California State Assembly

BUSINESS AND PROFESSIONS

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MARC BERMAN
CHAIR

AGENDA

Tuesday, June 14, 2022
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

1.	SB 216	Dodd	Contractors: workers' compensation insurance: mandatory coverage.
2.	SB 872	Dodd	Pharmacies: mobile units.
3.	SB 994	Jones	Vocational nursing: direction of naturopathic doctor.
4.	SB 1120	Jones	Engineering, land surveying, and geology.
5.	SB 1064	Newman	Structural pest control: workers' compensation insurance coverage.
6.	SB 1237	Newman	Licenses: military service.
7.	SB 1148	Laird	Cannabis: licenses: California Environmental Quality Act.
8.	SB 1267	Pan	Clinical laboratories.
9.	SB 1326	Caballero	Cannabis: interstate agreements.
10.	SB 1346	Becker	Surplus medication collection and distribution.

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. All are encouraged to watch the hearing from its live stream on the Assembly's website at https://www.assembly.ca.gov/todaysevents.

The hearing room will be open for attendance of this hearing. Any member of the public attending a hearing is encouraged to wear a mask at all times while in the building. The public may also participate in this hearing by telephone. We encourage the public to monitor the committee's website for updates.

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 216 (Dodd) – As Amended June 1, 2022

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

SENATE VOTE: 28-0

SUBJECT: Contractors: workers' compensation insurance: mandatory coverage

SUMMARY: Requires asbestos abatement contractors, concrete contractors, heating, ventilation, and air conditioning contractors, and tree service contractors to have workers' compensation insurance regardless of whether or not they have employees until January 1, 2026, at which time all contractors are required to have workers' compensation insurance regardless of whether or not they have employees.

EXISTING LAW:

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

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

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

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

5) Requires as a condition of initial licensure, reinstatement, reactivation, renewal or continued maintenance of a license, a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, as specified, unless the applicant or licensee meets both of the following conditions:

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

    b) Does not hold a C-39 license, as specified.

(BPC § 7125(a)(b))

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

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

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

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

10) Requires a license to be automatically suspended if a C-39 Classification has been removed and the licensee has been found by the registrar to have employees and to lack a valid Certificate of Workers Compensation Insurance or Certification of Self-Insurance. (BPC § 7125(e)(2))

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

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

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

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

THIS BILL:

1) Adds, until January 1, 2026, the C-8, C-20, C-22, and D-49 license classifications to the license classifications required, as a condition of initial licensure, reinstatement, reactivation, renewal or continued maintenance of a license, to have a current and

valid Certificate of Workers Compensation Insurance or Certification of Self-Insurance in the applicant's or licensee's business name.

2) Exempts from the above requirement an applicant or licensee organized as a joint venture, as specified, that has no employees, provided that the applicant or licensee files a statement with the Board on a form prescribed by the registrar before the issuance, reinstatement, reactivation, or continued maintenance of a license, certifying that the applicant or licensee does not employ any person in any manner so as to become subject to the workers' compensation laws of California or is not otherwise required to provide for workers' compensation insurance coverage under California law.

3) Requires the registrar of the CSLB, between July 1, 2023, and January 1, 2026, to remove the C-8, C-20, C-22, or D-49 classification from an active license unless a valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance is received by the registrar.

4) Specifies that, between July 1, 2023, and January 1, 2026, any licensee whose license is active and has had the C-8, C-20, C-22, or D-49 classification removed, and who is found by the registrar to have employees and to lack a valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, shall have their license automatically suspended.

5) Beginning January 1, 2026, requires all licensing classifications under the CSLB's jurisdiction to have on file with the CSLB a current and valid Certificate of Workers' Compensation Insure or Certificate of Self-Insurance in the applicant or licensee's business name, as specified.

6) Exempts from the above requirement an applicant or licensee organized as a joint venture, as specified, that has no employees, provided that the applicant or licensee files a statement with the Board on a form prescribed by the registrar before the issuance, reinstatement, reactivation, or continued maintenance of a license, certifying that the applicant or licensee does not employ any person in any manner so as to become subject to the workers' compensation laws of California or is not otherwise required to provide for workers' compensation insurance coverage under California law.

FISCAL EFFECT: According to the Senate Appropriations Committee:

[CSLB] anticipates minor and absorbable administrative fiscal impacts. The mechanism for contractors and insurance companies to electronically submit a workers' compensation insurance certificate is available on the Board's internet website. The CSLB does not anticipate additional staff resources needed to process the additional certificates for licensees who are currently exempt.

The CSLB notes that there may be potential decreased revenue as a result of contractors who choose to not renew their license rather than obtain workers' compensation insurance as required by this bill. While the total potential decrease in

revenue is unknown, it may be significant, ranging from the hundreds of thousands to millions of dollars annually.

COMMENTS:

Purpose. This bill is sponsored by the *State Contractors License Board*. According to the author, "Contractors with an exemption from workers compensation insurance on file with CSLB are routinely found to have employees at active construction sites or in the investigation of consumer complaints. Contractors failing to obtain workers compensation insurance for their employees are placing workers, homeowners, and themselves at risk. By mandating all contractors have a workers' compensation policy, the insurers will play a vital role in determine the appropriate premium and identify cheaters."

Background.

Contractors State License Board. CSLB is responsible for the implementation and enforcement of the Contractors' State License Law, relating to the licensing, scope of practice, and discipline of contractors and home improvement salespersons in California. Any person or business that constructs or alters, or offers to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by CSLB if the total cost, including both labor and materials, of one or more contracts on the project is $500 or more. CSLB issues four (4) types of contractors licenses: "A"' General Engineering Contractor license; "B" General Building Contractor license; "B-2" Residential Remodeling Contractor license*;* and "C" Specialty Contractor licenses of which there are 42 classifications. Each licensing classification (I.e. electrical, drywall, painting, plumbing, roofing, and fencing) specifies the type of contracting work permitted in that classification. Specific licensees are also eligible for "Asbestos" or "Hazardous Substance Removal" certifications issued by CLSB. Moreover, CSLB registers and regulates home improvement salespersons. Currently, there are 234,020 active licensees and 24,051 registered home improvement salespersons in California.

Workers' Compensation Insurance. In California, all employers are required to have workers' compensation insurance and to pay for workers' compensation benefits for workers that experience work-related injury or illness. Workers' compensation benefits include medical care, disability benefits, job displacement benefits, and death benefits. These benefits are designed to provide injured or ill employees with the medical treatment needed to recover, partially replace lost wages, and help workers return to work. Workers' compensation benefits do not include damages for pain and suffering or punitive damages.

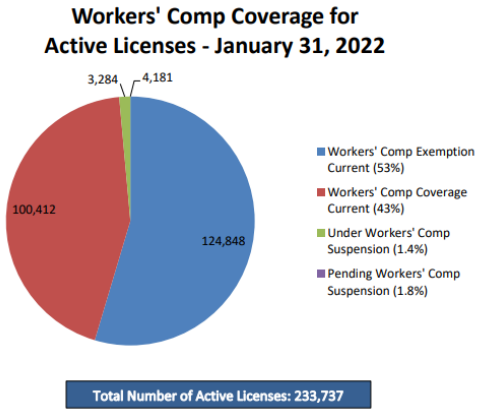
Employers may purchase workers' compensation insurance from a licensed insurance company or through the State Compensation Insurance Fund. Self-insurance is also an option but requires state approval, a net worth of $5 million minimum, net income of $500,000 annually, and posting of a security deposit.

The state does not regulate workers' compensation insurance premium rates. The Workers' Compensation Insurance Rating Bureau (WCIRB) recommends rates, and insurance companies must disclose their rates to the California Department of Insurance, but rates can vary among insurance companies. Annual premiums are determined by a variety of factors, including industry classification. Insurance companies assign a specific rate to each classification code,

subject to approval by the Insurance Commissioner. The classification code and related rate are used to calculate the base rate of the workers' compensation insurance premium. The assigned rate is expressed as a dollar value and multiplied by each $100 of payroll per classification.

The Contractors State License Law requires applicants and licensees, as a condition of licensure, to have workers' compensation insurance if they have any employees. Applicants and licensees are required to submit to CSLB a valid Certificate of Workers' Compensation Insurance, a valid Certification of Self-Insurance from the Department of Industrial Relations (DIR), or a Certificate of Exemption. Existing law currently requires all C-39 roofing contractors to have workers' compensation insurance regardless of whether or not they have any employees.

According to the CSLB, approximately 55 percent of active licensees currently maintain an exemption from workers' compensation.



Active License Classifications Workers' Comp Status: As of January 31, 2022

	Classification	Exemptions on File	WC Policies on File	Total Policies & Exemptions	% of Total with Exemptions
A	General Engineering	5,397	9,075	14,472	37%
B	General Building	61,854	40,085	101,939	61%
B-2	Residential Remodeling	29	6	35	83%
C-2	Insulation and Acoustical	282	870	1,152	24%
C-4	Boiler Hot Water	190	547	737	26%
C-5	Framing / Rough Carp	503	405	908	55%
C-6	Cabinet-Millwork	2,624	1,913	4,537	58%
C-7	Low Voltage Systems	2,003	2,735	4,738	42%
C-8	Concrete	2,637	3,648	6,285	42%
C-9	Drywall	1,238	1,759	2,997	41%
C10	Electrical	14,132	11,617	25,749	55%
C11	Elevator	45	159	204	22%
C12	Earthwork & Paving	1,002	1,391	2,393	42%
C13	Fencing	682	914	1,596	43%
C15	Flooring	3,613	3,361	6,974	52%
C16	Fire Protection	768	1,385	2,153	36%
C17	Glazing	1,094	1,813	2,907	38%
C20	HVAC	6,836	5,592	12,428	55%
C21	Building Moving Demo	517	1,170	1,687	31%
C22	Asbestos Abatement	2	286	288	0.7%
C23	Ornamental Metal	407	631	1,038	39%
C27	Landscaping	4,860	6,605	11,465	42%
C28	Lock & Security Equipment	143	220	363	39%
C29	Masonry	984	1,281	2,265	43%
C31	Construction Zone	58	279	337	17%
C32	Parking Highway	172	301	473	36%
C33	Painting	8,672	6,792	15,464	56%
C34	Pipeline	147	357	504	29%
C35	Lath & Plaster	579	1,188	1,767	33%
C36	Plumbing	9,018	6,884	15,902	57%
C38	Refrigeration	915	911	1,826	50%
C39	Roofing	0	4,559	4,559	0%
C42	Sanitation	384	582	966	41%
C43	Sheet Metal	390	1,004	1,394	27%
C45	Signs	373	501	874	43%
C46	Solar	475	778	1,253	38%
C47	Gen Manufactured House	225	225	450	50%
C50	Reinforcing Steel	68	192	260	26%
C51	Structural Steel	412	1,045	1,457	28%
C53	Swimming Pool	1,174	1,463	2,637	45%
C54	Tile	3,610	2,769	6,379	57%
C55	Water Conditioning	126	176	302	42%
C57	Well Drilling	299	488	787	38%
C60	Welding	528	469	997	53%
C61	Limited Specialty	7,944	10,390	18,334	43%

In 2017, CSLB conducted an audit of a sample of contractors in four classifications that perform outdoor construction likely to require multiple workers C-8 (Concrete), C-12 (Earthwork/Paving), C-27 (Landscaping), and D-49 (Tree Trimming). The survey revealed that at least 59 percent of contractors investigated had false workers' compensation exemptions on file with CSLB. Contractors who file a false workers' compensation exemption are subject to disciplinary action and cancelation of the false exemption, which subjects the license to suspension.

In late 2017, CSLB Enforcement Committee established a two-person advisory committee to determine strategies to combat workers' compensation insurance avoidance. CSLB also works closely with the Employment Development Department, Division of Industrial Relations Division of Labor Standards Enforcement, California Department of Insurance, and State

Compensation Insurance Fund to improve enforcement. Between January 2018 and March 2020, CSLB issued 500 stop work orders to licensed contractors on job sites for failure to secure workers' compensation and took 342 legal actions against licensed contractors for workers' compensation insurance violations.

Employees who suffer from a work-related injury or illness are entitled to medical treatment and other benefits regardless of whether or not their employer has workers' compensation insurance. The Uninsured Employers Benefits Trust Fund (UEBTF) pays claims to workers when illegally uninsured employers fail to pay workers' compensation benefits. The UEBTF then pursues reimbursement from the responsible employer.

Current Related Legislation.

AB 2894 (Cooper) would require an applicant or licensee to inform the CSLB of its workers' compensation classification code as a condition of licensure. *Currently in the Senate Rules Committee.*

Prior Related Legislation.

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

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

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

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

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

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

ARGUMENTS IN SUPPORT:

The *Contractors State License Board* writes as the sponsor of this bill:

> Existing law requires licensed contractors with employees to have a COI on file with CSLB. However, contractors can file an "exemption" with CSLB if they claim to have no employees. Every year, about 45% of California's licensed contractors file a [Certificate of Workers' Compensation Insurance], while 55% claim to be exempt from workers' compensation laws. CSLB research and enforcement efforts confirm this claim to be highly unlikely.
>
> The existing framework of allowing a licensed contractor to file an exemption claiming they have no employees has not been effective. While the CSLB takes hundreds of disciplinary actions a year against contractors found with employees and an exemption on file, CSLB is not staffed to audit the 123,000 contractor license entities that claim to have no employees.
>
> The failure of contractors to secure workers' compensation coverage for employees unfairly increases workers compensation costs for compliant contractor employers and exposes workers and project owners to financial and other risk. These contractors are also unlikely to accurately report their employee tax withholding to the Employment Development Department. This is an underground economy problem that increases California's tax gap and reduces revenue available for schools, law enforcement and other public needs.

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

Fairness. This bill would require an unknown number of law-abiding contractors who legitimately do not have any employees to purchase workers' compensation insurance.

Potential Consequences. Requiring contractors who do not have any employees to have workers' compensation insurance could result in higher costs for consumers or cause contractors to go underground or retire earlier than they would have otherwise. Since 2007, C-39 roofing contractors have had to carry workers' compensation insurance regardless of whether or not they have employees. Data collected by CSLB demonstrates that the workers' compensation insurance requirement contributed to a 27 percent decline in total roofing license population. Moreover, the loss of license renewal revenue to CSLB from a declining population of C-39 roofing contractors between 2007 and 2020 was approximately $120,000 per year.

REGISTERED SUPPORT:

American Subcontractors Association-California
California Builders Alliance

California Labor Federation, AFL-CIO
California Landscape Contractors Association
California Legislative Conference of Plumbing, Heating & Piping Industry
California State Association of Electrical Workers
California State Council of Laborers
California State Pipe Trades Council
Construction Employers' Association
Contractors State License Board
Flasher Barricade Association
Housing Contractors of California
International Union of Elevator Constructors
National Electrical Contractors Association
Northern California Allied Trades
Plumbing-heating-cooling Contractors Association of California
Sacramento Regional Builders Exchange
Southern California Glass Management Association
United Contractors
Wall and Ceiling Alliance
West Coast Arborists
Western Electrical Contractors Association
Western States Council Sheet Metal, Air, Rail and Transportation
Western Wall and Ceiling Contractors Association

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 872 (Dodd) – As Introduced January 24, 2022

SENATE VOTE: 39-0

SUBJECT: Pharmacies: mobile units

SUMMARY: Authorizes a county or a city and county to operate a licensed mobile unit to provide prescription medication to individuals within the county's jurisdiction and specifies certain criteria that a mobile unit must meet.

EXISTING LAW:

1) Establishes the Board of Pharmacy (Board) within the Department of Consumer Affairs (DCA) to administer and enforce pharmacy law. (Business and Professions Code (BPC) § 4001)

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

3) Defines a "pharmacy" as an area, place, or premise licensed by the Board in which the profession of pharmacy is practiced and where prescriptions are compounded. This definition includes, but is not limited to, any area, place, or premises described in a license issued by the Board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold, or dispensed at retail. (BPC § 4037)

4) Defines a "remote dispensing site pharmacy" as a licensed pharmacy located in California that is exclusively overseen and operated by a supervising pharmacy and staffed by one or more qualified registered pharmacy technicians, where pharmaceutical care services are remotely monitored or provided by a licensed pharmacist through the use of telepharmacy technology. (BPC § 4044.3)

5) Defines "telepharmacy" as a system that is used by a supervising pharmacy for the purpose of monitoring the dispensing of prescription drugs by a remote dispensing site pharmacy and provides for related drug regimen review and patient counseling by an electronic method. (BPC § 4044.7)

6) Requires every pharmacy to designate a pharmacist in charge who is responsible for the pharmacy's compliance with all state and federal laws. (BPC § 4113)

7) Prohibits a person from conducting a pharmacy in California without a license. Authorizes the Board to issue temporary permits and to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged, as specified. (BPC § 4110)

8) Authorizes a pharmacist or a clinic licensed as specified to furnish a dangerous drug or device in reasonable quantities without a prescription during a federal, state, or, local emergency and requires records of such action to be maintained. (BPC § 4062(a))

9) Authorizes the Board to waive provisions of pharmacy law during a declared federal, state, or local emergency and up to 90 days following the termination of the declared emergency if the waiver will aid in the protection of the public health or the provision of patient care. (BPC §§ 4062(b) and 4062(d))

10) Authorizes the Board to allow for the employment of a mobile pharmacy or clinic in areas impacted during a declared federal, state, or local emergency to ensure the continuity of patient care if certain conditions are met. (BPC § 4062(c))

11) Authorizes the Board to allow for the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged, the mobile pharmacy is necessary to protect the health and safety of the public, and the following conditions are met: 1) the mobile pharmacy is providing services only on or immediately contiguous to the site of the damaged or destroyed pharmacy; 2) the mobile pharmacy is providing services only on or immediately contiguous to the site of the damaged or destroyed pharmacy; 3) the mobile pharmacy is having a licensed pharmacist on the premises while drugs are being dispensed; 4) the mobile pharmacy is taking reasonable security measures to safeguard the drug supply maintained in the mobile pharmacy; 5) the pharmacy operating the mobile pharmacy provides the board with records of the destruction of, or damage to, the pharmacy and an expected restoration date; 6) within three calendar days of restoration of the pharmacy services, the board is provided with notice of the restoration of the permanent pharmacy; and 7) the mobile pharmacy is not operated for more than 48 hours following the restoration of the permanent pharmacy. (BPC § 4110(c))

THIS BILL:

1) Authorizes a county or a city and county to operate a licensed mobile unit to provide prescription medication within its jurisdiction to specified individuals, including those individuals without fixed addresses, as well as others.

2) Provides criteria for dispensation, specifically:

    a) A Board-licensed mobile unit;

    b) The mobile unit is staffed by a pharmacist in charge and a pharmacy technician;

    c) A licensed pharmacist is on the premises and the mobile unit is under the control and management of a pharmacist while prescription medications are being dispensed;

    d) All activities of the pharmacist, including the furnishing of medication by the pharmacist, are consistent with a pharmacist's scope of practice;

e) Any physician practicing in the mobile unit who might be prescribing medication must meet the requirements of the Medical Practice Act; and

f) The mobile unit does not carry or dispense controlled substances.

FISCAL EFFECT: This bill is keyed fiscal by Legislative Counsel. According to the Senate Committee on Appropriations analysis dated April 18, 2022:

The California State Board of Pharmacy estimates costs of $157,000 in Fiscal Year (FY) 2023-24 and $149,000 in FY 2024-25 for an additional staff to implement the new licensing program (Pharmacy Board Contingent Fund). The board notes that no fee is currently included in the bill to offset the board's administrative costs, which are not absorbable within existing resources.

The Office of Information Services within the Department of Consumer Affairs (DCA) estimates information technology costs of $90,000 for new vendor resources which include creating the new license type, updating forms and letters, and adding additional enforcement codes.

COMMENTS:

Purpose. This bill is co-sponsored by the **County of San Diego** and the **County of Santa Clara**. According to the author: "Existing law only allows for pharmacies to operate within mobile units in very narrow circumstances involving disasters. Outside of that they must be brick and mortar locations. Current law does not allow counties to operate mobile units to reach vulnerable populations including people experiencing homelessness and people in remote locations. This bill would authorize pharmacies to be operated within a mobile unit to better serve these populations."

Background.

Board of Pharmacy. The Board regulates the practice of pharmacists, interns, pharmacy technicians, and exemptees (those who are involved with the wholesale or manufacturer of drugs and medical devices, but not required to hold a pharmacist license). The Board also regulates all types of firms that distribute prescription drugs and devices in California, including community pharmacies and those located in hospitals, clinics, home and community support services facilities, and out-of-state mail order pharmacies that fill prescriptions and deliver them in California.

Telepharmacy. California passed laws supporting telemedicine in 1996, establishing it as a legitimate means of receiving health care services. The telemedicine statutes were updated in 2011 with the Telehealth Advancement Act, which updated the state's definition of telehealth, simplified approval processes for telehealth services, and expanded the range of medical services that may be provided via telehealth. The law also establishes legal parity between the direct and remote delivery of pharmacy care.

Pharmacy Services During a Natural Disaster or State of Emergency. Many boards within the DCA are authorized to suspend compliance or waive the applicability of those acts for services

provided by licensees during a state of emergency. Current pharmacy law authorizes the use of a mobile pharmacy for a limited period of time in the wake of an emergency state, but it is not a long-term solution. The Board can also allow the temporary use of a pharmacy when a pharmacy is destroyed or damaged, the mobile pharmacy is necessary to protect the health and safety of the public, and the following conditions are met: 1) the mobile pharmacy provides services only on or immediately contiguous to the site of the damaged or destroyed pharmacy; 2) the mobile pharmacy is under the control and management of the pharmacist-in-charge of the pharmacy that was destroyed or damaged; 3) a licensed pharmacist is on the premises while drugs are being dispensed; 4) reasonable security measures are taken to safeguard the drug supply maintained in the mobile pharmacy; 5) the pharmacy operating the mobile pharmacy provides the board with records of the destruction of, or damage to, the pharmacy and an expected restoration date; 6) within three calendar days of restoration of the pharmacy services, the board is provided with notice of the restoration of the permanent pharmacy; 7) the mobile pharmacy is not operated for more than 48 hours following the restoration of the permanent pharmacy.

Prior Related Legislation.

AB 1533 (Assembly Committee on Business and Professions, Chapter 629, Statutes of 2021) made various changes to the Pharmacy Law intended to improve oversight of the pharmacy profession stemming from the joint sunset review oversight of the Board including permitting the Board to allow the temporary use of a pharmacy when a pharmacy is destroyed or damaged or the mobile pharmacy is necessary to protect the health and safety of the public, as specified.

AB 2576 (Aguiar-Curry, Chapter 716, Statutes of 2018) authorized a community clinic licensed by the Board to furnish drugs or devices without a prescription during a state of emergency, and authorizes the Board to waive specified provisions of the Pharmacy Practice Act for up to 90 days following the termination of a declared emergency. It permits the Governor, during a state of emergency, to direct all state agencies to utilize, employ, and direct state personnel, equipment and facilities to allow community clinics and health centers to provide and receive reimbursement for services provided during or immediately following an emergency, as specified.

AB 401 (Aguiar-Curry, Chapter 548, Statutes of 2017) authorized a remote dispensing site pharmacy to use a telepharmacy system, and required the Board to issue a remote dispensing site pharmacy license; required a remote dispensing site pharmacy to be located in a medically underserved area; authorized a pharmacist to serve as a supervising pharmacist to provide telepharmacy services for up to two remote dispensing site pharmacies; authorized a licensed remote dispensing site pharmacy to order dangerous drugs and devices and controlled substances and authorized a registered pharmacy technician to receive and sign for the delivered order; authorized a registered pharmacy technician to work at a remote dispensing site pharmacy and to perform tasks under the supervision of a pharmacist using a telepharmacy system; and authorized a pharmacist at a supervising pharmacy to supervise up to two pharmacy technicians at each remote dispensing site pharmacy in addition to any pharmacy technicians being supervised at the supervising pharmacy.

SB 528 (Stone, 2017) authorizes a pharmacy to provide pharmacy services to clinics that qualify as “covered entities” through the use of an Automated Drug Delivery Service (ADDS). (Status: This bill was held in the Assembly Appropriations Committee.)

ARGUMENTS IN SUPPORT:

The County of Santa Clara, Co-Sponsor of the measure, writes in support: "SB 872 will provide counties with the ability to get much needed health services to vulnerable populations. It will allow a mobile pharmacy licensed by the Board of Pharmacy, staffed by a pharmacist, (and at the option of the county, a clinician qualified to perform medical exams and prescribe medications) to go directly into communities, homeless encampments and similar venues such as transitional housing locations. Once there, they are able to see patients, provide medical exams, prescribe medication, and dispense on site. Medications that would be provided include those that are otherwise provided by the counties, including but not limited to, for diabetes, hypertension, antibiotics, certain infectious diseases, and the treatment of mental health conditions. Controlled substances would not be provided."

The County of San Diego, Co-Sponsor of the measure, writes in support: "SB 872 will provide counties with a way to get much needed health services to vulnerable populations. It will allow a mobile pharmacy licensed by the Board of Pharmacy, staffed by a pharmacist, (and at the option of the county, a clinician qualified to perform medical exams and prescribe medications) to go directly into communities, homeless encampments and similar venues such as transitional housing locations. Once there, they are able to see patients, prescribe medication, provide medical exams and dispense on site. Controlled substances would not be provided. Medications that would be provided include those that are otherwise provided by the counties, including but not limited to, for diabetes, hypertension, antibiotics, certain infectious diseases, and the treatment of mental health conditions."

The County Health Executives Association of California (CHEAC) writes in support: "SB 872 will allow counties to provide health services to vulnerable populations where they live. The measure would allow a mobile pharmacy licensed by the Board of Pharmacy, staffed by a pharmacist, to go directly into communities, homeless encampments, and similar places such as transitional housing locations. Mobile pharmacies could provide services to patients, including prescribing medications, including those for diabetes, hypertension, antibiotics, and certain infectious diseases."

The National Association of Social Workers, California Chapter (NASW – CA) writes in support: "SB 872 will provide counties with a way to get much needed health services to vulnerable populations. It will allow mobile pharmacy licensed by the Board of Pharmacy, staffed by a pharmacist, (and at the option of the county, a clinician qualified to perform medical exams and prescribe medications) to go directly into communities, homeless encampments and similar venues such as transitional housing locations. Once there, they are able to see patients, prescribe medication, provide medical exams and dispense on site."

ARGUMENTS IN SUPPORT:

None on file.

AMENDMENTS:

To allow these mobile units to provide medications to treat substance use disorders and to clarify in the language that medications prescribed by all legal prescribers, such as nurse practitioners, could be provided by the mobile units:

1. On page 2, strike line 4 and insert the following:

   "A county, city and county or a special hospital authority described in Chapter 5 (commencing with Section 101850), or Chapter 5.5 (commencing with Section 101852) of Part 4 of Division 101 of the Health and Safety Code may operate a mobile unit to provide …"

2. On page 2, line 12, after the word "code", insert the following:

   "The mobile unit shall be operated as an extension of a pharmacy license held by the county, city and county or special hospital authority."

3. On page 2, strike lines 16-19.

4. On page 3, strike lines 3 and 4 and insert the following:

   "(7) Dangerous drugs shall not be left in the mobile unit during the hours in which it is not in operation."

   "(8) At least 30 days prior to commencing operation of a mobile pharmacy, a county, city and county or special hospital authority shall notify the board of its intention to operate a mobile pharmacy. Notice shall also be given to the board at least 30 days prior to discontinuing operation of a mobile pharmacy."

REGISTERED SUPPORT:

County of Santa Clara *(Co-Sponsor)*
County of San Diego *(Co-Sponsor)*
California Academy of Family Physicians
California Association of Public Hospitals and Health Systems
California Pharmacists Association
City and County of San Francisco
County Health Executives Association of California
County Society of Health-System Pharmacists
National Association of Social Workers, California Chapter
The City and County of San Francisco

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 994 (Jones) – As Amended April 21, 2022

SENATE VOTE: 33-0

SUBJECT: Vocational nursing: direction of naturopathic doctor

SUMMARY: Authorizes naturopathic doctors (NDs) to supervise and direct licensed vocational nurses (LVNs), as specified.

EXISTING LAW:

1) Regulates the practice of naturopathic medicine under the Naturopathic Doctors Act and establishes the Naturopathic Medicine Committee (NMC) to administer and enforce the act. (BPC §§ 3610-3686)

2) Defines "naturopathic medicine" as a distinct and comprehensive system of primary health care practiced by a naturopathic doctor for the diagnosis, treatment, and prevention of human health conditions, injuries, and disease. (BPC § 3613(c))

3) Defines "naturopathic doctor" as a person who holds an active license issued pursuant to this chapter. (BPC § 3613(d))

4) Defines "naturopathy" as a noninvasive system of health practice that employs natural health modalities, substances, and education to promote health. (BPC § 3613(e))

5) Defines "naturopathic assistant" as a person who may be unlicensed, who performs basic administrative, clerical, and technical supportive services in compliance with this chapter for a licensed naturopathic doctor or naturopathic corporation and who is at least 18 years of age, and who has had at least the minimum amount of hours of appropriate training pursuant to standards established by the Medical Board of California for a medical assistant. (BPC § 3613(g))

6) Defines "supervision" as the supervision of procedures by an ND, within the ND's scope of practice, who is physically present in the treatment facility during the performance of those procedures. (BPC § 3613(j))

7) Regulates LVNs under the Vocational Nursing Practice Act and establishes the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) to administer and enforce the act. (Business and Professions Code (BPC) §§ 2840-2895.5)

8) Defines "the practice of vocational nursing" as the performance of services requiring technical, manual skills acquired by means of a course in an approved school of vocational nursing, or its equivalent, practiced under the direction of a licensed physician and surgeon or registered nurse. (BPC § 2859(a))

9) Defines "vocational nurse" as a person who has met all the legal requirements for a license as an LVN in this state and who for compensation or personal profit engages in vocational nursing. (BPC § 2859(b))

THIS BILL:

1) Adds NDs to the list of healthcare providers who may direct an LVN.

2) Provides that an LVN may not perform any function outside the scope of an LVN.

3) Authorizes an LVN to perform the functions that currently require physician and surgeon direction under the direction of an ND, which are:

   a) Administration of medication by hypodermic injections.

   b) Withdrawal of blood from a patient.

   c) Starting and superimposing intravenous (IV) fluids.

   d) Tuberculin skin tests, coccidioidin skin tests, and histoplasmin skin tests within the course of a tuberculosis control program.

   e) Immunization techniques upon standing orders of a supervising licensed physician and surgeon or naturopathic doctor, or pursuant to written guidelines adopted by a hospital or medical group with whom the supervising licensed physician and surgeon or naturopathic doctor is associated.

4) Provides that an LVN practicing solely under the direction of an ND may only perform the aspects of the above functions that are within the ND scope of practice outlined under the Naturopathic Doctors Act and do not require the ND to obtain additional training or develop standardized procedures with a physician and surgeon.

5) Adds naturopathic doctor's offices to the list of settings an LVN may start and superimpose IV fluids.

6) Provides that an LVN may only start and superimpose IV fluids at the direction of an ND who has completed a qualifying course on IV therapy from a course provider approved by the NMC as required under the Naturopathic Doctors Act.

7) Imposes the same supervision and oversight requirements that apply to physician and surgeons to NDs, including that a supervising ND is not required to be physically present for or examine a person being tested or immunized.

FISCAL EFFECT: According to the Senate Committee on Appropriations, pursuant to Senate Rule 28.8, no significant state costs are anticipated.

COMMENTS:

Purpose. This bill is sponsored by the *California Naturopathic Doctors Association*. According to the author, this bill "simply allows [NDs] to hire [LVNs]. Current law does not allow an ND to be called a 'physician.' However, current law also only allows 'physicians' to hire LVNs. This discrepancy is thought to have been an oversite in the original drafting of an ND's scope of practice. This bill fixes that oversight without changing either party's personal scope of practice."

Background. NDs are licensed healthcare professionals who practice a form of primary care that focuses on wellness, prevention, and the utilization of natural methods and substances to support and stimulate the body's self-healing process. Aside from natural methods, NDs may also utilize other medical tools, such as pharmaceuticals, medical devices, and diagnostic testing and imaging.

NDs are licensed and regulated by the NMC within the Department of Consumer Affairs (DCA). The latest update on the DCA's data portal shows the NMC reporting 1,268 actively licensed NDs.

ND Support Staff. To assist NDs with their practice, NDs can hire naturopathic assistants who can perform limited tasks in the office with the supervising ND present. According to the sponsor, this limitation means there are still many tasks that the ND must perform themselves, lowering their efficiency and increasing wait times for patients. As a result, the sponsor states that NDs would benefit from being able to utilize medical staff with additional training and a broader scope of practice.

Specifically, the sponsor reports that NDs regularly receive job applications from LVNs who wish to work for them. Currently, however, NDs are not authorized to supervise or direct LVNs. This bill would create that authorization.

LVNs. LVNs are licensed healthcare professionals who provide basic nursing services and who are trained and authorized to perform many functions and procedures that naturopathic assistants cannot. LVNs are licensed and regulated by the BVNPT within the DCA. The latest update on the DCA's data portal shows the BVNPT reporting 130,090 actively licensed LVNs.

ND vs. LVN Scope of Practice. While naturopathic medicine is defined as a distinct system of health care, NDs can utilize many procedures in their practice that LVNs are trained to perform under the supervision of either a physician and surgeon or registered nurse.

Specifically, any licensed ND is authorized to:

1) Order and perform physical and laboratory diagnostic tests, such as blood withdrawal and testing.
2) Order diagnostic imaging studies for interpretation by a qualified healthcare licensee.
3) Dispense, administer, order, prescribe, and furnish or perform:
    a) Food, vitamins, homeopathy, and other supplements and over-the-counter drugs, utilizing routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal,

transdermal, intradermal, subcutaneous, IV, and intramuscular, although an ND may only administer IV therapy after completing specified coursework.
   b) Hot or cold hydrotherapy.
   c) Naturopathic physical medicine, including the manual use of massage, stretching, resistance, or joint play examination, but not small amplitude movement at or beyond the end range of normal joint motion.
   d) Electromagnetic energy.
   e) Colon hydrotherapy.
   f) Therapeutic exercise.
   g) Medical devices, including barrier contraception and durable equipment.
   h) Health education and counseling.
   i) Repair and care of superficial lacerations and abrasions, but not suturing.
   j) Removal of foreign bodies from superficial tissue.
   k) Epinephrine to treat anaphylaxis.
   l) Natural and synthetic hormones.

NDs may also perform the following if additional conditions are met:

1) Furnish or order drugs classified as up to Schedule III under the California Uniform Controlled Substances Act under standardized procedures developed with a supervising physician and surgeon after completing specified coursework in pharmacology.
2) Perform naturopathic childbirth attendance after obtaining a certificate of specialty practice of naturopathic childbirth attendance by the NMC, including administering, ordering, or performing.

NDs are also specifically prohibited from performing the following:

1) Prescribing, dispensing, or administering a controlled substance or device except as specified under the provisions allowing for physician and surgeon supervision and training.
2) Administering therapeutic ionizing radiation.
3) Advertising other forms of medicine.
4) Administering general or spinal anesthesia.
5) Performing abortions.
6) Performing surgery.
7) Performing acupuncture or traditional Chinese and Asian medicine, including Chinese herbal medicine, unless licensed as an acupuncturist.

LVNs are also authorized to perform many of the services authorized under the ND license. The LVN scope of practice authorizes services "requiring technical and manual skills," including:

1) Basic nursing services, including basic assessment and performance and evaluation of interventions according to a care or treatment plan.
2) Administration of medications, including by hypodermic injection when directed by a physician and surgeon.
3) Patient education.
4) The performance of the following when directed by a physician and if additional training requirements are met:
   a) Starting and superimposing IV fluids.

b) Blood withdrawal.
c) Tuberculin skin tests, coccidiosis skin tests, and histoplasma skin tests within the course of a tuberculosis control program.
d) Immunizations pursuant to written guidelines adopted by an organized health system, such as a hospital or medical group, with whom the supervising physician is associated.

However, LVNs are not trained in naturopathic medicine. To address that, this bill seeks to maintain the structure of the current physician supervision model with NDs. As a result, the ND would remain responsible for the overall care of the patient, and the LVN would be responsible for the functions they are directed to perform.

Because some functions require additional training or supervision for an ND to perform (such as vaccinations or childbirth attendance), this bill also specifies that an LVN who is supervised solely by an ND may only perform the functions that do not require additional certification or supervision.

ARGUMENTS IN SUPPORT:

The *California Naturopathic Doctors Association* (sponsor) writes in support, "[This bill] would allow NDs to hire LVNs and allow both providers to work within their existing scope of practice. This bill will allow NDs to hire staff with a higher level of medical training to assist in patient care and assist with triage. It will reduce wait time for patients and increase the number of patients each doctor can serve. This would increase LVNs exposure to the primary care setting and allow them to work more closely with doctors and patients than they might in other settings, including participation in care plan development. This bill does not expand the scope of NDs."

The *Naturopathic Medicine Committee (NMC)* writes in support:

> This bill would provide additional staffing to work in naturopathic offices at a greater educational and training level than that of a naturopathic assistant (NA). Currently there is a barrier in that NDs are limited in the assistance they are able to secure in their practices when a physician and surgeon are not involved. This limits the ability of the ND to provide services to their patients at levels that their physician co-parts are able to. In order to resolve these barriers to workforce development and consumer access, we recommend and support this bill which would allow NDs to provide orders and supervision to LVNs. This also provides resolution to NDs who are in an integrated practice with MD/DOs and LVNs, and would allow LVNs to assist the NDs in services that NAs cannot and are prohibited in providing.
>
> We believe that [this bill] will assist in resolving the challenges and barriers outlined above. We note that [this bill] will not broaden practice scope for either the ND or the LVN. NDs who have not met the IV Therapy specialty requirements, would not be allowed to provide direction and supervision to an LVN to provide those services. The NMC is ready and capable of implementing [this bill] should it be successful and is hopeful of seeing this bill become law.

ARGUMENTS IN OPPOSITION:

None on file

IMPLEMENTATION ISSUES:

Regulations. BVNPT staff has raised questions about the overlap of LVN and ND scope, particularly as it relates to naturopathic medicine. If this bill passes this Committee, the author may wish to work with the BVNPT, the NMC, and stakeholders to ensure that the licensing boards have the time and necessary clarity needed to promulgate any regulations needed under the bill.

REGISTERED SUPPORT:

California Naturopathic Doctors Association (sponsor)
A Voice for Choice Advocacy
Naturopathic Medicine Committee

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1120 (Jones) – As Amended March 15, 2022

SENATE VOTE: 33-0

SUBJECT: Engineering, land surveying, and geology

SUMMARY: Requires applicants, licensees, and certificate holders to provide the Board for Professional Engineers, Land Surveyors, and Geologists (Board) with a valid email address, if available, and notify the Board of any email address changes. Clarifies that unlicensed individuals cannot offer professional engineering and land surveying services. Updates land survey requirements.

EXISTING LAW:

1) Establishes the Board within the Department of Consumers Affairs (DCA) to license and regulate engineers, geologists, and land surveyors and sunsets the Board on January 1, 2024. (Business and Professions Code (BPC) § 6710)

2) Requires individuals to be licensed in order to offer or provide civil, electrical, or mechanical engineering, geology, or land surveying services. (BPC §§ 6700 *et seq.*, 7800 *et seq.*, and 8700 *et seq.*)

3) Requires the Board, within 60 to 90 days prior to the expiration of a certificate of registration as a professional engineer or the expiration of a certificate of authority to use the title "consulting engineer," "structural engineer," "soil engineer," "soils engineer," or "geotechnical engineer," to mail the registrant or authority holder a notice of pending expiration, as specified. (BPC § 6795.1)

4) Specifies that the system of plane coordinates which that has been established by the National Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of California and which is based on the North American Datum of 1983 shall be known as the "California Coordinate System of 1983" (CCS83). (Public Resources Code (PRC) § 8801(b))

5) Requires, after December 31, 2005, any survey that uses or establishes a CCS83 value or values to reference the survey and have field-observed statistically independent connections to one or more horizontal reference stations, as specified. (PRC § 8813.1)

THIS BILL:

1) Deletes obsolete language to clarify that professional engineering and land surveying services must be performed by a licensee.

2) Requires an applicant for licensure or certification to report their email address to the Board at the time of application.

3) Requires each licensee or certificate holder who has a valid email address to report their email address to the Board at the time of renewal.

4) Requires applicants, certificate holders, and licensees to notify the Board within 30 days of any change to their email address.

5) Specifies that email addresses provided to the Board are not subject to the Public Records Act.

6) Repeals the requirement that the Board mail a renewal notice to certificate holders 60 to 90 days prior to the expiration of a certificate of registration or certificate of authority.

7) Updates the reference to the most current California Coordinate System (CSS).

8) Requires, on or after January 1, 2023, that surveys using California Coordinate System of 1983 values must be referenced to and have field-observed statistically independent connections to two or more horizontal reference stations.

9) Makes various technical and conforming changes.

FISCAL EFFECT: According to the Senate Appropriations Committee pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. The bill is co-sponsored by the *California Board for Professional Engineers, Land Surveyors, and Geologists* and the *California Land Surveyors Association*. According to the author, "SB 1120 updates the regulations for industries covered by the Board for Professional Engineers, Land Surveyors, and Geologists to conform with modern industry standards."

Background.

Engineers, Land Surveyors, and Geologists. The Board licenses professional engineers, land surveyors, geologists and geophysicists. It also certifies engineering geologists and hydrogeologists.

- *Engineers (e.g. civil, electrical, and mechanical)* design, analyze, and evaluate commercial and residential buildings, bridges, dams, foundations, grading plans, drainage and sewage disposal systems, electrical systems, and machinery.

- *Land surveyors* retrace property lines, perform boundary line adjustments, prepare topographic and subdivision maps, and perform construction surveys.

- *Geologists* study the earth and use numerous techniques to determine the location, composition, and orientation of earth materials (e.g. oil, gas, and mineral deposits). *Geophysicists* measure earth's physical properties (e.g. electricity, magnetism, and gravity) and naturally occurring events such as earthquakes.

Email. Several boards and bureaus within the DCA have sought statutory authorization to require applicants and licensees to provide a valid email address. Email provides a more expedient and cost-effect means of communication than physical mail. This bill would allow the Board to require a valid email address from applicants, licensees, and certificate holders.

California Coordinate System. The CCS is part of a nationwide State Plane Coordinate System that is used for identifying physical locations on the earth's surface. While use of the CCS is optional, all new land surveys and new mapping projects that use it are required to use the CCS83 in lieu of earlier versions. This bill requires future surveys that establish a CCS83 value or values to have field-observed statistically independent connections to two or more horizontal reference stations, rather than one or more horizontal reference stations as is currently required by law.

Prior Related Legislation.

AB 1030 (Chen) of 2021 would have removed the same duplicate and obsolete language as in Sections 1, 2, 4, 7, 8, and 10 of this bill. *The bill died pending a hearing in this committee.*

AB 1522 (Low), Chapter 630, Statutes of 2019 extended the sunset date for the Board and its authority to appoint an executive officer until January 1, 2024; authorized the Board to take enforcement actions against a geologist-in-training certificate; continues disciplinary authority; and made other technical and clarifying changes.

SB 920 (Cannella), Chapter 150, Statutes of 2018 extended the authorization for licensed engineers, land surveyors, and architects to form limited liability partnerships until January 1, 2026.

ARGUMENTS IN SUPPORT:

The *Board for Professional Engineers, Land Surveyors, and Geologists* writes as a co-sponsor of this bill:

> Specifically, SB 1120, as amended March 15, 2022, would add sections to the Professional Engineers Act, the Geologist and Geophysicist Act, and the Professional Land Surveyors' Act to require applicants and licensees to provide the Board with their email address (if they have one) and to notify the Board of any updates to that email address. Although email has become the preferred method of communication for most people, current law does not require applicants or licensees to provide the Board with their email address, nor does it require them to update their email address if it changes. This prevents the Board from being able to rely upon email to provide vital information to applicants and licensees such as application status, examination results, license renewals, and enforcement actions, even if it is more expeditious and cost effective than mail sent through the US Postal Service.
>
> Furthermore, this bill will provide clarity by removing misinterpreted and unnecessary provisions of the Professional Engineers Act and the Professional Land Surveyors' Act and, thus, provide better protection for consumers and licensees. BPC §§ 6738(e) and 8729(e) state that the Acts do not prevent an individual or business

from employing or contracting with an appropriately licensed individual to perform the respective engineering or land surveying services incidental to the conduct of business. These subdivisions have been in law for around 70 years but lately have been misinterpreted as allowing unlicensed individuals to offer or contract to provide professional engineering and land surveying services to their clients, even though other provisions of the BPC explicitly prohibit such offerings. Instead, this provision was meant to allow for employment of other types of licensees for internal purposes only. Additionally, it is unnecessary to state in law that individuals or businesses may employ or contract with professional engineers or land surveyors when the individuals or businesses need engineering or land surveying work done on their own projects.

The *California Land Surveyors Association* writes as a co-sponsor of this bill: "SB 1120 makes several, largely technical, changes to laws relating to land surveying and is the product of work from both our client and the California Board for Professional Engineers, Land Surveyors, and Geologists. Specifically, this bill makes updates within the California Coordinate System (CCS) to clarify that two or more GPS control points is needed for newly established surveys. In California, land surveyors use the CCS which is part of the national State Plane Coordinate System (SPCS) and controls the substantive requirement for surveying, statutorily defining how to locate points on earth's surface within the state of California. This effort seeks to improve the tools relating to land surveying based upon new technologies and best available information. SB 1120 helps make this important update."

ARGUMENTS IN OPPOSITION:

None on file.

AMENDMENTS:

According to the author, the proposed statutory changes included in Section 11 of the bill were in response to the national State Plane Coordinate System being updated this year. However, that process has been delayed and Section 11 of the bill is no longer necessary. As such, the author has requested that amendments be taken in committee to remove Section 11 of the bill in its entirety.

REGISTERED SUPPORT:

Board for Professional Engineers, Land Surveyors, and Geologists *(Co-Sponsor)*
California Land Surveyors Association *(Co-Sponsor)*

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1064 (Newman) – As Introduced February 15, 2022

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

SENATE VOTE: 33-0

SUBJECT: Structural pest control: workers' compensation insurance coverage

SUMMARY: Requires structural pest control companies to provide proof of workers' compensation for company registration with or licensure by the California Structural Pest Control Board (Board).

EXISTING LAW:

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

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

3) Establishes the Board as the entity within the Department of Consumer Affairs (DCA) that licenses and regulates structural pest control applicators, field representatives, operators, and structural pest control companies. (Business and Professions Code (BPC) § 8500 *et seq.*)

4) Defines "Structural Pest Control" to mean any of the following, with respect to household pests, wood destroying pests or organisms, and pests that may invade other industrial structures:

   a) Identification of infestations or infections.

   b) Inspections for the purpose of identifying or attempting to identify infestations or infections of households or structures.

   c) Creation of inspection reports, recommendations, estimates, and bids with respect to those infestations or infections.

   d) Making contracts, submitting bids for, or performing any work for the purpose of eliminating, exterminating, controlling, or preventing infestations or infections of pests, including structural work and the use of pesticides.

   (BPC §8505)

5) Defines a "registered company" as any sole proprietorship, partnership, corporation, or other organization or any combination thereof that is registered with Board to engage in the practice of structural pest control. Requires every company that engages in the practice of structural pest control to be registered with the Board. (BPC §§ 8506.1 and 8610(a))

6) Defines a "qualifying manager" as the licensed operator or operators designated by a registered company to supervise the daily business of the company and to be physically present at the principal office or branch office location for a minimum of nine days every three consecutive calendar months to supervise and assist the company's employees. Requires every company to designate an individual or individuals who hold an operator's license to act as its qualifying manager or managers. (BPC §§ 8506.2 and 8610(c))

7) Authorizes the Board, after a hearing, to temporarily suspend or permanently revoke a license while a licensee or applicant is guilty of or commits any one or more of the acts of omissions constituting grounds for disciplinary action; authorizes the Board to assess civil penalties, as specified. (BPC § 8620)

8) Specifies that disregard and violation of the building laws of the state, or of any of its political subdivisions, or of the safety laws, labor laws, health laws, or compensation insurance laws of the state relating to the practice of structural pest control is a ground for disciplinary action. (BPC § 8636)

9) Prohibits the Board from issuing a company registration unless the applicant provides evidence of an insurance policy approved by the Board; requires 10-days notification be given to the Board by the insurance company if the policy is to be canceled or changed during the policy period. (BPC § 8690)

10) Specifies that an insurance policy must provide minimum limits of $500,000 for any one loss due to bodily injury, sickness, or disease, including death sustained by any person, and $500,000 minimum for any one loss due to injury or destruction of property, including the loss of use of the property. (BPC § 8692)

11) Makes a violation of these insurance provisions a misdemeanor, grounds for the Board to suspend or revoke the operator's license of the owner or qualifying manager or managers of the registered company and of the company registration. (BPC § 8695)

12) Requires a registered company to maintain a $12,500 surety bond payable for the benefit of any person damaged by fraud or dishonesty of the registered company in the performance of a contract, or any person who is damaged as a result of a violation by the registered company. (BCP §§ 8697 and 8697.2)

13) Provides that if, after a hearing, a license or company registration is suspended or revoked, the registrar shall require the applicant, licensee, or registered company, as a condition of the issuance, reissuance, or restoration of the license or company registration, to file a surety bond in a sum of not less than $1,000 nor more than $25,000, in addition to the bond specified above. (BPC § 8697.3)

14) Specifies that failure of a licensee or registered company to maintain in full force and effect any bond required, the registrar shall issue an order suspending or revoking the license or company registration, which shall not be reinstated until a new bond is filed. (BPC § 8697.4)

15) Requires every licensed contractor to have on file at all times with the Contractors State License Board (CSLB) a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, as specified, unless the applicant or licensee meets both of the following conditions:

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

b) Does not hold a C-39 license, as specified.

(BPC § 7125(a) and (b))

16) Provides that failure of a licensed contractor to obtain or maintain workers' compensation insurance coverage, if required under the Contractors State License Law, shall result in the automatic suspension of the license. Specifies that the suspension shall be effective on either the date that the workers' compensation insurance coverage lapses or the date that workers' compensation coverage is required to be obtained, whichever is earlier. (BPC § 7125.2(a)(1) and (2))

THIS BILL:

1) Prohibits the Board from issuing, reinstating or continuing to maintain any company registration unless the applicant or existing company has filed a current and valid Certificate of Workers' Compensation Insurance with the Board.

2) Specifies that a Certificate of Workers' Compensation Insurance must be issued and filed by an insurer duly licensed to write workers' compensation insurance in California.

3) Exempts from the above requirement any company with no employees so long as the company provides the Board a statement on a prescribed form certifying that it does not employ any workers that are required to be covered by law.

4) Requires an insurer, including the State Compensation Insurance Fund, to report the following information to the Board about these policies: company name, registration number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if applicable.

5) Requires an insurer to also report when a registered company's workers' compensation insurance policy is cancelled by the insurer and all of the following apply:

   a) The insurer has completed a premium audit or investigation.

   b) A material misrepresentation has been made by the insured that results in financial harm to the insurer.

   c) No reimbursement has been paid to the insurer by the insured.

6) Specifies that willful or deliberate disregard and violation of workers' compensation insurance laws constitutes a cause for disciplinary action against the registered company and the qualifying manager or managers.

7) Specifies that any person who violates these provisions is *not* guilty of a misdemeanor punishable by a fine and/or imprisonment in county jail, as specified.

FISCAL EFFECT: According to the Senate Appropriations Committee pursuant to Senate Rule 28.8, no significant state costs anticipated.

COMMENTS:

Purpose. This bill is sponsored by the *Pest Control Operators of California*. According to the author: "Under current law, pest control companies in California must hold an active insurance policy that guarantees coverage for up to $500,000 in loss due to injury or destruction of property. At present, however, there is no explicit requirement for a pest control company to show proof of such workers' compensation insurance at the time of applying for a new license or renewing an existing license. The consequences of this lack of accountability became clear in July 2021, when a pest control worker performing fumigation in Arcadia, California fell to his death from the roof of a two-story home. If the company had had the required workers' compensation coverage, the family would have been eligible for financial assistance. Under the provisions of [this bill], the process for issuing licenses for California pest control companies will include verification of active workers' compensation insurance. Additionally, [this bill] requires the state compensation insurance fund and the insurer to notify the Structural Pest Control Board of a company's policy lapse, thereby ensuring that all employers of California pest control workers satisfy the requirements of existing law. No California company whose employees engage in potentially hazardous activities should be allowed to escape responsibility for obtaining the required coverages."

Background.

Structural Pest Control and the Board. According to the Board, "Structural pest control is the control of household pests (including but not limited to rodents, vermin and insects) and wood-destroying pests and organisms or such other pests which may invade households or structures." Structural pest control companies identify, exterminate, and prevent the infestation or infections of such pests and organisms by performing structural repairs or by applying chemical agents or mechanical devices.

The Board issues three types of licenses (Applicator, Field Representative, and Operator) for three branches of pest control, including Fumigation (whole structure treatment with lethal gas), General Pest (ants, cockroaches, mice, and rats), and Termite (termites, wood boring beetles, dry rot, and fungus).

Each license has its own scope of practice, entry-level requirements, and education/examination requirements, with some overlap. Applicators may apply a pesticide, or any other medium to eliminate, exterminate, control or prevent infestations or infections. Applicators cannot inject lethal gases used in fumigation. Field Representatives may inspect and identify infestations or infections of pests and contract for work on behalf of a registered company. Operators may assume responsibility for the company and its employees as the company Qualifying Manager and qualify a company for registration with the Board. Each company and branch office must register with the Board. In the 2012/2013 year, there were 2,713 Principal Registrations and 437 Branch Office Registrations. At that time, the licensee population included 5,051 Applicators, 10,549 Field Representatives, and 3,601 Operators.

Workers' Compensation. In California, all employers are required to have workers' compensation insurance and to pay for workers' compensation benefits for workers that experience a work-related injury or illness. Workers' compensation benefits include medical care, disability benefits, job displacement benefits, and death benefits. These benefits are designed to provide injured or ill employees with the medical treatment needed to recover,

partially replace lost wages, and help workers return to work. Workers' compensation benefits do not include damages for pain and suffering or punitive damages.

Employers may purchase workers' compensation insurance from a licensed insurance company or through the State Compensation Insurance Fund. Self-insurance is also an option but requires state approval, a net worth of $5 million minimum, net income of $500,000 annually, and posting of a security deposit.

Employees who suffer from a work-related injury or illness are entitled to medical treatment and other benefits regardless of whether or not their employer has workers' compensation insurance. The Uninsured Employers Benefits Trust Fund (UEBTF) pays claims to workers when illegally uninsured employers fail to pay workers' compensation benefits. The UEBTF then pursues reimbursement from the responsible employer.

Precedent. Construction contractors, as a condition of licensure from the CSLB, are required to have workers' compensation insurance if they have any employees. Applicants and licensees are required to submit to CSLB a valid Certificate of Workers' Compensation Insurance, a valid Certification of Self-Insurance from the Department of Industrial Relations (DIR), or a signed exemption certifying that they do not have any employees. Existing law currently requires all C-39 roofing contractors to have workers' compensation insurance regardless of whether or not they have any employees. Insurance companies are required to provide CSLB specific information about the applicant or licensee's workers' compensation insurance policy, including the name, license number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if applicable. This information is available on CSLB's website. Willful or deliberate disregard and violation of workers' compensation insurance laws constitutes a cause for disciplinary action against the licensee.

This bill is modeled after CSLB workers' compensation insurance requirements and would similarly require proof of workers' compensation insurance before the issuance, reinstatement, or continuance of any company registration with the Board, unless the company does not have any employees.

Current Related Legislation.

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

AB 2894 (Cooper) would require an applicant or licensee to inform the CSLB of its workers' compensation classification code as a condition of licensure. *Currently in the Senate Rules Committee.*

Prior Related Legislation.

SB 662 (Galgiani), Chapter 218, Statutes of 2013, increased the minimum limit for liability insurance to $500,000 for a structural pest control company; increased the amount of the surety bond required to maintain a license or company registration to $12,500; increased the upper limit of a surety bond required for issuance, reissuance, or restoration of a license or company registration, after a suspension or revocation, to $25,000.

ARGUMENTS IN SUPPORT:

The *Pest Control Operators of California* write as the sponsor of this bill: "SB 1064 will ensure that California's pest control workers enjoy the same safety protections as other licensed professionals, protecting workers from financial liability for injury or death on the job."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES FOR CONSIDERATION:

Board Disciplinary Action. By requiring proof of workers' compensation insurance as a condition of company registration or licensure with the Board, this bill would allow the Board to proactively identify non-compliant companies and managers and suspend their company registration and operator's license. However, nothing in the bill requires automatic suspension of a company registration or operator's license, unlike the Contractors State License Law, which this bill was modeled after. The author may wish to amend the bill to specify that failure to obtain or maintain workers' compensation insurance coverage, if required, shall result in the automatic suspension of a company registration and operator's license, effective on either the date that the workers' compensation insurance coverage lapses or the date that workers' compensation coverage is required to be obtained, whichever is earlier.

REGISTERED SUPPORT / OPPOSITION:

Support

Pest Control Operators of California *(Sponsor)*
California Structural Pest Control Board
California Labor Federation, AFL-CIO

Opposition

None on file.

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1237 (Newman) – As Amended March 30, 2022

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

SENATE VOTE: 35-0

SUBJECT: Licenses: military service

SUMMARY: Defines the phrase "called to active duty," for purposes of various license requirement waivers under the Department of Consumer Affairs (DCA), as having the same meaning as "active duty" as defined under federal law and provides that the definition additionally includes active duty in the California National Guard due to the proclamation of a state of insurrection, the proclamation of a state extreme emergency, or otherwise being called by the Governor, as specified.

EXISTING FEDERAL LAW:

1) Defines "active duty" as full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned, but does not include full-time National Guard duty. (Title 10 United States Code § 101(d)(1))

EXISTING STATE LAW:

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

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

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

4) Authorizes any licensee or registrant of a DCA board 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 to, upon application, reinstate their license or registration without examination or penalty. (BPC § 114)

5) Requires DCA boards 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 who does not utilize their license while on active duty. (BPC § 114.3)

6) Requires a DCA board to expedite 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)

7) Requires a DCA licensing board to issue temporary licenses to the spouses of active-duty members of the United States Armed Forces and requires the DCA and the Department of Real Estate to compile information on military, veteran, and spouse licensure into an annual report for the Legislature, and for the DCA to post the information on its website. (BPC §§ 115.6, 115.8, 115.9, 10151.3)

8) Authorizes the Governor to declare any part of the State of California, a county, or a city to be in a state of insurrection, as specified, and order into the service of the state any number and description of the active militia, or unorganized militia, to serve for a term and under the command of any officer as the Governor directs. (Military and Veterans Code (MVC) § 143)

9) Authorizes the Governor to call into active service any portion of the active militia, and if the number available be insufficient, any portion of the unorganized militia as may be necessary, in any of the following events:

   a) In case of war, insurrection, rebellion, invasion, tumult, riot, breach of the peace, public calamity, or catastrophe, including, but not limited to, catastrophic fires, other emergencies, or resistance to the laws of this state or the United States. (MVC § 146(a))

   b) Upon call or requisition of the President of the United States. (MVC § 146(b))

   c) Upon call of any United States marshal in California, or call of any officer of the United States Army commanding an army, army area, or military administrative or tactical command including generally the State of California, or call of any officer of the United States Air Force commanding an air force, air defense force, air defense command or air command including generally the State of California. (MVC § 146(c))

   d) Upon call of the chief executive officer of any city or city and county, or any justice of the Supreme Court, or any judge of the superior court, or any sheriff, setting forth that there is an unlawful or riotous assembly with intent to commit a felony, or to offer violence to person or property, or to resist the laws of the State of California or the United States or that there has occurred a public calamity or catastrophe requiring aid to the civil authorities. (MVC § 146(d))

   e) Upon call of the sheriff stating that the civil power of the county is not sufficient to enable the sheriff to execute their duties. (MVC § 146(e))

FISCAL EFFECT: According to the Senate Committee on Appropriations, pursuant to Senate Rule 28.8, no significant state costs are anticipated.

COMMENTS:

Purpose. This bill is sponsored by the *California Optometric Association*. According to the author, this bill "expands eligibility to the DCA license fee waiver program for licensees or registrants called to active duty as a member of the United States Armed Forces or the California National Guard by clarifying the basis upon which all thirty-eight licensing boards and bureaus under the jurisdiction of the DCA must administer the program. By codifying a uniform definition of the term 'called to active duty,' [this bill] intends to open this program to all licenses or registrants serving in an active duty status, regardless of the duration of their active duty assignment. This legislation is necessary due to the DCA determination that 'called to active duty' includes licensees in all branches of the United States Armed Forces who, on a temporary basis, travel to remote locations to engage in activity relating to a war, national emergency, or other military operation."

Background. In California, many professions require a license to legally practice. While active-duty members of the United States Armed Forces may practice on federal property with a license from any state, a member who chooses to stay in this state after active duty, or a spouse or partner that moves to this state with an active duty member due to military orders, may be required to apply for a new license, even if they are licensed in a different state. Conversely, a licensee who is called to active duty for duties that do not require a license would need to maintain or reapply for their license to practice upon their return.

Applying for and maintaining a license is expensive and burdensome, and military families tend to be more heavily impacted, often having little choice in when they must move. To assist with these burdens, existing law provides for several accommodations for military families applying for California licenses. DCA boards are required to ask about the military status of each of their applicants so that these benefits can be applied. For example, DCA boards are required to expedite license applications for veterans and the spouses or partners of active duty military members. For licensees who are called to active duty for tasks that do not require a license, there are options for waiving renewal requirements for a period of time.

ARGUMENTS IN SUPPORT:

The *California Optometric Association* (sponsor) writes in support, "DCA has interpreted the phrase 'called to active duty' to include licensees in all branches of the United States Armed Forces who, on a temporary basis, travel to remote locations to engage in activity relating to a war, national emergency, or other military operation. This bill would expand the waiver to include not just those 'called to active duty' but also those in the military on active duty in a permanent, career position at a base located outside of California."

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

California Optometric Association (sponsor)
American Legion, Department of California

AMVETS, Department of California
Board of Registered Nursing
California Association of County Veterans Service Officers
California State Board of Pharmacy
California State Commanders Veterans Council
Contractors State License Board
County of Monterey
Northern Chumash Tribal Council
Vietnam Veterans of America, California State Council

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1148 (Laird) – As Amended May 23, 2022

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

SENATE VOTE: 38-0

SUBJECT: Cannabis: licenses: California Environmental Quality Act

SUMMARY: Exempts the issuance of a state license to engage in commercial cannabis activity from the California Environmental Quality Act (CEQA) if a local jurisdiction, as the lead agency, has filed a notice of exemption or a notice of determination following the adoption of a negative declaration or certification of an environmental impact report for that specific activity.

EXISTING LAW:

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

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

3) Defines "local jurisdiction" as a city, county, or city and county. (BPC § 26001)

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

5) Provides the Department with authority for issuing 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)

6) Prohibits the Department from approving an application for a state cannabis license if approval of the state license will violate the provisions of any local ordinance or regulation. (BPC § 26055)

7) Until June 30, 2022, gives the Department discretion to issue provisional licenses to applicants who are not yet in compliance with CEQA but who provide evidence that compliance is underway, with specific criteria for demonstrating progress. (BPC § 26050.2)

8) Requires the Department to consider issues relating to water use and environmental impacts when issuing cannabis cultivation licenses and prohibits the Department from issuing new licenses or increasing the total number of plant identifiers within a watershed or area where the State Water Resources Control Board or the Department of Fish and Wildlife has found that cannabis cultivation is causing significant adverse impacts. (BPC § 26060)

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

10) Establishes CEQA, a process through which environmental impact reports are prepared to identify the significant effects on the environment of discretionary projects proposed to be carried out or approved by public agencies, to identify alternatives to those projects, and to indicate the manner in which those significant effects can be mitigated or avoided; provides for various specific exemptions from this process. (Public Resources Code §§ 21000 *et seq.*)

THIS BILL:

1) Provides that CEQA does not apply to the issuance by the Department of a state license to engage in commercial cannabis activity if the local jurisdiction, as the lead agency, has filed with the Office of Planning and Research a notice of exemption or a notice of determination following the adoption of a negative declaration or certification of an environmental impact report that is specific to the applicant's commercial cannabis activity or license.

2) Requires all activity associated with the commercial cannabis license that the applicant is applying to exempt from CEQA to conform with the scope of the commercial cannabis activity analyzed and reviewed under CEQA by the local jurisdiction, as determined by the Department, to qualify for the exemption.

FISCAL EFFECT: Pursuant to the Senate Rule 28.8, negligible state costs.

COMMENTS:

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

> "As the legal cannabis market struggles, we must ensure those coming into the legal market transition from provisional licenses to annual licenses with ease. To aid this transition, Senate Bill 1148 streamlines the review and approval of cannabis licenses by eliminating a redundant review after a local jurisdiction completes CEQA. A robust CEQA review by local jurisdictions will remain a vital piece to obtain an annual license, and the Department of Cannabis Control will continue to complete CEQA review where local approval of a project is ministerial.
>
> "The additional time and resources spent by applicants and DCC staff during this duplicative process slows licensure. Streamlining this process will improve the transition of provisional licenses to annual licenses. Shortening the time it takes to issue annual licenses will help ensure those in the legal cannabis market remain."

Background.

Brief Overview 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. This regulatory scheme was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program. After several years of lawful 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. Threat of action by the federal government created apprehension within California's cannabis community.

After several prior attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. 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. 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 could also choose to ban cannabis establishments altogether.

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 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 the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was passed to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws. On January 16, 2019, the state's three cannabis licensing authorities—the Bureau of Cannabis Control, the California Department of Food and Agriculture, and the California Department of Public Health—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively.

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

Provisional Licensing and CEQA. Language included in MAUCRSA authorized the state's cannabis licensing authorities to issue four month "temporary licenses" to applicants, which could be extended in 90-day increments. These temporary licenses allowed businesses to engage in commercial cannabis activity under state approval while local governments commenced with establishing their own local authorization processes and reviewing applications for local approval. Temporary licenses were issued without any fees and temporary licensees did not have access to the state's track and trace system.

While the intent of MAUCRSA was to transition businesses to full annual licensure no later than December 31, 2018—at which time temporary license authority was scheduled to expire—many local jurisdictions struggled to launch their approval programs. For example, by August of 2018, Humboldt County regulators had received 2,376 permit applications and only approved 240. Some jurisdictions issued temporary or provisional local permits, but had not completed the full process for local permitting.

One of the driving issues behind the delay with local authorization was the requirement that a "complete" application include evidence of compliance with CEQA. Signed into law by Governor Ronald Reagan in 1970, CEQA public agencies to consider the environmental impact of approving discretionary projects. While the scope of this process can vary based on the nature of the project, CEQA review can frequently be protracted and complex.

To transition away from temporary licensure while local authorization issues remained unresolved, the Legislature passed SB 1459 (Cannella) in 2018, which instead established a "provisional license" scheme. Unlike temporary licenses, provisional license holders must pay a fee, comply with track and trace requirements, and meet additional responsibilities under MAUCRSA. However, provisional licensure does not require proof of CEQA compliance.

Provisional license authority was originally scheduled to sunset on January 1, 2020; this was subsequently extended to January 1, 2022. The 2021/22 Budget Act further extended this expiration date, prohibiting the Department from renewing a provisional licenses after January 1, 2025 and sunsetting the provisional licensing program on January 1, 2026. Specific expiration dates and deadlines were applied to provisional licensees and applicants based on the size and nature of the business, and new requirements for certain applicants to submit documentation regarding lake or streambed alteration agreement were enacted.

According to the Department, approximately 70 percent of licenses in California remain provisional. This bill is intended to alleviate the persistent issues with completing CEQA review as part of securing both state and local authorization by streamlining the process and eliminating redundant reviews, where applicants will have to undergo CEQA review as part of their state license application even after undergoing full CEQA review for their local approval as part of a completed application. The bill would provide that CEQA does not apply to the issuance of a state license when the local jurisdiction has filed a notice of exemption or a notice of determination following the adoption of a negative declaration or certification of an environmental impact report. The author believes that this limited exemption will make the transition of the market from provisional to annual licensure swifter and smoother while preserving thorough environmental review.

Current Related Legislation. SB 1186 (Wiener), among other provisions, would exempt local ordinances related to medicinal cannabis from CEQA. *This bill is pending in the Assembly Committee on Rules.*

Prior Related Legislation. AB 141 (Committee on Budget, Chapter 141, Statutes of 2021) extended the timeline for provisional licenses, prohibiting renewal after January 1, 2025.

AB 97 (Committee on Budget, Chapter 40, Statutes of 2019) extended the repeal date for the provisional license authority until January 1, 2022.

SB 1459 (Cannella, Chapter 857, Statutes of 2018) authorized the state's cannabis licensing authorities to grant provisional licenses until January 1, 2020.

SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) enacted MAUCRSA and authorized the state's cannabis licensing authorities to grant temporary licenses.

ARGUMENTS IN SUPPORT:

Origins Council supports this bill, writing: "SB 1148 would address certain, limited aspects of this larger structural problem. Where site-specific CEQA review has been conducted by the local jurisdiction, it is not necessary to duplicate the process at the state level. By addressing this issue, SB 1148 would aid in the efficient processing of state cannabis licenses without compromising effective environmental protections."

Etheridge Farms also supports this bill, writing: "When applicants apply for a state cannabis license, they generally work with their local jurisdiction first to obtain the appropriate approvals. This process typically includes some discretionary approval by the local jurisdiction, like a cannabis business permit. If the local jurisdiction subjects the proposed project to such discretionary approval, state law also requires that the local jurisdiction review the project under the California Environmental Quality Act (CEQA). This review process is critical to analyzing the proposed project's potential environmental impacts and allows stakeholders to comment on the effects a project may have in their communities. Because licenses issued by the DCC also involve discretionary review, the DCC must also review the project under CEQA, despite vigorous CEQA activity at the local level. The additional time and resources spent by applicants and DCC staff during this duplicative process slows licensure. Streamlining this process will improve the transition of thousands of provisional licenses to annual licenses."

ARGUMENTS IN OPPOSITION:

The Nature Conservancy, **Trout Unlimited**, **California Trout**, **California Native Plant Society**, and **Defenders of Wildlife** write jointly in opposition to this bill unless substantially amended: "Given the significant adverse impact cannabis cultivation can have on the environment, it is essential (and in line with the voter intent behind the passage of Proposition 64) that the state ensure compliance with CEQA and that a there has been a thorough and detailed review of the environmental impacts of cultivation activities. Our groups have significant concerns with changing the statute to exempt the state from ensuring that there has been adequate CEQA review of licenses. Under Proposition 64, the state plays a critical role in ensuring the CEQA findings made at the local level are adequate and comprehensive."

REGISTERED SUPPORT:

Body and Mind
California Cannabis Industry Association
Cannabis Distribution Association
Etheridge Farms
Good Farmers Great Neighbors
Kiva Confections
Origins Council
The Parent Company

REGISTERED OPPOSITION:

California Association of Professional Scientists
California Native Plant Society
California Trout
Defenders of Wildlife
The Nature Conservancy
Trout Unlimited

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1267 (Pan) – As Amended June 6, 2022

SENATE VOTE: 39-0

SUBJECT: Clinical laboratories

SUMMARY: Adds reproductive biology to the category of science specialties that may be performed in clinical laboratories by specified clinical laboratory personnel, adds additional license categories for clinical reproductive biologists and clinical laboratory geneticists, and expands the definition for the subspecialty of genetics.

EXISTING LAW:

1) Regulates clinical laboratory technology through licensure of laboratory facilities and clinical laboratory personnel under the California Department of Public Health (CDPH). (BPC §§ 1200-1327)

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

3) Defines "clinical laboratory bioanalyst" or "bioanalyst" as a person licensed to engage in clinical laboratory practice and direction of a clinical laboratory in the specialties of histocompatibility, microbiology, diagnostic immunology, chemistry, hematology, immunohematology, genetics, or other specialty or subspecialty specified in regulations adopted by the CDPH. (BPC § 1203)

4) Defines "clinical laboratory scientist" as a person licensed to engage in clinical laboratory practice under the overall operation and administration of a laboratory director, unless serving as a director of a waived laboratory, as specified, in the specialties of histocompatibility, microbiology, diagnostic immunology, chemistry, hematology, immunohematology, genetics, or other specialty or subspecialty specified in regulations adopted by the CDPH. (BPC § 1204)

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

6) Defines "specialty" as histocompatibility, microbiology, diagnostic immunology, chemistry, hematology, immunohematology, pathology, genetics, or other specialty specified by regulation adopted by the CDPH. (BPC § 1206(a)(17))

7) Defines "subspecialty" as, for purposes of genetics, molecular biology related to the diagnosis of human genetic abnormalities, cytogenetics, or other subspecialty specified by regulation adopted by the CDPH. (BPC § 1206(a)(18))

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

9) Limits each specialty licensee to specified specialties and subspecialties, including:

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

   b) For a clinical cytogeneticist, the subspecialty of cytogenetics within the specialty of genetics or other specialty or subspecialty specified by regulation adopted by the CDPH. (BPC § 1207(b)(5))

10) Defines a specialized limited clinical laboratory scientist licensee designated as "clinical chemist scientist," "clinical microbiologist scientist," "clinical toxicologist scientist," "clinical immunohematologist scientist," "clinical genetic molecular biologist scientist," "clinical cytogeneticist scientist," and "clinical histocompatibility scientist" as a person, other than a person licensed to direct a clinical laboratory or licensed as a clinical laboratory scientist or trainee, who is licensed to engage in clinical laboratory practice. (BPC § 1210(a))

11) Includes in each specialized limited clinical laboratory scientist license specified specialties and subspecialties, including:

   a) For a clinical genetic molecular biologist, the subspecialty of molecular biology related to diagnosis of human genetic abnormalities within the specialty of genetics or other specialty or subspecialty specified by regulation adopted by the CDPH. (BPC § 1210(b)(4))

   b) Clinical cytogeneticist to the subspecialty of cytogenetics within the specialty of genetics or other specialty or subspecialty specified by regulation adopted by the CDPH. (BPC § 1210(b)(5))

12) Requires the CDPH to issue a clinical chemist, clinical microbiologist, clinical toxicologist, clinical genetic molecular biologist, or clinical cytogeneticist license to each person who has applied for the license, who is holds a master of science or doctoral degree in the specialty for which the applicant is seeking a license, and who has met the additional reasonable qualifications of training, education, and experience as the CDPH may establish by regulations. (BPC § 1264)

13) Establishes a $63 license application and annual renewal fee for clinical laboratory bioanalyst and other specialty licenses and a $38 application fee and a $25 annual renewal fee for limited and non-limited clinical laboratory scientist licenses. (BPC § 1300)

THIS BILL:

1) Adds reproductive biology to the list of specialties included for clinical laboratory bioanalysts and clinical laboratory scientists.

2) Defines the subspecialty of reproductive biology to mean andrology and embryology, including diagnostic testing for management of primary and secondary infertility, fertility assessment, and fertility preservation, as well as the evaluation and assessment of gametes and embryos and their associated fluids and tissues, or other subspecialty specified by regulation adopted by the CDPH, but excludes the qualitative assessment of sperm in preparation for intrauterine insemination.

3) Expands the definition of the subspecialty of genetics to include biochemical genetics and laboratory genetics.

4) Adds "clinical laboratory geneticist," "clinical laboratory geneticist scientist, "clinical reproductive biologist," and "clinical reproductive biologist scientist" to the list of specialty and limited clinical laboratory scientist licenses.

5) Requires the CPDH to issue a clinical reproductive biologist license to every applicant who holds a doctoral degree in a chemical, physical, or biological science, or clinical laboratory science, who, prior to the adoption of implementing regulations, is certified as a Reproductive Biology Laboratory Director or Embryology Laboratory Director by the American Board of Bioanalysis (ABB), or other certifying board in clinical reproductive biology or clinical embryology approved by the CDPH, and who meets any additional and reasonable qualifications of training, education, and experience as the CDPH may establish by regulations.

6) Establishes a $63 license application and annual renewal fee for the new licenses under this bill.

7) Makes other technical and conforming changes.

FISCAL EFFECT: According to the Senate Committee on Appropriations, the California Department of Public Health (CDPH) estimates:

- Ongoing annual cost of approximately $171,254 to hire an additional staff at the Examiner II classification with subject matter expertise in reproductive biology in the Laboratory Field Services (LFS) licensing program. Staff would oversee processing of licensure applications for trainees, clinical laboratory scientists, and other specialists in reproductive biology, oversee approval of training programs and certification examinations, and perform other administrative and supportive functions in the program (Clinical Laboratory Improvement Fund).

- One-time information technology cost between $26,000 and $34,000 for software updates to the two LFS online application programs, the Personal Licensing (PERL) system and the Electronic Laboratory Licensing and Registration for Facilities System (ELLFS).

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, this bill "seeks to address unmet demand in two laboratory fields that are not currently recognized in State law. Under current law, the [CDPH] is able to create new license categories whenever they determine a new category is necessary. However, CDPH can only apply fees for licenses and renewals of clinical laboratory scientists and trainees in these fields. The [CDPH] cannot apply licensure fees for laboratory directors for specialties not prescribed in statute. This means they cannot issue licenses to directors in these fields. [This bill] would simply add laboratory geneticists and reproductive biologists to state law so CDPH can issue them licenses."

Background. Federal and state laws regulate clinical laboratory testing on human specimens for diagnostic or assessment purposes, for example, blood work or biopsies. The purpose of clinical laboratory regulation is to ensure patients who undergo diagnostic testing receive accurate and timely results. Inaccurate or delayed results may prevent a patient from receiving the proper level or type of care. To that end, all clinical laboratories and tests must comply with requirements under CLIA. CLIA establishes the minimum standards under federal law but allows states to establish more stringent requirements.

One way California law goes further than federal law is that it limits the practice of clinical laboratory scientist licensees to the specific scientific specialty associated with their license. Currently, the law does not include reproductive biology as a specialty or subspecialty. While CDPH has the authority to establish new specialties and subspecialties within existing licenses, it has not done so for reproductive biology. There is also no authority to issue a standalone reproductive biology license.

According to the author, this restriction has led laboratories to have to recruit separate laboratory scientists and directors for clinical testing who may lack specialized training or rely on out-of-state labs to process tests in the reproductive biology field. This bill seeks to address that issue by adding the specialty of reproductive biology and an associated license.

Reproductive Biology. Reproductive biology is the study of the biochemistry, physiology, endocrinology, cell biology, genetics, and molecular biology of processes involved in reproduction. The American Board of Bioanalysis, a CLIA-recognized certifying board for clinical laboratory scientists, offers certifications for reproductive biologists in two fields, embryology and andrology. Embryology is the study of embryos and their development, while andrology is the study of male reproductive functions. Embryology laboratories often provide services related to in vitro fertilization, while andrology laboratories primarily provide semen analysis.

Genetics. Genetics is the study of inherited genes and genetic material. Under existing law, the subspecialty of genetics is defined as molecular biology related to the diagnosis of human genetic abnormalities, cytogenetics, or other subspecialty specified by regulation adopted by the CDPH. According to the author, this bill seeks to align the law with the certifying board for the

field of human genetics, the American Board of Medical Genetics and Genomics, by adding broadening the definition of the genetics subspecialty to include biochemical genetics and general laboratory genetics and adding a specialty license category for clinical laboratory geneticists.

Current Related Legislation. AB 2107 (Flora), which is pending in the Senate, expands the clinical laboratory practice of licensed clinical genetic molecular biologists to include molecular biology within the specialty of microbiology and authorizes unlicensed adults to specified laboratory tests.

Prior Related Legislation. AB 940 (Ridley-Thomas), Chapter 341, Statutes of 2015, clarified that a qualified licensed bioanalyst may act as a laboratory director, allowed an applicant for a bioanalyst license to obtain four years of experience in any laboratory approved under CLIA, and authorized the CDPH to charge a renewal fee for specified licenses. Provisions deleted from AB 940 in the Senate would have added reproductive biology as a specialty and established a clinical reproductive biologist license, among other things.

IMPLEMENTATION ISSUES:

1) *Technical Clean-Up*. Section 8 of this bill allows the CDPH to issue a clinical reproductive biologist license prior to the adoption of implementing regulations, but it also specifies that the applicant must meet "any additional and reasonable qualifications of training, education, and experience as the department may establish by regulations." Because the bill specifies that the application is still contingent on requirements established by CDPH, clean-up may be needed to ensure that the CDPH can issue licenses without first determining those requirements.

2) *Chaptering Issues*. This bill amends provisions that are being amended in AB 2107 (Flora), which is pending in the Senate. If this bill passes this Committee, the author may wish to ensure the conflicts are resolved to avoid chaptering out issues.

ARGUMENTS IN SUPPORT:

None on file

ARGUMENTS IN OPPOSITION:

None on file

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1326 (Caballero) – As Amended June 6, 2022

SENATE VOTE: 27-10

SUBJECT: Cannabis: interstate agreements

SUMMARY: Empowers the Governor to enter into agreements with other states that allow for interstate commerce between licensed cannabis businesses across state lines.

EXISTING LAW:

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

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

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

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

5) 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)

6) Provides that nothing in MAUCRSA shall be construed to authorize or permit a licensee to transport or distribute, or cause to be transported or distributed, cannabis or cannabis products outside the state, unless authorized by federal law. (BPC § 26080)

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

8) Requires the DCC to prepare and submit to the Legislature an annual report on the DCC's activities, including specified information. (BPC § 26190)

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

THIS BILL:

1) Authorizes the Governor to enter into an agreement with another state or states authorizing medicinal or adult-use commercial cannabis activity, or both, between entities licensed under the laws of the contracting state and entities operating with a state license, provided that the activities are lawful and subject to licensure under the laws of the contracting state.

2) Requires that an interstate agreement prohibit both unlawful transportation of cannabis or cannabis products and transportation of cannabis through the jurisdiction of any other state, district, commonwealth, territory, or possession of the United States where that transportation is not authorized.

3) Requires that an interstate agreement require that the contracting state impose requirements on foreign licensees that meet or exceed the requirements applicable to state licensees, including those relative to public health and safety standards; participation in track and trace; testing standards; packaging and labeling requirements; quality assurance requirements; marketing and advertising restrictions; and the establishment of a process for identifying adulterated or misbranded cannabis products and subsequently destroying of those products.

4) Requires that an interstate agreement include provisions requiring the DCC and the appropriate regulatory authorities of the contracting state to address public health and welfare emergencies concerning cannabis or cannabis products that are sold or intended for sale within this state, including for the prompt recall or embargo of adulterated or misbranded cannabis or cannabis products.

5) Requires that an interstate agreement include provisions requiring the appropriate regulatory authorities of each state to investigate instances of alleged noncompliance with the commercial cannabis regulatory programs upon request by the other state and in accordance with mutually agreed-upon procedures.

6) Requires that an interstate agreement include provisions determined by the Governor to promote the inclusion and support of individuals and communities in the cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization.

7) Requires that an interstate agreement provide for collection of all applicable taxes.

8) Exempts interstate agreements from the California Environmental Quality Act (CEQA).

9) Allows foreign licensees to engage in commercial cannabis activity with a state licensee and a state licensee may engage in commercial cannabis activity with a foreign licensee, subject an interstate agreement as authorized by the bill.

10) Prohibits a foreign licensee from engaging in commercial cannabis activity within the boundaries of California without a state license, or engage in commercial cannabis activity within a local jurisdiction without authorization issued by the local jurisdiction.

11) Exempts the Governor from the rulemaking procedures and requirements of the Administrative Procedure Act when entering into agreements or amendments to agreements.

12) Requires the Governor to submit any proposed agreement to the Joint Legislative Budget Committee to review and provide recommendations regarding within 60 days, which the Governor shall consider, and requires the Governor to set forth, in writing, the reasons for not incorporating any recommendations.

13) Additionally requires that a proposed agreement be placed on the DCC's internet website for public comment for 30 days, which shall be considered by the Governor.

14) Defines terms used in the bill.

15) Features a severability clause in case any provision of the bill is held invalid.

16) Finds and declares that this act furthers the purposes and intent of Proposition 64.

17) Amends MAUCRSA to provide for an exception to language contained in Proposition 64 prohibiting licensees from transporting or distributing cannabis outside the state.

FISCAL EFFECT: According to the Senate Committee on Appropriations, $267,000 in the first year and $259,000 ongoing for an additional staff for the DCC to create an interstate commerce regulatory framework and develop interstate agreements as necessary, as well as unknown, likely significant costs to operationalize future interstate cannabis agreements into the appropriate licensing and compliance framework.

COMMENTS:

Purpose. This bill is sponsored by the **Rural County Representatives of California**. According to the author:

> "SB 1326 provides a relief valve for the oversupply of cannabis, an opportunity to grow California's brand and market share, support job creation and gives the state a competitive advantage as federal policy develops. SB 1326 would allow the Governor to enter into agreements with other states that have legalized cannabis for medicinal or adult recreational use to promote interstate commercial cannabis activity following California's strict testing, product safety, and labeling requirements. SB 1326 is an essential step to ensure that California can fully capitalize on, and remain a leader in, the forthcoming national cannabis market. Furthermore, SB 1326 would allow California to use its own labor, environmental, and product quality standards be adopted in other states. Finally, SB 1326 would lay the groundwork for a multi-state legal cannabis market."

Background.

Brief Overview of Cannabis Regulation in California. California was the first state to make the consumption of cannabis lawful when voters approved Proposition 215, or the Compassionate Use Act, in 1996. 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. This regulatory scheme was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program. 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.

After several prior attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. 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. 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 could also choose to ban cannabis establishments altogether.

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 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 the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was passed to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws. On January 16, 2019, the state's three cannabis licensing authorities—the Bureau of Cannabis Control, the California Department of Food and Agriculture, and the California Department of Public Health—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively.

In early 2021, the Department of Finance released trailer bill language to create a new Department of Cannabis Control with centralized authority for cannabis licensing and enforcement activities. This new department was created through a consolidation of the three prior licensing authorities' cannabis programs. As of July 1, 2021, the DCC has been the single entity responsible for administering and enforcing the majority of MAUCRSA. New regulations are currently pending to effectuate the consolidation and make additional policy changes to the regulation of cannabis.

Conflicts with Federal Law. The federal Controlled Substances Act classifies numerous drugs and chemicals into one of five schedules. Drugs falling within Schedules II through V may be prescribed only by health practitioners in possession of a registration from the Drug Enforcement Agency (DEA) and are ranked according to the drug's potential for misuse, with lower numbered schedules representing drugs with a higher risk of abuse or dependence. Schedule I drugs have been determined to have no currently accepted medical use and a high potential for abuse. Examples of Schedule I drugs are heroin, ecstasy, and—significantly—marijuana or cannabis. Despite the proliferation of medical and recreational cannabis legalization laws across the country, cannabis's Schedule I status under the federal Controlled Substances Act continues to render it an illegal product at the federal level.

This conflict has historically led to persistent tensions and periodic clashes with federal officials seeking to enforce the Controlled Substances Act. In October of 2009, Deputy Attorney General David W. Ogden sent a memo to United States Attorneys containing "clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana." The Ogden Memo reiterated that "the Department of Justice is committed to the enforcement of the Controlled Substances Act in all States" and that "no State can authorize violations of federal law." However, the memo further advised prosecutors to "not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."

Cannabis establishments operating in compliance with Proposition 215 assumed they would be relatively safe under the Ogden Memo's guidance. However, United States Attorneys subsequently engaged in a series of raids and crackdowns in California against medical marijuana dispensaries. In February of 2011, U.S. Attorney Melinda Haag sent a letter to the City of Oakland asserting that her office would "enforce the Controlled Substances Act vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law."

In response to the federal government's enforcement activities, California Attorney General Kamala D. Harris assessed whether the state's medical marijuana guidelines could be clarified to reduce exploitation by criminal enterprises, reassure legitimate actors, and avert further crackdowns. However, it was ultimately determined that the state's legislative scheme for cannabis needed greater overhaul. In December of 2011, the Attorney General sent letters to the Senate President pro Tem and Assembly Speaker urging legislation to "reform, simplify, and improve" state law. These letters led in part to the introduction and passage of MCRSA in 2015.

In August of 2013, new guidance from the federal Department of Justice again reshaped California's understanding of how the Controlled Substances Act would be enforced in states that had legalized cannabis. A memorandum sent by James M. Cole, the new Deputy Attorney General, restated that enforcement against cannabis establishments in compliance with state laws would not be a priority. Federal prosecutors were urged under the Cole 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 Department of Justice from interceding in state efforts to implement medicinal cannabis.

On January 4, 2018—mere days after California licensing authorities began issuing cannabis business licenses under MAUCRSA—United States Attorney General Jeff Sessions sent a memorandum to United States Attorneys expressly declaring that "previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately." In a public statement accompanying the release of the memo, Attorney General Sessions characterized the action as a "return to the rule of law." The Sessions Memo effectively revoked any promise of enforcement deprioritization in matters relating to cannabis activity in compliance with state law.

While it initially appeared as though United States Attorneys could again engage in crackdowns against California-licensed cannabis businesses, no significant enforcement activities of that nature ultimately took place during the Trump Administration. Since then, the Biden Administration has not issued new guidance on federal enforcement of the Controlled Substances Act as it relates to cannabis. In an April 26, 2022 hearing, United States Attorney General Merrick Garland reassured a Senate Appropriations subcommittee that "the Justice Department has almost never prosecuted use of marijuana, and it's not going to be." Attorney General Garland further stated that cannabis prosecutions are "not an efficient use of the resources given the opioid and methamphetamine epidemic that we have" and implied that the basic principles of the Cole Memo would be followed.

Interstate Cannabis Commerce. While federal legislation to remove cannabis from Schedule I of the Controlled Substances Act does not appear imminent, sustained leniency by the federal Department of Justice and a growing national trend of cannabis legalization at the state level has galvanized calls to begin establishing a marketplace for cannabis across multiple states. Currently, 37 states have legalized cannabis for medical purposes and 19 states have legalized it for recreational use. However, all cannabis and cannabis products produced in those states may generally not be transported or sold across state borders, with each state's cannabis economy operating within a closed system.

The lack of interstate cannabis commerce is has traditionally resulted in large part to concern for running afoul of federal law, recognizing that the federal government has heightened jurisdictional authority over activities taking place across state lines and that federal guidance in the Cole Memo specifically cautioned states to "prevent diversion of marijuana outside of the regulated system." However, were cannabis to be federally recognized as legal, there would arguably be legal pressure to quickly allow for a national marketplace, as legal precedent involving the "dormant commerce clause" generally prohibits protectionist economic policies by states that discriminate against or unduly burden interstate commerce.

On June 20, 2019, Oregon Governor Kate Brown signed SB 582 into law. This bill authorizes the Governor of Oregon to "enter into agreement with another state for purposes of cross-jurisdictional coordination and enforcement of marijuana-related businesses and cross-jurisdictional delivery of marijuana items." However, the bill will not become operative until either federal law is amended to allow for interstate cannabis commerce, or until the federal Department of Justice "issues an opinion or memorandum allowing or tolerating the interstate transfer of marijuana items between authorized marijuana-related businesses," whichever occurs first.

Since the rescission of the Cole Memo, there has been no federal guidance explicitly speaking to the issue of transporting licensed cannabis across state lines. A coalition of cannabis activists called the Alliance for Sensible Markets has submitted a letter to the governors of Oregon, Washington, California, and Colorado asking that seek formal guidance from the U.S. Department of Justice regarding "state-regulated interstate trade between two or more legal adult use or medical markets." However, no such guidance has since been obtained.

This bill is drafted similarly to Oregon's in that it would authorize the Governor of California to enter into interstate agreements to allow for cannabis commerce to take place across state lines. The author and sponsors believe that this would prove beneficial for California's cannabis industry, which they argue produces more cannabis than it can reasonably sell exclusively within California. The bill does not contain the same requirement that the federal government in some way sanction the interstate activity, nor does it require the Legislature's approval. However, the bill would require annual reports regarding the status of any interstate agreements, and there would be opportunities for both the Legislature and the public to comment on any proposed agreement, which the Governor would have to at least consider.

Currently, no other state has authorized its Governor to enter into an interstate agreement for cannabis, so this bill would not have a practical effect until another state enacts a similar legislation or until federal action activates Oregon's law. The author nevertheless believes that California should be the first state to grant its Governor with relatively unrestricted authority to enter into agreements allowing for cannabis commerce across state lines. The author is not concerned that the risk of federal enforcement of the Controlled Substances Act could be aggravated by this type of interstate activity, but hopes that in the event that cannabis is legalized federally, California would be advantaged by already having interstate agreements in place.

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

ARGUMENTS IN SUPPORT:

The **Rural County Representatives of California** (RCRC) is sponsoring this bill. According to the RCRC, "over five years after the passage of Prop 64, the cannabis industry is experiencing overproduction and a steep drop in prices, oversaturation of products, and cannabis businesses struggling to survive. Without considerable market expansion as part of the solution to stabilize the legal industry and incentivize participation in the regulated market, California risks the collapse of portions of the legal industry, particularly for rural producing regions, which could lead to considerable expansion of the illicit market and dire economic impacts to local economies."

The **Cannabis Distribution Association** is also supporting this bill, writing: "Licensed businesses that have put everything on the line to enter the legal industry can't afford to wait for federal legalization to provide California cannabis to other legal markets, especially markets that traditionally import agricultural products from California to supply their retail shelves, where thousands of medical patients and adult-use consumers need access to high-quality cannabis and cannabis products. Initiating interstate commerce now rather than potentially waiting years for federal legalization would benefit both producer and consumer states, as well as patients, consumers, small and social equity businesses, and the environment."

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

Threat of Federal Enforcement. Among the enumerated powers granted to the Congress by the United States Constitution is the power "to regulate Commerce … among the several States." Commonly referred to as the "Interstate Commerce Clause," this provision is understood to authorize the federal government to impose laws on the states regulating activities taking place across their boundaries. This includes the Controlled Substances Act; in 2005, the United States Supreme Court affirmed in *Gonzales v. Raich* that the cultivation of cannabis could be federally criminalized even though it took place lawfully in California under Proposition 215.

The authority of the federal government to nationally ban what may authorized at the state level is further established through the Constitution's Supremacy Clause. This provision provides that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding." Constitutionally speaking, the continued Schedule I status of cannabis under the Controlled Substances Act renders cultivation and sale of the plant illegal as a matter of federal law, regardless of what laws California chooses to enact.

Nevertheless, since Proposition 215 was passed in 1996, California and numerous other states have chosen to pursue cannabis legalization laws with the hope and expectation that the federal government would not intervene. As previously discussed, this optimism has been reinforced through guidance from the federal Department of Justice. While each memorandum has been clear that the federal government *could* enforce the Controlled Substances Act in states that have established legal schemes for cannabis commerce, there has generally been an understanding that these actions would not take priority. However, there remain certain policy areas within the domain of cannabis legalization that have been perceived as risking increased federal interest.

The Cole Memo specifically enumerated certain enforcement priorities that state laws regulating cannabis should take care to consider when enacting laws legalizing cannabis. One of those priorities was "preventing the diversion of marijuana from states where it is legal under state law in some form to other states." The Cole Memo additionally suggested that "a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states." While Department of Justice policy expressly deprioritized enforcement against "strong and effective regulatory and enforcement systems" consisting only of intrastate cannabis commerce, the Cole Memo also made it clear that care should be taken to prevent cannabis from crossing state lines.

When the Cole Memo was rescinded, the reasoning provided by the Trump Administration was to provide federal prosecutors *broader* authority to enforce the Controlled Substances Act in states that legalized cannabis. There has been no new guidance from the Biden Administration regarding what factors the Department of Justice would consider prior to enforcement. However, given longstanding policy that the transport of cannabis beyond state boundaries is potential cause for antagonism with the federal government, it may be considered excessively brash to authorize interstate commerce at this time absent some form of federal reassurance.

Conflict with Proposition 64. The text of Proposition 64, as placed before voters in November of 2016, was clearly drafted responsively to the priorities enumerated in the Cole Memo. Specifically, Section 3 of the AUMA stated that one of the purposes and intents of the initiative was to "prevent the illegal diversion of marijuana from California to other states or countries." Language also expressly provided that the proposed law "shall not be construed to authorize or permit a licensee to transport or distribute, or cause to be transported or distributed, marijuana or marijuana products outside the state, unless authorized by federal law."

The policy of preventing licensed cannabis from crossing state lines was reflected in another provision prohibiting cannabis advertising on billboards "located on an Interstate Highway or State Highway which crosses the border of any other state." In implementing this section, the Bureau of Cannabis Control added the phrase "…within a 15-mile radius of the California border" in its regulations. This addition qualified that cannabis billboards could be placed on an interstate or cross-border highways as long as it was placed farther than 15 miles from the state line. In the Bureau's statement of reasons, it argued that this fulfilled the intent of Proposition 64 to prohibit what could be perceived as advertisement to individuals living in other states. The Bureau echoed this understanding of the initiative's intent in its ultimately unsuccessful defense against litigation that struck down that regulation.

Supporters of this bill have argued that because the Cole Memo was rescinded, there is no active guidance or federal law restricting the transport of cannabis from California to any other state. While that may be true, that same policy is unambiguously codified within the AUMA, and remains in place in MAUCRSA. Even if safe harbor from federal prosecution were guaranteed, allowing for interstate commerce without at least some reference to federal authorization could arguably violate Proposition 64 unless subsequently approved by the voters.

AMENDMENTS:

To safeguard against the threat of federal enforcement of the Controlled Substances Act and to remain consistent with Proposition 64, add a new section to the bill with the following provisions to make any interstate agreement operative only upon the receipt of some reassurance that the agreement would not provoke adverse federal action:

(a) An agreement entered into pursuant to this chapter shall not take effect unless one of the following occurs:

(1) Federal law is amended to allow for the interstate transfer of cannabis or cannabis products between authorized commercial cannabis businesses.

(2) Federal law is enacted that specifically prohibits the expenditure of federal funds to prevent the interstate transfer of cannabis or cannabis products between authorized commercial cannabis businesses.

(3) The United States Department of Justice issues an opinion or memorandum allowing or tolerating the interstate transfer of cannabis or cannabis products between authorized commercial cannabis businesses.

(4) The Attorney General issues a written opinion through the process established pursuant to Section 12519 of the Government Code that implementation of agreements entered into under this chapter will not result in significant legal risk to the State of California based on review of federal judicial decisions and administrative actions.

(b) The Department shall notify the Governor and the appropriate policy committees of the Legislature upon the occurrence of an event described in subdivision (a), and shall post the notification on the Department's internet website.

REGISTERED SUPPORT:

Rural County Representatives of California *(Sponsor)*
Alliance for Sensible Markets
Cannabis Distribution Association
Cannabis Equity Policy Council
County of Monterey
JRG Attorneys At Law
Kiva Confections
League of California Cities
Nabis
SEIU California
UDW/AFSCME Local 3930

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 14, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1346 (Becker) – As Amended March 24, 2022

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

SENATE VOTE: 36-0

SUBJECT: Surplus medication collection and distribution

SUMMARY: Eliminates various requirements for a county's voluntary drug repository and distribution program that distributes surplus medications to medically indigent patients.

EXISTING LAW:

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

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

3) Establishes a voluntary drug repository and distribution program to distribute surplus medications to persons in need of financial assistance to ensure access to necessary pharmaceutical therapies. Expresses the intent of the Legislature in establishing this program to protect and promote the health and safety of Californians, while reducing unnecessary waste at licensed health and care facilities, by allowing those facilities to donate unused and unexpired medications that were never in the hands of a patient or resident and for which no credit or refund to the patient or resident could be received. (Health and Safety Code (HSC) § 150200)

4) Allows the following entities to donate drugs: a general acute care hospital; pharmacy; acute psychiatric hospital; skilled nursing facility, including a skilled nursing facility designated as an institution for mental disease; intermediate care facility; intermediate care facility or developmentally disabled-habilitative facility; intermediate care facility or developmentally disabled-nursing facility; correctional treatment center; psychiatric health facility; chemical dependency recovery hospital; residential care facility for the elderly with 16 or more residents; and an approved mental health rehabilitation center. (HSC § 150202)

5) Requires a county that establishes a voluntary drug repository and distribution program to establish written procedures for, at a minimum, all of the following:

    a) Establishing eligibility for medically indigent patients who may participate in the program.

    b) Ensuring that patients eligible for the program shall not be charged for any medications provided under the program.

c) Developing a formulary of medications appropriate for the repository and distribution program.

d) Ensuring proper safety and management of any medications collected by and maintained under the authority of a participating entity.

e) Ensuring the privacy of individuals for whom the medication was originally prescribed.

(HSC § 150204(b))

6) Sets forth the following requirements for any medication donated to a voluntary drug repository and distribution program:

a) The medication shall not be a controlled substance.

b) The medication shall not have been adulterated, misbranded, or stored under conditions contrary to standards set by the United States Pharmacopoeia or the manufacturer.

c) The medication shall not have been in the possession of a patient or any individual member of the public, and in the case of medications donated by a health or care facility, shall have been under the control of a staff member of the health or care facility who is licensed in California as a health care professional or has completed, at a minimum, existing training requirements.

(HSC § 150204(c))

7) Requires a county that establishes a voluntary drug repository and distribution program to establish written procedures for, at a minimum, all of the following:

a) Establishing eligibility for medically indigent patients who may participate in the program.

b) Ensuring that patients eligible for the program shall not be charged for any medications provided under the program.

c) Developing a formulary of medications appropriate for the repository and distribution program.

d) Ensuring proper safety and management of any medications collected by and maintained under the authority of a participating entity.

e) Ensuring the privacy of individuals for whom the medication was originally prescribed.

(HSC § 150204(b))

8) Allows only medication in unopened, tamper-evident packaging or modified unit dose containers that meet United States Pharmacopeia (USP) standards to be eligible for donation to the repository and distribution program, and requires provided lot numbers and expiration dates to be affixed. (HSC § 150204(d))

9) States that a pharmacist or physician at a participating entity shall use their professional judgment in determining whether donated medication meets the standards of this division before accepting or dispensing any medication under the repository and distribution program. (HSC § 150204(e))

THIS BILL:

1) Removes the requirement that participating entities disclose source information, such as the name and location of the source of all donated medication it receives, to its county health department on a quarterly basis.

2) Removes the prohibition on multiple transfers of medication and requires that the transfer documentation also include original manufacturer lot numbers and current expiration date, in addition to the drug name, strength, and quantity of the medication.

3) Removes the requirement that donated medication be retained in its donated packaging and that the donated medication be segregated from the participating entity's other drug stock by physical means, for purposes including, but not limited to, inventory, accounting, and inspection.

4) Removes the requirement that medication donated to a program is maintained in donated packaging units until dispensed to an eligible patient who presents a valid prescription.

5) Removes the allowance that a pharmacy that exists solely to operate the program may repackage a reasonable quantity of donated medicine in anticipation of dispensing the medicine to its patient population.

6) Removes the requirement that records shall be kept separate from the participating entity's other acquisition and disposition records, replacing it instead with a requirement that, notwithstanding any other law, the acquisition record created by a participating entity may be used as the donation, destruction, or disposition record required of a donor organization for donated medication.

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

COMMENTS:

Purpose. This bill is sponsored by **Santa Clara County**. According to the author, "Unused medication worth billions of dollars end up in the garbage every year. According to research cited by the National Conference of State Legislators, hospitals discard over $3 billion worth of medication, and long-term care facilities throw away an additional $2 billion worth of medication. Instead of disposing unused medication, states with repository programs may donate it. These programs are helping hundreds of thousands of patients around the country when every other alternative has failed. With the help of these programs, not only are patients able to access their lifesaving medicine, but are helped financially as well – often no longer facing a choice between food, rent, and prescription drugs. Current statute restricts program expansion and efficiency, inadvertently limiting the number of eligible patients served. Existing requirements

place unnecessary and cumbersome burdens on participating entities. SB 1346 provides operational flexibility and eliminates tasks that do not enhance a program, lessens unnecessary record keeping requirements, and removes overly stringent inventory requirements. SB 1346 will help increase the number of entities that operate a voluntary drug repository program."

Background.

Voluntary Drug Repository and Distribution Programs. California established a voluntary drug repository and distribution program in 2006, which authorized California counties the option to adopt an ordinance under which certain licensed entities could donate unused medications to county-owned pharmacies, or pharmacies that contract with the county, for dispensing to medically indigent patients free of charge. This voluntary drug repository and distribution program has been revised three times in order to better effectuate and implement its goal of increasing access for vulnerable populations. SB 1329 (Simitian, Chapter 709, Statutes of 2012) authorized a county public health officer to implement a voluntary drug repository and distribution program and added several categories of licensed health care facilities that may donate medications. AB 467 (Stone, Chapter 10, Statutes of 2014) established a licensure category to facilitate the transfer of donated medications, and AB 1069 (Gordon, Chapter 316, Statutes of 2016) authorized a program pharmacy to repackage a reasonable quantity of donated medicine in anticipation of dispensing to a specific patient.

At least three counties in California (Santa Clara, San Mateo, and San Francisco) have established a program, although the Santa Clara Program is the only current operational program. As of April 2018, Santa Clara's Better Health Pharmacy has distributed more than 31,000 free prescriptions from 180 donors around California, saving residents more than $2,000,000.

Similar Programs in Other States. According to the National Conference of State Legislatures (NCSL), "[39] states and Guam have enacted legislation regarding prescription drug donation, return and reuse. State legislation usually determines the type of medication accepted, the entities eligible to donate, the pharmacy protocols to ensure safety and the individuals eligible for redistribution. Most programs focus on providing expensive medications to those with limited resources. Programs also vary in their efficacy and operational status, as states range in their ability to fund them and provide access points to redistribute medication."

NCSL notes the following commonalities in most state drug donation programs:

• No controlled substances medication is allowed to be accepted or transferred.

• No adulterated or misbranded medication is allowed to be accepted or transferred.

• All pharmaceuticals must be checked by a pharmacist prior to being dispensed.

• All pharmaceuticals must not be expired at the time of receipt.

• All pharmaceuticals must be unopened and in sealed, tamper-evident packaging.

• Liability protection for both donors and recipients is assured.

Drug Integrity. The National Association of Boards of Pharmacy (NABP) is an independent and impartial association that assists its member boards and jurisdictions in developing, implementing, and enforcing uniform standards for the purpose of protecting the public health. It developed a position paper in 2009, revised in 2012, on the issue of drug donation programs:

> "NABP endorses the return and reuse of medications that have been maintained in a closed system that ensures the integrity of the medication. A closed system is defined as the delivery to and/or the return of prescription medication from a health care or other institutional facility, which is maintained in a controlled environment under the control of a health care practitioner and not the patient. A closed distribution system enables the pharmacy to ensure that the integrity of the medications dispensed is intact, as they have not left the control of the pharmacy or institutional facility, and the control of the medication is under the direction of a health care practitioner.
>
> "NABP does not endorse the reuse of medications that have left the closed distribution system as there is an inability to ensure the integrity of such drugs, which may place the public at risk."

The Food, Drug and Cosmetic Act (FDCA) was passed by Congress to ensure public confidence in the drug distribution system and to require that drugs are both safe and effective. The FDCA requires the FDA to regulate drug manufacturers and approve drugs for sale and requires state governments to regulate the drug distribution system by licensing and regulating drug wholesalers. The NABP paper further notes that: "FDA's Compliance Policy Guide on the Return of Unused Prescription Drugs to Pharmacy Stock directly states that '[a] pharmacist should not return drug products to his stock once they have been out of his possession" because of the inability to assure drug "strength, quality, purity or identity.'"

California's existing program operates in a closed system. Currently, few counties have sought to utilize the state's framework for operation of a voluntary drug repository and distribution program. The author believes that this is due to cumbersome requirements relating to reporting, storage, and other safeguards. By alleviating some of these requirements, the author hopes that counties will be able to take better advantage of these programs.

Prior Related Legislation.

SB 310 (Rubio, Chapter 541, Statues of 2021) established the Cancer Medication Recycling Act (Cancer Medication Program) until January 1, 2027 to allow for the donation and redistribution of cancer drugs between patients of a participating physician.

SB 650 (Rubio of 2019) would have originally established a Cancer Medication Program overseen by the Board of Pharmacy to allow the donation and redistribution of cancer drugs between patients of a physician and releases both donors and recipients from liability. The bill was amended to require the Board of Pharmacy to report to the Legislature on the best mechanism to enable the transfer of unused cancer medications to persons in need of financial assistance to ensure access to necessary pharmaceutical therapies. *The measure was held under submission in the Assembly Committee on Appropriations.*

AB 1069 (Gordon, Chapter 316, Statutes of 2016) authorized a pharmacy that exists solely to operate the Program to repackage a reasonable quantity of donated medicine in anticipation of dispensing the medicine to its patient population. Requires the pharmacy to have repackaging policies and procedures in place for identifying and recalling medications; and requires the medication that is repackaged to be labeled with the earliest expiration date.

AB 467 (Stone, Chapter 10, Statutes of 2014) established a licensure category for a surplus medication collection and distribution intermediary established for the purpose of facilitating the donation of medications to, or transfer of medications between, participating entities under a county's unused medication repository and distribution program.

SB 1329 (Simitian, Chapter 709, Statutes of 2012) revised and recast provisions authorizing a county to establish a drug repository and distribution program, to authorize a program to be established by an action of the county board of supervisors, or by the county public health officer, as specified and expanded the types of entities that are eligible to participate in a program.

SB 798 (Simitian, Chapter 444, Statutes of 2005) authorized the establishment of a voluntary prescription drug collection and distribution program for the purpose of distributing surplus prescription drugs to medically indigent patients free of charge.

ARGUMENTS IN SUPPORT:

According to the sponsor, **Santa Clara County**, "SB 1346 would increase the effectiveness of our County's program as well as similar programs in California by removing the administrative and operational burdens faced by participating entities. The bill provides participating entities with operational flexibility, eliminates tasks that do not enhance the program, lessens unnecessary record keeping requirements, and removes overly stringent inventory requirements. These changes will address onerous program requirements and may increase the number of entities that operate a voluntary drug repository and distribution program."

Additionally, **SIRUM**, a 501(c)(3) nonprofit founded at Stanford University, supports this bill and notes the following: "California law allows participating entities to collect unused prescription medications from entities including skilled nursing facilities, manufacturers, and wholesalers for the purpose of redistributing the surplus to those who may not be able to afford these medications. SIRUM has helped to facilitate the donation of medications through the existing state program and currently works to connect eligible medicine donors with participating entities, including Better Health Pharmacy, established by the County of Santa Clara. Current statute restricts program expansion and efficiency, inadvertently limiting the number of eligible patients served. Existing requirements place unnecessary and cumbersome burdens on participating entities. Certain administrative procedures, for example, needlessly expend entity staff time, which could be better spent on serving eligible patients. Other requirements result in inefficient operational procedures. For example, donated medication cannot be stored in the same bin as purchased medication because both must be physically segregated, requiring staff to check medication inventory in two separate areas, which decreases filling efficiency and may increase medication error. Additionally, participating entities with limited space are unable to meet this inventory requirement.

"SB 1346 would increase the effectiveness of drug repository and distribution programs by removing unnecessary administrative and operational burdens imposed upon participating entities. This legislation will provide participating entities with operational flexibility, eliminate counterproductive tasks, lessen unnecessary record keeping requirements, and remove overly stringent inventory controls. Addressing these onerous program requirements, we believe will increase the number of entities electing to operate a voluntary drug repository and distribution program."

ARGUMENTS IN OPPOSITION:

The California State Board of Pharmacy (Board) has taken an "Oppose Unless Amended" position on this bill based on significant patient safety concerns. The Board states that, as currently drafted, the bill "seeks to expand the authority for a county prescription drug redistribution program, would allow for co-mingling of donated medication, would eliminate limitations on the number of times these medications can be transferred to another participating entity, and removes important information about the name of the donating facility and where the donation is coming from. This measure appears to facilitate a second tier of medication with lesser standards for medically indigent patients. The Board is concerned with the erosion of safeguards in place to ensure all patients receive safe and effective medications. Both state and federal laws related to prescription medications are intended to prevent the sale and distribution of pharmaceutical preparations and drugs that do not conform to the standards of the National Formulary or that violate the Sherman Food, Drug, and Cosmetic Act."

POLICY ISSUES:

AB 798 (Simitian, Chapter 444, Statutes of 2005) sought to reduce the high costs of prescription medications for some of California's most vulnerable patients. With proper safeguards, surplus medications that have not been distributed and maintained by licensed pharmacists or the manufacturer should be utilized. Prior legislation also sought to encourage the redistribution of unused drugs in order to discourage pharmaceutical waste from reaching California waterways.

It is vital that individuals receiving donated medication are not relegated to a lower standard of care. As the Board of Pharmacy points out, all patients deserve the right to safe and efficacious medications. However, the argument has been made that the current requirements aimed at maximizing patient safety are excessive and are preventing broader participation by counties in the program framework.

While eliminating potential barriers to participation in these programs is likely a meritorious goal, it may be advisable to begin with a smaller population of participants to ensure that there is not an increase in patient harm or adverse events. The author may wish to consider narrowing the application of the bill to a smaller number of counties that have demonstrated interest and expertise in these programs. This pilot project could help demonstrate that a less restrictive program framework could be effective and safe statewide.

AMENDMENTS:

1) To narrow the bill's application to establish a regional pilot project, specify that the revised program framework may only be implemented by the Counties of Santa Clara, San Mateo, and the City and County of San Francisco.

2) To provide the Legislature with information to determine whether to continue or expand the revised program, require the Board of Pharmacy to submit an annual report to the Legislature no later than July 1, beginning on 2024 and subject the bill's provisions to repeal on a sunset date of January 1, 2029.

3) To clarify that participants in a regional pilot project must continue to meet all other legal responsibilities and requirements relating to pharmacy services and expressly provide that programs must comply with state and federal law.

REGISTERED SUPPORT:

County of Santa Clara *(Sponsor)*
California Medical Association
SIRUM

REGISTERED OPPOSITION:

California State Board of Pharmacy

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