill died in the Senate Committee on Business, Professions, and Economic Development.*

AB 2549 (Salas) would have expanded temporary licensure for military spouses and partners to include licenses issued by the Veterinary Medical Board, the Dental Board of California, the Dental Hygiene Board of California, the California State Board of Pharmacy, the State Board of Barbering and Cosmetology, the Board of Psychology, the California Board of Occupational Therapy, the Physical Therapy Board of California, and the California Board of Accountancy. *This bill died in the Senate Committee on Business, Professions, and Economic Development.*

AB 2185 (Patterson) would have similarly required each board under the DCA to offer license reciprocity for military spouses and partners who are licensed in other states. *This bill died in the Assembly Committee on Business and Professions.*

SB 1226 (Correa, Chapter 657, Statutes of 2014) requires the DCA to expedite applications from honorable discharged veterans and allows in-lieu course requirements for private security officers.

AB 1904 (Block, Chapter 399, Statutes of 2012) provides for the expedited licensure of military spouses.

ARGUMENTS IN SUPPORT:

The **San Diego Military Advisory Council** (SDMAC) supports this bill. According to SDMAC, "as our military families move into California the ability for the spouse to continue work is key to affording to live in our state. Licensing challenges are a top contributor to military spouse unemployment and under-employment, and the nonprofit Blue Star Families' recent survey found military spouse employment is the top concern among military families."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

Currently, this bill applies to both military spouses and partners and veterans. While each of these populations are likely worthy of special consideration, they arguably face distinct circumstances and challenges. Existing law already provides a process for many boards to issue temporary licenses to military family members, and there are active proposals to expand this process to all boards under the DCA. Rather than creating a new licensing pathway for military family members seeking licensure under boards that do not grant temporary licensure, it may be more effective to utilize and enhance the existing architecture for those applicants. The author may therefore wish to consider narrowing the bill to focus on veterans.

As the bill relates to licensure for veterans, the author may wish to consider clarifying the bill to ensure that it applies more specifically to the veteran population it intends to benefit. For many honorably discharged veterans of the military, reentering civilian life can be a challenge and the ability to quickly find employment is essential to supporting that readjustment. To focus the bill's application to that veteran population, the author might consider narrowing the scope of the bill to create a new temporary licensure pathway specifically for veterans within a defined period of time following discharge.

REGISTERED SUPPORT:

Beale Military Liaison Council, Inc.
California Defense Community Alliance
City of Camarillo
County of Ventura
San Diego Military Advisory Council
Solano County Board of Supervisors
South Bay Aerospace Alliance
Travis Community Consortium

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1305 (Lackey) – As Introduced February 19, 2021

SUBJECT: The Medicinal and Adult-Use Cannabis Regulation and Safety Act: exemption for DEA-approved commercial cannabis activity.

SUMMARY: Exempts activity performed pursuant to a registration with the federal Drug Enforcement Administration (DEA) from licensure and regulation under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

EXISTING LAW:

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

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

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

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

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

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

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

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

9) Exempts from MAUCRSA any product containing cannabidiol (CBD) that has been approved by the federal Food and Drug Administration (FDA) that has either been placed on a schedule of the federal Controlled Substances Act other than Schedule I or has been exempted from one or more provisions of that act, and that is intended for prescribed use for the treatment of a medical condition.

10) Establishes a federal registration program with the DEA for manufacturers seeking to plant, grow, cultivate, or harvest marihuana for legitimate medical, scientific, research, and industrial purposes. (Title 21 United States Code of Federal Regulations Part 1318)

THIS BILL:

1) Exempts from MAUCRSA any activity performed pursuant to a registration with the DEA.

2) Finds and declares that the bill furthers the purposes and intent of the Control, Regulate and Tax Adult Use of Marijuana 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:

> "This bill imposes no regulatory or financial burden on the state, furthers the intent of the people and legislature and is a rare, non-controversial no-brainer. Prop 64 and ensuing MAUCRSA were intended to regulate adult-use and medicinal cannabis. This bill ensures that federally authorized research entities, which do not participate in the commercial cannabis markets, are enabled to research cannabis' effects without being caught in a Catch-22 by choosing to either violate federal law or violate state law under. Federally licensed research organizations cannot, by law, engage in medicinal or adult-use cannabis activities and thus licensing them under MAUCRSA, would conflict with the controlled substances laws they must follow. Federally licensed researchers are strictly controlled and regulated. It is imperative for California to continue to lead the way in research."

Background.

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

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

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

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

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

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

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

MCRSA vested authority for:

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

- The CDPH to license and regulate manufacturers; and

- The CDFA to license and regulate cultivators.

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

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

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

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

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

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

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

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

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

Exemptions from MAUCRSA. MAUCRSA is intended to "establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale" of both medicinal and adult-use cannabis. There are, however, several existing exemptions. First, while technically derived from the plant *Cannabis sativa*, "cannabis" does not include industrial hemp for purposes of MAUCRSA. Additionally, the provisions of MAUCRA does not apply to FDA-approved pharmaceutical products containing CBD derived from cannabis. These medications include treatments for conditions such as epilepsy.

DEA Registration Program. Federal regulations establish "procedures governing the registration of manufacturers seeking to plant, grow, cultivate, or harvest marihuana" under the DEA. These regulations authorize the DEA Administrator to "grant an application for a registration to manufacture marihuana, including the cultivation of cannabis, only if he *[sic]* determines that such registration is consistent with the public interest." The regulations further provide that to meet the "public interest" requirement, the proposed cultivation and manufacturing of cannabis should be for "legitimate medical, scientific, research, and industrial purposes."

The federal regulations require the DEA Administrator to consider a number of public interest factors when determining whether to grant a registration. One factor is "compliance with applicable State and local law." This would presumably mean that DEA registrants would be required to obtain a license under the provisions of MAUCRSA. However, because cannabis is still classified as a Schedule I controlled substance at the federal level, the author believes that participating in the MAUCRSA regulatory system would mean that registrants would be violating federal law, creating an irreconcilable conflict.

To address this issue, the author proposes to simply exempt any activities relating to cannabis performed pursuant to a DEA registration from the requirements of MAUCRSA. This exemption would allow DEA registrants to comply with both state and federal law when engaged in federally authorized cannabis research. While the provisions of MAUCRSA would not apply to this activity, the author is likely correct in making the assertion that the restrictions of a DEA registration are sufficiently strict to ensure that there is adequate oversight of the cannabis activities notwithstanding the exemption.

Prior Related Legislation. AB 710 (Wood, Chapter 62, Statutes of 2018) exempted FDA-approved pharmaceuticals containing CBD from MAUCRSA.

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

ARGUMENTS IN SUPPORT:

The **University of California** (UC) supports this bill. The UC states that "UC researchers have made impressive strides to increase scientific knowledge around cannabis. However, there remain substantial impediments to conducting cannabis research. Under the current legal requirements, researchers working directly with cannabis and its derivatives must navigate a lengthy maze of approvals from three federal agencies, in addition to state and institutional authorization. We appreciate that AB 1305 makes clear that institutions engaged in federally permitted cannabis research activities are not required to receive a medicinal or adult-use cannabis license under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Natura
University of California

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 465 (Nazarian) – As Introduced February 8, 2021

SUBJECT: Professional fiduciaries: prelicensing and renewal or restoration: education.

SUMMARY: Requires the prelicensing education courses for licensed professional fiduciaries to include 1 hour of cultural competency training every 3 years. This allows professional fiduciaries to apply cultural and ethnic data to the process of care that includes Lesbian, Gay, Bisexual, Pansexual, Transgender, Genderqueer, Queer, Intersex, Agender, Asexual and other queer-identifying community (LGBTI) communities, ethnic communities, and religious communities.

EXISTING LAW:

1) Establishes the Bureau within the Department of Consumer Affairs (DCA), to licenses and regulate professional fiduciaries under the Professional Fiduciaries Act (Act). (Business and Professions Code (BPC) § 6510)

2) Defines "professional fiduciary" as a person who acts as a conservator of the person, the estate, or person and estate, or guardian of the estate, or person and estate, for two or more individuals at the same time who are not related to the professional fiduciary or to each other, as specified. (BPC § 6501)

3) Specifies that the Bureau is responsible for administering the licensing and regulatory program for professional fiduciaries; and requires the Bureau to approve classes qualifying for prelicensure education, as well as classes qualifying for annual continuing education, as specified. (BPC § 6518(a)(b))

4) Requires a person to meet all of the following requirements for licensure: (BPC § 6533)

    a) Be at least 21 years of age, and have not committed any acts that are grounds for denial, as specified;

    b) Submit fingerprints;

    c) Completed the prelicensing requirements, and pass the licensing examination;

    d) Have one of the three: a bachelor’s degree, an associate of arts degree and three years of work experience either as a professional fiduciary or providing professional fiduciary duties, or have not less than five years of work experience, prior to July 1, 2012, as specified.

Requires the Bureau to maintain specified information in each of its licensees file and make it available to a court for any purpose, as specified. (BPC § 6534)

THIS BILL:

1) Beginning January 1, 2023, would require the prelicensing education courses to include at least one hour of instruction in cultural competency, as defined by the bill.

2) Requires a licensee to complete at least one hour of instruction in cultural competency every 3 years as a condition of license renewal or restoration.

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

COMMENTS:

Purpose. This bill is sponsored by *Equality California* and *The Professional Fiduciary Bureau of California*. According to the Author, "Professional fiduciaries provide critical services to seniors and persons with disabilities. LGBTI communities, religious communities, and ethnic communities' older adults are some of the most vulnerable populations in our society. Given that LGBTI seniors are less likely to be able to turn to family or other support networks, professional fiduciaries are a good option to obtain the support and care needed later in life. This measure is intended to ensure that LGBTI communities, religious communities, and ethnic communities' seniors receive supportive and respectful care through professional fiduciaries by requiring LGBTI cultural competency and sensitivity training during the educational licensing process."

Background. LGBTI older adults typically have fewer options for informal care. Financial instability and legal issues are also major concerns among LGBTI, religious, and ethnic seniors, lifetime disparities in earnings, employment and opportunities to build savings, as well as discrimination when seeking access to legal and social programs that are traditionally established to support aging adults.

It has been reported that LGBTI seniors face unique challenges as they age. This includes barriers to receiving formal health care and social support that heterosexual, cisgender adults do not encounter. Several studies report LGBTI seniors avoid or delay health care, or conceal their sexual and gender identity from health providers and social service professionals for fear of discrimination.

In addition, compared to heterosexual cisgender adults, LGBTI older adults typically have fewer options for informal care. LGBTI seniors are twice as likely to be single or live alone. LGBTI seniors are four times less likely to have children to care for them than non-LGBTI seniors. Studies find resilient LGBTI older adults often rely on "families of choice" (families composed of close friends), LGBTI community organizations, and affirmative religious groups for care and support.

Financial instability and legal issues are also major concerns among LGBTI seniors. Lifetime disparities in earnings, employment, and opportunities to build savings, as well as discrimination when seeking access to legal and social programs that are traditionally established to support aging adults, seems to put LGBTI older adults at greater financial risk than their non-LGBTI peers.

Prior Related Legislation. AB 1247 (Nazarian, 2018) was identical. Vetoed by Governor Brown for the following reason, "While I understand and support cultural competence, I do not believe the mandated continuing education requirements of this bill are warranted."

AB 2430 (Nazarian 2019) – placed on hold due to covid19 in the previous legislative session.

ARGUMENTS IN SUPPORT:

According to the *Professional Fiduciary Association of California* (PFAC), "Our association supports the provision of AB 465 that would establish a definition of cultural competency in the Professional Fiduciaries Act as understanding and applying cultural and ethnic data to the process of care that includes, but is not limited to, information on the appropriate treatment of, and provision of care to, the lesbian, gay, bisexual, transgender, and intersex [LGBTQI+] communities, ethnic communities, and religious communities.

PFAC also supports the provision of [this bill] that would establish a requirement that licensed professional fiduciaries obtain 1 hour of cultural competency training upon initial licensing and every 3 years.

Taken together, these provisions will ensure that licensed professional fiduciaries have education in cultural competency on the appropriate treatment of, and provision of care to these important communities."

REGISTERED SUPPORT:

Equality California (Sponsor)
Professional Fiduciary Association of California (Sponsor)
Apla Health
El/la Para Translatinas
Sacramento Lgbt Community Center

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 913 (Smith) – As Introduced February 17, 2021

SUBJECT: Collateral recovery.

SUMMARY: Clarifies and updates the definitions in the Collateral Recovery Act to conform to current practices and with other provisions of law.

EXISTING LAW:

1) Establishes the Bureau of Security and Investigative Services (BSIS) within the Department of Consumer Affairs (DCA) to license and regulate repossessors under the Collateral Recovery Act. (Business and Professions Code (BPC) §§ 7500 – 7511)

2) Defines "assignment" as any written authorization by the legal owner, lienholder, lessor, lessee, registered owner, or the agent of any of them, to repossess any collateral, including, but not limited to, collateral registered under the Vehicle Code (VEH) that is subject to a security agreement that contains a repossession clause. "Assignment" also means any written authorization by an employer to recover any collateral entrusted to an employee or former employee in possession of the collateral. (BPC § 7500.1(a))

3) Defines "collateral" as any specific vehicle, trailer, boat, recreational vehicle, motor home, appliance, or other property that is subject to a security agreement. (BPC § 7500.1(e))

4) Defines "debtor" as any person obligated under a security agreement. (BPC § 7500.1(i))

5) Defines "legal owner" as a person holding a security interest in any collateral that is subject to a security agreement, a lien against any collateral, or an interest in any collateral that is subject to a lease agreement. (BPC § 7500.1(n))

6) Defines "licensee" as an individual, partnership, limited liability company, or corporation licensed under this chapter as a repossession agency. (BPC § 7500.1(o))

7) Defines "repossession" as the locating or recovering of collateral by means of an assignment. (BPC § 7500.1)

8) Requires, a licensed repossessor to remove and inventory personal effects from the collateral after repossession. The inventory of the personal effects must be complete and accurate, and the personal effects must be labeled and stored by the licensee for a minimum of 60 days in a secure manner, except those personal effects removed by or in the presence of the debtor or the party in possession of the collateral at the time of the repossession. (BPC § 7507.9)

9) Authorizes a debtor, with the consent of the licensee, to waive the preparation and presentation of an inventory if the debtor redeems the personal effects or other personal property not covered by a security interest within the time period for the notices required by the Act and signs a statement that the debtor has received all the property. (BPC § 7507.9(h))

10) Requires a repossession agency to request written authorization from the debtor before releasing personal effects or other personal property not covered by a security agreement. (BPC § 7507.9(i))

11) Exempts a vehicle repossessed pursuant to the terms of a security agreement from registration solely for the purpose of transporting the vehicle from the point of repossession to the storage facilities of the repossessor, and from the storage facilities to the legal owner or a licensed motor vehicle auction, provided that the repossessor transports with the vehicle the appropriate documents authorizing the repossession and makes them available to a law enforcement officer on request. (Vehicle Code (VEH) § 4022)

12) Provides that a vehicle removed and seized by a peace officer as specified shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met: (VEH § 14602.6(f))

    a) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

    b) The following payment requirements are met:

        i) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to VEH § 22850.5 unless the legal owner voluntarily requested a poststorage hearing.
        ii) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card shall be in the name of the person presenting the card. "Credit card" means "credit card" as defined in Civil Code (CIV) § 1747.02(a), except, for the purposes of this section, credit card does not include a credit card issued by a retail seller.
        iii) A person operating or in charge of a storage facility described above who violates the requirements shall be civilly liable to the owner of the vehicle or to the person who tendered the fees for four times the amount of the towing, storage, and related fees, but not to exceed five hundred dollars ($500).
        iv) A person operating or in charge of a storage facility described above shall have sufficient funds on the premises of the primary storage facility during normal business hours to accommodate, and make change in, a reasonable monetary transaction.
        v) Credit charges for towing and storage services shall comply with CIV § 1748.1. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.

    c) The legal owner or the legal owner's agent presents a copy of the assignment, as defined in BPC § 7500.1(b); a release from the one responsible governmental agency, only if required by the agency; a government-issued photographic identification card; and any

one of the following, as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The law enforcement agency, impounding agency, or any other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to the Collateral Recovery Act, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of those agencies, that the agent is exempt from licensure pursuant to BPC §§ 7500.2 or 7500.3.

d) No administrative costs authorized under VEH § 22850.5(a) shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city and county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents other than those specified in this paragraph. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The legal owner or the legal owner's agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold logbook. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the vehicle, may photocopy and retain the copies of any documents presented by the legal owner or legal owner's agent.

e) A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner's agent to retrieve the vehicle, provided all conditions required of the legal owner or legal owner's agent under this subdivision are satisfied.

13) Provides that, when collateral is released to a licensed repossessor, licensed repossession agency, or its officers or employees, the following apply:

a) The law enforcement agency and the impounding agency, including any storage facility acting on behalf of the law enforcement agency or impounding agency, shall comply with the release requirements of VEH § 14602.6 and shall not be liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section. A law enforcement agency shall not refuse to issue a release to a legal owner or the agent of a legal owner on the grounds that it previously issued a release.

b) The legal owner of collateral shall, by operation of law and without requiring further action, indemnify and hold harmless a law enforcement agency, city, county, city and county, the state, a tow yard, storage facility, or an impounding yard from a claim arising

out of the release of the collateral to a licensed repossessor or licensed repossession agency, and from any damage to the collateral after its release, including reasonable attorney's fees and costs associated with defending a claim, if the collateral was released in compliance with this section. (VEH § 14602.6(j))

14) Provides that, pursuant to VEH § 4022 and to VEH § 22651(o)(3)(B), a vehicle obtained by a licensed repossessor as a release of collateral is exempt from registration pursuant for purposes of the repossessor removing the vehicle to his or her storage facility or the facility of the legal owner. A law enforcement agency, impounding authority, tow yard, storage facility, or any other person in possession of the collateral shall release the vehicle without requiring current registration and pursuant to VEH §14602.6(f). (VEH § 4000(g)(1))

15) Provides that the legal owner of collateral shall, by operation of law and without requiring further action, indemnify and hold harmless a law enforcement agency, city, county, city and county, the state, a tow yard, storage facility, or an impounding yard from a claim arising out of the release of the collateral to a licensee, and from any damage to the collateral after its release, including reasonable attorney's fees and costs associated with defending a claim, if the collateral was released in compliance with this subdivision. (VEH § 4000(g)(2))

THIS BILL:

1) Updates the definition of "deadly weapon" to refer to a "firearm" to conform to the practices of law enforcement.

2) Clarifies the definition of "legal owner" to conform to the corresponding legal definition of "registered owner".

3) Clarifies that personal effects left in a vehicle belong to the registered owner.

4) Conforms the definition of "repossession" to BPC § 7507.12 which describes when a repossession is complete.

5) Clarifies for a repossession that a "private building" is one that is "locked and secured" and a "secured area" is an area that is "not open."

6) Clarifies that a "violent act" which must be reported to the Bureau of Security and Investigative Services (BSIS) refers to an act that occurs during the repossession.

7) Intent to recruit previous repossession agency licensees back and retain family members in the industry.

8) Increases the time in which an expired repossession agency license may be renewed from three years to ten years.

9) Allows a family member of a qualified manager who has died to reinstate and retain the repossession agency license number by paying the renewal fee and meeting requirements of the chapter.

10) Clarifies that employees of a licensed repossession agency who perform out of office skip tracing, or who drive camera cars are not required to be licensed.

11) Updates the law to recognize modern technology communication by authorizing the notice of inventory of personal effects to be delivered by email

12) Clarifies that "unlawful entry" means entering an area that is locked and secured as defined.

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

COMMENTS:

Purpose. This bill is sponsored by the *California Association of Licensed Repossessors*. According to the Author, "[This bill] is an industry-sponsored measure that will update and clarify the laws regulating the repossession industry in California. The bill clarifies and conforms definitions used in the law. Outdated definitions in the Act lead to confusion and conflicting approaches in the repossession industry. Clarifications need to be made to ensure that consumers are protected, and that the profession can efficiently and effectively operate. Additionally, the law needs to be updated to reflect current communication practices by allowing a notice of inventory of personal effects and a notice of seizure to be delivered by email."

Background. The Collateral Recovery Act (Act) provides for the licensing and regulation of repossessors. Among other things, the Act specifies standards for education, experience, and repossession procedures. However, the sponsor notes that the Act is out of date in some instances. Therefore, this bill aims to clarify and update the Act.

Current law licenses and regulates repossession agencies under the Bureau of Security and Investigative Services (BSIS) within the Department of Consumer Affairs. The Collateral Recovery Act defines key terms relating to the repossession industry, and contains a number of definitions that are outdated, do not reflect current practices, or which need clarification.

According to the Sponsors of the bill, the outdated definitions in the Act lead to confusion and conflicting approaches in the repossession industry. Clarifications need to be made to ensure that consumers are protected and that the profession is able to efficiently and effectively operate. Additionally, the law requires that a repossessor license that has been expired for three years cannot be renewed, and that a new license must be obtained in order to practice in the industry. The law does not contain a clear provision to ensure the ongoing continuity of repossession agencies by family members when the qualified manager has died.

Prior Related Legislation. AB 2759 (Obernolte, Chapter 354, Statutes of 2020) contained most of the provisions in the current bill. Specifically, the amendments to Business and Professions Code (BPC) §§ 7500.1, 7504.4, 7506.7, 7508.2. These provisions passed the Assembly with no "NO" votes but were amended out of the bill in the Senate on August 6, 2020 because of the limited time to analyze and discuss the bill due to the restricted Legislative schedule brought about by the COVID-19 Pandemic.

AB 281 (Gallagher), (Chapter 740, Statutes of 2015). Allows repossessors to show proof of their license via various media, established a disciplinary review committee to review the request of a licensee to contest the assessment of an administrative fine or appeal a denial of a license, and made other technical changes.

AB 2503 (Hagman), (Chapter 390, Statutes of 2014). Clarifies the process a repossessor follows when notifying law enforcement that he/she has picked up a vehicle; to ensure that impound

yards do not require repossessors to renew a vehicle's registration when repossessing it; and to ensure that repossessors are able to complete repossessions without undue interference.

ARGUMENTS IN SUPPORT:

According to the *California Association of Licensed Repossessors* (CALR), "On behalf of the California Association of Licensed Repossessors (CALR), I am writing in Support of AB 913 (Smith). CALR is the Sponsor of this bill which updates and clarifies the Collateral Recovery Act (Act) in the Business and Professions Code (BPC). Outdated definitions in the Act lead to confusion and conflicting approaches in the repossession industry. Clarifications need to be made to ensure that consumers are protected, and that the profession is able to efficiently and effectively operate."

REGISTERED SUPPORT:

California Association of Licensed Repossessors (Sponsor),

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 298 (Irwin) – As Introduced January 25, 2021

SUBJECT: Accountancy: California Board of Accountancy.

SUMMARY: Authorizes the board to admit an applicant to the certified public accountant examination before the applicant completes those education requirements if the applicant satisfies the conditions specified by the board.

EXISTING LAW:

1) Provides that the California Board of Accountancy (CBA) within the DCA is responsible for the licensure and regulation of accountants and is required to designate an executive officer and repeals these provisions on January 1, 2020. (Business and Professions Code (BPC) § 5000 et seq.)

2) Provides that a person shall be deemed to be engaged in the practice of public accountancy if he or she performs certain acts, makes certain representations, and renders accounting services to the public and clients for compensation. (BPC § 5051)

3) Provides that the CBA, after notice and hearing, may revoke, suspend, or refuse to renew any permit or certificate granted by the CBA, or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of criminal acts, specified false statements or omissions, dishonesty, fraud, gross negligence or repeated negligent acts in performance of professional standards, and other acts or violations as specified. (BPC § 5100)

4) Provides that a board may deny a regulated license on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only of certain conditions are met. (BPC § 480)

5) Defines "certified public accountant" to mean any person who has received from the CBA a certificate of certified public accountant and who holds a valid permit to practice under the provisions of this chapter. (BPC § 5033)

6) Defines "public accountant" to mean any person who has registered with the CBA as a public accountant and who holds a valid permit for the practice of public accountancy. (BPC § 5034)

7) Authorizes the CBA to revoke, suspend, issue a fine, or otherwise restrict or discipline the holder of an authorization to practice for any act that would be a violation of this code or grounds for discipline against a licensee or holder of a practice privilege, or grounds for denial of a licensee or practice privilege under this code. (BPC § 5050.2)

8) Authorizes an individual whose principal place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state to, subject to the conditions and limitations in this article, engage in the practice of

public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

a. The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.
b. The individual has a license, certificate, or permit from a state which has been determined by the CBA to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under BPC Section 5093.
c. The individual possesses education, examination, and experience qualifications for licensure which have been determined by the CBA to be substantially equivalent to this state's qualifications under BPC § 5093. (BPC § 5096)

9) Authorizes the CBA to administratively suspend the right to public accountancy in California under a practice privilege without notice or hearing. (BPC § 5096.4)

10) Provides that if the CBA determines that allowing individuals from a particular state to practice in this state pursuant to a practice privilege as described in BPC Section 5096 violates the CBA's duty to protect the public, pursuant to BPC Section 5000.1, the CBA shall require, by regulation, out-of-state individuals licensed from that state, as a condition to exercising a practice privilege in this state, to file the notification form and pay the applicable fees as required by BPC § 5096. (BPC § 5096.21)

11) Requires the CBA to consider specified factors when making the determination that allowing individuals from a particular state to practice in California, violates the CBA's duty to protect the public. (BPC § 5096.21)

THIS BILL:

1) Permits the California Board of Accountancy (CBA) to authorize an applicant to apply and take the Certified Public Accountant (CPA) Exam prior to the completion of the educational requirements necessary for licensure.

2) Clarifies the authority for the CBA to conduct its business, in the unlikely event that the Board officers are unable to attend, unable to act, or have to recuse themselves from a particular agenda item.

3) Safeguards the confidentiality of a CBA's applicant and licensee email addresses by ensuring that the information will not be considered a public record subject to disclosure pursuant to a California Public Records Act (PRA) request or posted on the internet pursuant to BPC section 27, unless required by a court order.

4) Clarifies the ethics education requirements for an applicant. Specifically, the bill would allow coursework related to auditing and fraud to be counted toward the ethics requirement for an applicant.

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

COMMENTS:

Purpose. This bill is sponsored by the *California Board of Accountancy*. According to the Author, "[This bill] will further the California Board of Accountancy's consumer protection mission. This bill will streamline the process for applicants to complete the Uniform Certified Public Accountant Exam, support the Board's authority to conduct its board meetings, clarify the privacy of the Board's licensee and applicant email addresses, and add coursework in fraud and auditing to be included as allowable to meet the ethics education requirement. These non-controversial changes will ensure the Board can continue conducting its licensing and enforcement functions to provide Californians with a strong accounting workforce."

Background. *Application Process.* Existing law requires accountant licensee applicants to meet certain educational requirements, such as a conferral of a Bachelor's degree, prior to being authorized by the CBA to sit for the official Certified Public Accountant (CPA) Exam. The CBA reports that some applicants must wait several weeks for their college or university to produce an official transcript that reflects degree conferral.

Upon submission of the licensee's application, the CBA then requires up to 30 days to review transcripts and authorize qualified applicants to sit for the CPA Exam. Due to these timeframes, applicants can wait up to three months or longer, thereby delaying their passage of the CPA Exam and entry into the CPA profession.

CBA Board and Officers. The Business and Professions Code also provides for the election of the CBA officers and provides authority for the President, or the Vice-President in his/her absence, to preside at CBA meetings. However, as currently written, there is no provision in statute to permit an individual other than the President or Vice-President including the Secretary/Treasurer, to preside over meetings. An occurrence could arise when all three of the board officers are unable to act as chair, while the other members have gathered for a noticed meeting.

Ethics Requirements. The ethics requirement for CPA licensure may be unintentionally creating a barrier for out of state applicants. The bill would require an applicant for licensure to provide documentation of completion of specified coursework, including coursework in ethics or accountants' professional responsibilities, auditing, or fraud.

Other States. The following other jurisdictions allow their applicants to sit for the CPA Exam prior to degree conferral: Kansas, Guam, Maine, Massachusetts, Minnesota, Missouri, Nebraska, North Carolina, Puerto Rico, and Washington.

Prior Related Legislation. AB 2267 (Irwin), 2020. Accountancy: California Board of Accountancy which did not move forward due to the truncated legislative session.

ARGUMENTS IN SUPPORT:

According to the *State of California, Office of Fiona Ma, State Treasurer*, "Under existing law, applicants that are college seniors have to wait for months in order to obtain proof of degree and to get authorized by the CBA to sit for the Uniform CPA Exam, which is only offered four times a year. The CBA is also unable to gather for important noticed meetings in the unlikely event that all three of the board officers are unable to act as chair. Furthermore, there is no cla1ity in the law that protects the emails of licensees and applicants from public disclosure.

[This bill] will streamline the process for applicants to complete the Uniform CPA Exam, support the CBA's authority to conduct its board meeting s, and clarify the privacy of CBA licensee and applicant email addresses."

REGISTERED SUPPORT:

California Board of Accountancy (Sponsor)
California State Treasurer

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 435 (Mullin) – As Amended March 11, 2021

SUBJECT: Hearing aids: locked programming software: notice.

SUMMARY: This bill requires hearing aid dispensers and licensed dispensing audiologists to provide a written notice to consumers who purchase hearing aids that use proprietary or locked programming software. The notice shall state that such hearing aids can only be serviced or programmed at specific facilities or locations, and shall be signed by the purchaser before sale.

EXISTING LAW:

1) Establishes the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board within the Department of Consumer Affairs, responsible for licensing and regulating the practice of speech-language pathology, audiology, and hearing aid dispensing in California. (Business and Professions Code (BPC) Section 2540 et seq.)

2) Defines a dispensing audiologist as a person who is authorized to sell hearing aids pursuant to their audiology license. (BPC Section 2530.2(l))

3) Defines a hearing aid dispenser as a person engaged in the practice of fitting or selling hearing aids to an individual with impaired hearing. (BPC Section 2538.14)

4) States that it is unlawful for an individual to engage in the practice of fitting or selling hearing aids without having first obtained the appropriate license from the Board. (BPC Section 2538.20 and BPC Section 2539.1)

5) Requires hearing aid dispensers and licensed audiologists, upon finalizing the sale of a hearing aid, to provide the purchaser with a signed written receipt containing the following information:

    a) The date of the sale.

    b) Specifications as to the make, serial number, and model number of the hearing aid or aids sold.

    c) The address of the principal place of business of the hearing aid dispenser or licensed audiologist, and the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.

    d) A statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact.

    e) The number of the licensee's license and the name and license number of any other hearing aid dispenser, temporary licensee, or audiologist who provided any recommendation or consultation regarding the purchase of the hearing aid.

f) The terms of any guarantee or written warranty made to the purchaser with respect to the hearing aid or hearing aids. (BPC Section 2538.35 and Section 2539.4)

6) Requires hearing aid dispensers and licensed dispensing audiologists to keep and maintain records in their office or place of business at all times, such as results of test techniques pertaining to fitting of the hearing aid and copies of written receipts provided to consumers, for a seven-year period. (BPC Section 2538.38 and Section 2539.10)

THIS BILL:

1) Defines "proprietary programming software" as software used to program hearing aids that is supplied by a hearing aid distributor or manufacturer for the exclusive use by affiliated providers. This software is locked and inaccessible to nonaffiliated providers.

2) Defines "locked, nonproprietary programming software" as software that any provider can render inaccessible to other hearing aid programmers.

3) Requires hearing aid dispensers and licensed dispensing audiologists, upon finalizing the sale of a hearing aid that uses proprietary programming or locked nonproprietary programming software, to provide the purchaser with a written notice.

4) Specifies that the notice above must be in 12-point type or larger and must state that the hearing aid being purchased uses proprietary or locked programming software and can only be serviced or programmed at specific facilities or locations.

5) Requires the notice to be signed by the purchaser before the sale, and requires the licensee to keep and maintain a copy of the notice in accordance to record-keeping statutory requirements.

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

COMMENTS:

Purpose. This bill is sponsored by the **Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.** According to the author: "AB 435 is a consumer protection measure. As a consumer of hearing aids myself, I know how expensive these devices are and the need to fully understand how and where they can get serviced. AB 435 simply requires hearing aid dispensers and dispensing audiologists to notify consumers in writing if the hearing aid they are purchasing uses proprietary software. This acknowledgment must be signed by the consumer. The proposed legislation does not prohibit the use of proprietary hearing aid software. It solely ensures the consumer is notified in writing that the hearing aid being purchased uses proprietary software and can only be adjusted or repaired at specific companies or locations."

Background.

Audiology and Hearing Aid Dispensing. In California, Hearing Aid Dispensers (HADs) and Audiologists are regulated under the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act (Act), a set of laws that outlines the licensure requirements, scope of practice, and responsibilities of both professions. The Act is enforced by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board), a

regulatory state agency under the umbrella of the Department of Consumer Affairs which is responsible for the licensing, examination, and enforcement of professional standards of HADs and Audiologists, as well as Speech Language Pathologists.

Audiologists provide services to individuals with hearing, balance, and related communication disorders. The BPC defines audiology to include the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior, or other aberrant behavior resulting from auditory dysfunction. Related to hearing aids, audiologists may also provide hearing aid recommendation, evaluation procedures, and auditory training. Upon meeting additional licensing requirements, an audiologist may also sell hearing aids, and are referred to as Dispensing Audiologists.

HADs provide services to individuals with impaired hearing which include hearing tests for the purposes of fitting, selection, and adaptation of hearing aids. The BPC defines the practice of fitting or selling hearing aids as the selection and adaptation of hearing aids, including direct observation of the ear, testing of hearing in connection with the fitting and selling of hearing aids, taking of ear mold impressions, fitting or sale of hearing aids, and any necessary postfitting counseling.

Only individuals who have been duly licensed by the Board may engage in the practice of audiology and hearing aid dispensing. As of 2021, over 1,300 Dispensing Audiologists and 1,400 HADs have active licenses in California.

Brief History of Hearing Aids. Hearing aids trace back their origins to the 17th century, first appearing as rudimentary "ear trumpets" designed to help individuals with hearing loss by gathering external sound through a wide opening and amplifying it through a narrow end. It was not until the 1900s – with the advent of electricity, the invention of the telephone, and better medical understanding of human hearing – that hearing aids began to electronically amplify sound using microphones and batteries. Further advances in technology continued to reduce the size of hearing aids, improve their fits in ears, and added more practical functions for users. Today, modern hearing aids are electronic devices worn in or behind the ear, and use a combination of hardware and software to amplify, reduce, and filter sound, eliminate unwanted feedback, and automatically adapt to various settings and noise environments. Hearing aids are primarily used to improve hearing and speech comprehension for individuals who experience hearing loss.

Hearing Aid Software. Modern hearing aids rely on digital software programming to optimize the acoustical fit and the individual need of each user. While many hearing aids are produced from a variety of manufacturers that have access to open programming software packages, there are a number of hearing aid brands that require the use of exclusive or "locked" programming software that is only available at specific dispensing outlets and group businesses that sell those brands. If a hearing aid uses such proprietary programming software, only specific brand-affiliated facilities can provide any programming services, as other dispensers do not have access to the proprietary software.

The use of proprietary software can create barriers for consumers trying to obtaining hearing aid software updates or reprogramming, by forcing the user to return to the site where the hearing aids were originally purchased, or requiring them to find another authorized outlet that can use

the appropriate locked software. This can be particularly challenging for consumers who relocate in a geographic region with fewer or no Dispensing Audiologists / HADs who are able to service a specific brand, or if a hearing aid manufacturer goes out of business – leaving the user with no recourse to manage their existing devices.

This bill aims to address this problem by requiring Dispensing Audiologists and HADs, upon finalizing the sale of a hearing aid that uses proprietary programming or locked nonproprietary programming software, to provide the purchaser with a written notice. The notice shall specifically disclose: "The hearing aid being purchased uses proprietary or locked programming software and can only be serviced or programmed at specific facilities or locations." The bill also requires the purchaser to sign the written notice prior to the sale of the hearing aid, and requires the licensee to keep a copy of the notice.

Current Related Legislation.

None.

Prior Related Legislation.

None.

ARGUMENTS IN SUPPORT:

The Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board (Sponsor) writes in support: "With current technology, the use of proprietary or locked programming software can result in a consumer's inability to obtain subsequent servicing or reprogramming for their hearing aids unless the consumer returns to the office from which the hearing aids were purchased, or another outlet of the same company. Consumers can be harmed when they unknowingly purchase hearing aids that cannot be serviced or programmed in a wide geographic location and they end up having to purchase a new hearing aid or live without full function of their current hearing aid. AB 435 (Mullin) would ensure that the consumer is made aware of these servicing and reprogramming limitations prior to the purchase of a hearing aid that uses proprietary or locked programming software."

The California Academy of Audiology writes in support: "Currently, consumers who purchase "locked" hearing aids must have their hearing aids programmed, adjusted, or changed at the specific proprietary location or office where the consumer purchased the device. […] Unfortunately, this practice harms California consumers. Consumers who purchase "locked" hearing aids often do so in part under the mistaken belief that the practice is necessary to minimize the risk that the device's programming could be damaged if it is handled in a follow-up appointment by representatives from an organization other than the proprietary brand that originally sold the device. But the risk for mishandling a hearing aid device by a properly trained healthcare provider is exceedingly low. Far more problematic, however, are the challenges brought upon consumers who can only have their hearing aids programmed, adjusted or otherwise changed at the store where their device was originally purchased. […] AB 435 addresses this important consumer protection issue, by requiring that consumers are adequately informed through written notice if the hearing aids that are purchased use proprietary or locked programming software.

Disability Rights California writes in support: "The deaf and hard of hearing community often depend on assistive technology, such as hearing aids to navigate their daily life. It is crucial that they have hearing technology that is dependable with a process that is consumer friendly and dependable. Receiving notice and detailed information regarding the locations where the hearing aids can be serviced is crucial to the community. In some cases, the deaf individual can be a young child or an older, and protecting those communities by ensuring that they will receive adequate service for their hearing aids is important.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Sponsor)
California Academy of Audiology
Disability Rights California
Hearing Loss Association of America, East Bay Chapter
2 individuals

REGISTERED OPPOSITION:

None of file.

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 690 (Arambula) – As Amended March 17, 2021

SUBJECT: Marriage and family therapists: clinical social workers: professional clinical counselors.

SUMMARY: Clarifies the types of settings where registrants and trainees may practice and gain required supervised experience hours toward licensure as marriage and family therapists, clinical social workers, and professional clinical counselors. Defines private practices and professional corporations as nonexempt settings, as specified. Expands the number of supervisees per supervisor in nonexempt settings from three to six individuals.

EXISTING LAW:

1) Establishes the Licensed Marriage and Family Therapist (LMFT) Act, the Clinical Social Worker (LCSW) Practice Act, and the Licensed Professional Clinical Counselor (LPCC) Act, which outlines the licensure requirements, scope of practice, and professional responsibilities of those respective professions. (Business and Professions Code (BPC) Section 4980.04 et seq., BPC Section 4991 et seq., and BPC Section 4999.10 et seq.)

2) Establishes the Board of Behavioral Sciences (Board) under the jurisdiction of the Department of Consumer Affairs responsible for enforcing the provisions of the Practice Acts described above. (BPC Section 4990 seq.)

3) Unless specifically exempted, requires a person to obtain a valid license or registration with the Board before engaging in the practice of marriage and family therapy, clinical social work, or professional clinical counseling (BPC Section 4980(b), BPC Section 4996(b), and BPC Section 4999.30)

4) Exempts from licensure requirements any unlicensed or unregistered employee or volunteer working in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable, as long as the employee or volunteer performs work solely under the supervision of the entity and provides a specified consumer protection form to clients. (BPC Section 4980.01(c), BPC Section 4996.14(b), and BPC section 4999.22(d))

5) Establishes the Moscone-Knox Professional Corporation Act, defining and governing the professional corporations of California. (Corporations Code Section 13400 et seq.)

6) Generally defines a trainee as an unlicensed person enrolled in an educational program that is designed to qualify the person for licensure. (BPC Section 4980.03(c) and BPC Section 4999.12(g))

7) Generally defines an associate as an unlicensed person who has earned the required degree qualifying the person for licensure and is registered with the Board. (BPC Section 4980.03(b) and BPC Section 4999.33(f))

8) Specifies the number of postdegree hours of experience an associate must accrue under supervision to be eligible for licensure (BPC Section 4080.43, BPC Section 4996.23, and BPC Section 4999.46)

9) States that an applicant for licensure under the Board shall not be employed or volunteer in a private practice until the applicant has been issued an associate registration by the Board. (BPC Section 4980.43(b)(2), BPC Section 4996.23(c), and BPC Section 4999.46(b)(2))

THIS BILL:

1) Reiterates that any individual working or volunteering in an exempt setting who is licensed or registered under the Board of Behavioral Sciences falls under the jurisdiction of the Board.

2) States that an entity that is licensed or certified by a government regulatory agency to provide health care services shall not be considered an exempt setting unless it already meets the statutory definition of an exempt setting.

3) Defines "private practice" as a nonexempt setting that meets the following criteria:

    a. The practice is owned by a licensed health professional either independently or jointly with one or more other licensed health professionals.

    b. The practice provides clinical mental health services, including psychotherapy, to clients.

    c. One or more licensed health professionals are responsible for the practice and for the services provided and set conditions of client payment or reimbursement for the provision of services.

4) Defines a "professional corporation" as a type of nonexempt setting and private practice that has been formed pursuant to the Moscone-Knox Professional Corporation Act.

5) Requires an active license or registration under the Board in order to practice marriage and family therapy, clinical social work, or professional clinical counseling in nonexempt settings at all times, with the following exceptions:

    a. A trainee may engage in their respective practice in a nonexempt setting that is not a private practice or a professional corporation while they are gaining supervised experience under the jurisdiction and supervision of their school, or pursuing a course of study, as specified.

    b. An applicant for registration as an associate may engage in their respective practice in a nonexempt setting that is not a private practice or a professional corporation before the registration number is issued if they are in compliance with existing statutes regarding postdegree hours of experience gained before the issuance of an associate registration.

6) Clarifies that an applicant for licensure shall not be employed or volunteer in a private practice or a professional corporation until the applicant is registered with the Board.

7) Specifies that an associate registered with the Board and employed or volunteering in a private practice or a professional corporation must be supervised by an individual who meets the following requirements:

    a. The supervisor is employed by or contracted by the associate's employer or is an owner of the private practice or professional corporation.

    b. Either provides psychotherapeutic services to clients for the associate's employer, or meets both of the following: (1) The supervisor and the associate's employer have a written contract providing the supervisor the same access to the associate's clinical records provided to employees of that employer and (2) the associate's clients authorize the release of their clinical records to the supervisor.

8) Expands the number of individuals a supervisor may supervise in a nonexempt setting from 3 supervisees to 6.

9) States that alternative supervision may be arranged during a supervisor's vacation or sick leave if the alternative supervision meets all existing statutory requirements.

10) Clarifies that supervisees in an exempt setting may obtain the required weekly direct supervisor contact via two-way, real time conferencing.

11) Prohibits any licensee from using a fictitious business name is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.

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

COMMENTS:

Purpose. This bill is sponsored by the **Board of Behavioral Sciences**. According to the author: "Meeting behavioral health needs is critical to optimizing the health and well-being of Californians. While access to behavioral health services has improved substantially over the past two decades, California has an inadequate supply of behavioral health care workers who possess the skills and credentials necessary to deliver the care that people need. For individuals seeking licensure as a marriage and family therapist, clinical social worker, or professional clinical counselor, finding supervision is often cited as a barrier to their ability to obtain employment and gain the required supervised hours of experience toward licensure. To ensure safe and ethical practice, the law places additional conditions and restrictions on the use of pre-licensed trainees who are still in school or pre-licensed associates gaining supervised experience hours after graduation in private practice settings, because these settings naturally have less built-in oversight. However, the law fails to provide a precise definition of a private practice setting. As mental health treatment has become more accessible over time, the various types of settings where psychotherapy is performed have increased, leading to confusion about whether or not

certain settings qualify as a private practice and whether or not schools are permitted to place trainees there. AB 690 provides the needed clarity regarding private practice settings, and ensures psychotherapy associates and trainees are fully utilized, thus helping to address the shortage of mental health providers in California."

Background.

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

Exempt Settings. Board licensees and registrants provide mental health services in a variety of different settings. These locations can include hospitals, community clinics, schools, non-profits, private companies, government agencies, and many others. Generally, individuals providing psychotherapeutic services in California within the scope of practice of a LMFT, LCSW, or LPCC are required to have a license or registration with the Board. However, state law provides certain exemptions to these licensure requirements. These "exempt settings" are statutory defined to include governmental entities, schools, colleges, universities, or nonprofit and charitable institutions, and allow unlicensed or unregistered employees or volunteers in such settings to provide psychotherapy services under specified conditions.

Exempt settings have been excluded from the Board's practice acts since the 1980s, and have been described as an important tool for non-profit entities to provide mental health services. In an effort to better understand the nature of such settings, the Board established its Exempt Setting Committee, which met throughout 2017 and 2018 to examine issues related to exempt settings. The committee was established for two purposes: first to examine mental health services provided in exempt settings and determine if consumers are receiving services consistent with the standard of care for the mental health professions; and second, to examine different types of practice settings that offer mental health services and determine if setting definitions need to be refined. The Board reports that its committee has completed its first objective with the implementation of AB 630 (Arambula and Low, Chapter 229, Statutes of 2019) which required consumer notification for complaint procedures in exempt settings, and Board-contact information for nonexempt settings. AB 690 aims to address the Board's second objective and clarify the various definitions of practice settings in order to better identify what the various types of settings licensees and registrants may be practicing in, and the availability to gain experience hours necessary for licensure.

Private Practice and Professional Corporations. While existing law provides for a definition of exempt settings, statutes are less clear about other types of settings. The BPC refers to "private practice," but this reference does not capture the diverse business structures that currently exist providing mental health services to Californians. Such businesses may not fall clearly under the

definition of exempt settings or private practices in the BPC. As the bill sponsors note, California statutes also place additional restrictions on the use of pre-licensed trainees or associates gaining supervised experience hours in private practice settings, as these settings generally have less oversight mechanisms in place – creating additional confusion about where aspiring licensees may or may not obtain their postdegree hours.

To this end, AB 690 aims to create clarity about the various settings where registrants may practice and gain the necessary experience hours needed for licensure. AB 690 broadly classifies all work settings into two categories: exempt settings and nonexempt settings. Under this bill, the definition of exempt settings remains unchanged, and nonexempt settings are classified into two specific categories: private practices and professional corporations. Private practice is defined as owned by a licensed health professional, either independently or jointly with one or more other health professionals, which provides clinical mental health services, including psychotherapy, to clients, and has one or more licensed health professionals that are responsible for the practice and for the services provided and set conditions of client payment or reimbursement for the provision of services. Professional corporation is defined as a type of nonexempt setting and private practice that has been formed pursuant to the Moscone-Knox Professional Corporation Act in the California Corporations Code.

The bill also reiterates that an active license or registration number is required to provide psychotherapeutic services in any nonexempt setting, with two exceptions: the first specifies that a trainee may provide services in a non-exempt setting as long as it is not a private practice or a professional corporation, and the trainee is under the jurisdiction and supervision of their school. The second specifies that an applicant for associate registration following the 90-day rule may provide services in a non-exempt setting as long as it is not a private practice or a professional corporation, if they are in compliance with the laws pertaining to the 90-day rule. The 90-day rule refers to existing law that allows applicants for registration to count supervised experience gained during the window of time between the degree award date and the issue date of the associate registration number, but only if the associate application is received by the Board within 90 days of the qualifying degree award date.

The bill also provides clarifications and changes regarding supervision. AB 690 clarifies that supervision of all individuals may be done via videoconferencing in an exempt setting, including trainees, mirroring existing law regarding associates who may be supervised via videoconferencing in exempt settings. Finally, the bill also expands the number of individuals a supervisors may supervise in any nonexempt setting from three persons to six.

Current Related Legislation.

None.

Prior Related Legislation.

AB 630 (Arambula and Low, Chapter 229, Statutes of 2019). Required psychotherapy providers who provide services under a Board of Behavioral Sciences (BBS) license, registration, or exemption to give clients a notice disclosing where complaints against the provider may be filed and makes various technical, clarifying, and conforming changes.

AB 2363 (Arambula, 2020). This bill featured similar language as AB 690.

ARGUMENTS IN SUPPORT:

The Board of Behavioral Sciences writes in support: "The purpose of AB 690 is to provide clear definitions of the specific types of practice settings that the Board's licensees, trainees, and associates are employed in. This will in turn provide critical clarification about where pre-licensed trainees may work, what constitutes a private practice, and it will provide additional opportunities for supervision in private practice settings. The Board believes that clarifying private practice and other setting definitions will lead to fuller utilization of associates and trainees, due to less confusion about where these individuals may or may not work due to a business's structure. This will in turn help address the shortage of mental health providers."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Board of Behavioral Sciences (Sponsor)

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1084 (Low) – As Introduced February 18, 2021

SUBJECT: Gender neutral retail departments.

SUMMARY: Requires a retail department store with 500 or more employees that sells childcare items, children's clothing, or toys, to maintain a gender neutral section or area.

EXISTING LAW:

1) Entitles all Californians to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments, thus prohibiting discrimination on any arbitrary basis, including but not limited to sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. (The Unruh Civil Rights Act, Civ. Code § 51.)

2) Provides that any person who denies, aids or incites a denial, or makes any discrimination or distinction contrary to the Unruh Civil Rights Act or to the Gender Tax Repeal Act, is liable for each and every offense for the actual damages and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage, but in no case less than $4,000, and any attorney's fees that may be determined by the court. (Civ. Code § 52(a).)

THIS BILL:

1) Requires a retail department store with 500 or more employees that sells childcare items, children's clothing, or toys, to maintain a gender neutral section or area.

2) Beginning on January 1, 2024, the bill would make a retail department store that fails to correct a violation of these provisions within 30 days of receiving written notice of the violation from the Attorney General liable for a civil penalty of $1,000, as provided.

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

COMMENTS:

Purpose. This bill is sponsored by *The Phluid Project*. According to the Author, "Unjustified differences in similar products that are traditionally marketed either for girls or for boys can be more easily identified by the consumer if similar items are not separated by gender. Combining boy's and girl's departments at retail stores with 500 or more employee's into a "kids" department or creating a gender neutral section will most definitely make all kids feel welcomed."

Background. *Federal Law. Passed House (05/17/2019). Equality Act.* The Equality Act prohibits discrimination based on sex, sexual orientation, and gender identity in a wide variety of areas including public accommodations and facilities, education, federal funding, employment,

housing, credit, and the jury system. Specifically, the Equality Act defines and includes sex, sexual orientation, and gender identity among the prohibited categories of discrimination or segregation.

The Equality Act expands the definition of public accommodations to include places or establishments that provide (1) exhibitions, recreation, exercise, amusement, gatherings, or displays; (2) goods, services, or programs; and (3) transportation services. The Equality Act allows the Department of Justice to intervene in equal protection actions in federal court on account of sexual orientation or gender identity.

Protections against discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin shall include protections against discrimination based on (1) an association with another person who is a member of such a protected class; or (2) a perception or belief, even if inaccurate, that an individual is a member of such a protected class. The bill prohibits the Religious Freedom Restoration Act of 1993 from providing a claim, defense, or basis for challenging such protections.

The Equality Act prohibits an individual from being denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual's gender identity.

The Unruh Civil Rights Act. The unruh civil rights act provides protection from discrimination by all business establishments in California, including housing and public accommodations. The term “business establishments” may include governmental and public entities as well.

The language of the Unruh Civil Rights Act specifically outlaws discrimination in housing and public accommodations based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status. However, the California Supreme Court has held that protections under the Unruh Act are not necessarily restricted to these characteristics.

The Act is meant to cover all arbitrary and intentional discrimination by a business establishment on the basis of personal characteristics similar to those listed above.

The law also protects the rights of individuals with disabilities to use streets, highways, and other public places; public conveyances; places of public accommodation, amusement or resort, and housing accommodations; and guide, signal, or service animals or alternative accommodations for persons with disabilities. The law clearly distinguishes between the right of a business to refuse service based on conduct as opposed to personal characteristics. The misconduct or disruptive behavior of particular individuals may be grounds for refusing to do business with them or denying them services.

Businesses covered under the law. The Unruh Civil Rights Act requires “[f]ull and equal accommodations, advantages, facilities, privileges or services in all business establishments.”

This includes, but is not limited to, the following places:

- Hotels and motels
- Nonprofit organizations that have a business purpose or are a public accommodation
- Restaurants

- Theaters
- Hospitals
- Barber shops and beauty salons
- Housing accommodations – including rental housing and shared-economy housing
- Public agencies
- Retail establishments

Signage Requirements – Gender Neutral Restrooms. An analogous situation to this bill could be found in the California Building Standards Code (CBC) which requires certain signage designations for restroom facilities which include only a geometric symbol. Terms frequently seen on restroom doors such as "restroom" "male" or "female" are not currently required under the current CBC. Symbols are required on restroom doors or immediately adjacent to restroom entrances when doors are not available. Geometric symbols are intended for visually impaired persons to identify the appropriate restroom facility to use. If word designations are included on the sign, then there are additional compliance requirements including type, size and font. Compliance with the CBC requirements for bathroom signage is typically handled by local building officials. According to the Department of General Services, geometric signage designations were not required under state law until 1982. This bill is similar in that businesses are not required to add or remove signage indicating specific gender or alter structures, it simply requires a location to be made available to any person without labeling to one specific gender.

Current Related Legislation. AB 1287 (Bauer-Kahan). Is currently set to be heard in Assembly Business and Professions Committee on April 6, 2021. This bill is double referred to Assembly Judiciary Committee. This bill would prohibits the charging of different prices for any two goods that are substantially similar, if those goods are priced differently based on the gender of the individuals for whom the goods are marketed and intended.

Prior Related Legislation. AB 2826 (Low, 2020). This bill was held due to the restrictions that were presented by COVID-19.

AB 1732 (Ting) Chapter 818, Statutes of 2016. Requires businesses, places of public accommodation, or state or local government agencies that offer a single-user toilet facility to be designated as an all-gender toilet facility, as specified, and authorizes an inspector, as specified to inspect for compliance.

ARGUMENTS IN SUPPORT: According to *The Phluid Project*, “The Phluid Project, a proud sponsor of [this bill], joined a movement of humans committed to challenging the ethos of traditions past that inhibit freedom and self expression. Our world is grounded in purpose and humanity through fashion, community, activism and education. The rising voice if today’s youth reject gender binaries and desire an all encompassing space, both physically and virtually, that allows them to wear what makes them feel good and express themselves with freedom and authenticity. This bill begins the process of eliminating dated social constructs, allowing youth to be creative, curious and authentic, free to be who the want to be and unleashing their full potential. Corporations will benefit from this movement as youth, and their parents, look to find gender non- specific options as they grow up in a new and evolving world. We constantly live in a state of unlearning and relearning. This bill carries us all into the future, further creating safe and affirming shopping spaces throughout the entire state of California.”

ARGUMENTS IN OPPOSITION: According to the *Siskiyou Conservative Republicans*, "A "store" is private property no matter how many employees they employ. They are in business to sell as much merchandize as possible to as many people as possible. Merchants are in the business to sell their goods not to do social engineering. The free-market place is driven by demand of their customers not by laws made by politicians.

It is not the business of the state to parent their constituent's children nor to dictate to businesses how to organize or display their merchandise. The state has no authority to meddle in the details of how retailers market or display their products."

REGISTERED SUPPORT:

The Phluid Project (Sponsor)
Consumer Federation of California

REGISTERED OPPOSITION:

California Family Council
Pacific Justice Institute
Siskiyou Conservative Republicans
Southwest California Legislative Council

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