California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

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

AGENDA

Tuesday, June 28, 2022
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

1.	SB 1259	Laird	Pharmacists: furnishing opioid antagonists.
2.	SB 1293	Bradford	Income taxation: credits: cannabis: equity applicants and licensees.(Tax Levy)
3.	SB 1428	Archuleta	Psychological testing technicians.
4.	SB 1433	Roth	Private postsecondary education: California Private Postsecondary Education Act of 2009.
5.	SB 1434	Roth	State Board of Chiropractic Examiners.
6.	SB 1436	Roth	Respiratory therapy.
7.	SB 1437	Roth	Interior designers.
8.	SB 1438	Roth	Physical Therapy Board of California.
9.	SB 1440	Roth	Licensed Midwifery Practice Act of 1993: complaints.
10.	SB 1441	Roth	Healing arts: nonconventional treatment.
11.	SB 1443	Roth	The Department of Consumer Affairs.
12.	SB 1495	Business, Professions and Economic Development	Professions and vocations.
13.	SB 1453	Ochoa Bogh	Speech language pathologists.
14.	SB 1475	Glazer	Blood banks: collection.

COVID FOOTER

SUBJECT:

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1259 (Laird) – As Amended June 13, 2022

SENATE VOTE: 33-0

SUBJECT: Pharmacists: furnishing opioid antagonists

SUMMARY: Expands existing authorization for a pharmacist to furnish specified opioid overdose reversal drugs without a prescription, in accordance with standardized procedures or protocols, to cover any approved opioid antagonist.

EXISTING LAW:

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

2) Establishes the California State Board of Pharmacy (BOP) to administer and enforce the Pharmacy Law, comprised of seven pharmacists and six public members. (BPC § 4002)

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

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

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

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

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

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

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

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

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

e) Furnish emergency contraception drug therapy, self-administered hormonal contraceptives, HIV preexposure and postexposure prophylaxis, and nicotine replacement products, subject to specified requirements.

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

(BPC § 4052)

8) Authorizes a pharmacist to furnish naloxone hydrochloride in accordance with standardized procedures or protocols developed and approved by the BOP and the Medical Board of California, in consultation with stakeholders; requires a pharmacist to take one hour of continuing education in the use of naloxone hydrochloride prior to furnishing that drug. (BPC § 4052.01)

9) Requires a prescriber to offer their patient prescription for naloxone hydrochloride or another drug approved for the reversal of opioid-induced respiratory depression when prescribing an opioid or benzodiazepine prescription under certain conditions. (BPC § 741)

10) Authorizes a licensed health care provider to prescribe and subsequently dispense or distribute an opioid antagonist to a person at risk of an opioid-related overdose or to a family member, friend, or other person in a position to assist a person at risk of an opioid-related overdose. (Civil Code § 1714.22)

THIS BILL:

1) Expands the existing authority of a pharmacist to furnish naloxone hydrochloride in accordance with standardized procedures or protocols to allow for a pharmacist to furnish any other opioid antagonist approved by the federal Food and Drug Administration (FDA).

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

COMMENTS:

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

> "SB 1259 ensures pharmacists can distribute more innovative reversal agents, otherwise known as antagonists, that are faster and more effective to reverse overdose in cases involving fentanyl. The Centers for Disease Control released a report for 2021 stating there was a record number of overdose deaths in the United States, reaching nearly 108,000. Additionally, the number of fentanyl-related overdose deaths has also climbed to nearly 70% of this overall number. Under current law, pharmacists can furnish naloxone, a common opioid antagonist. SB 1259 updates California's prescriptive authority statute to equip pharmacists with the ability to distribute the most appropriate and effective opioid antagonists to the public."

Background.

Overview of the Opioid Crisis. In October of 2017, the White House declared the opioid crisis a public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country. According to the Centers for Disease Control and Prevention, as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28 percent increase over the previous year. Additionally, the number of Americans who died of an overdose of fentanyl and other opioids more than doubled during that time with nearly 20,000 deaths.

Opioids are a class of drugs prescribed and administered by health professionals to manage pain. Modern use of the term "opioid" typically describes both naturally occurring opiates derived from the opium poppy as well as their manufactured synthetics. Common examples of prescription opioids include oxycodone (OxyContin, Percocet); hydrocodone (Vicodin, Norco, Lorcet); codeine; morphine; and fentanyl. Heroin is also an opioid.

In addition to providing pain relief, opioids can be used as a cough suppressant, an antidiarrheal, a method of sedation, and a treatment for shortness of breath. The majority of pharmaceutical opioids are Schedule II drugs under the federal Controlled Substances Act, considered by the federal Drug Enforcement Agency (DEA) to have a high potential for abuse that may lead to severe psychological or physical dependence. However, combination drugs containing lower doses of opioids combined with other active ingredients are typically less restricted; for example, cough syrups containing low doses of codeine are frequently classified Schedule V medications.

The abuse of prescription drugs was historically viewed as a criminal concern analogous to street narcotics cases investigated by law enforcement. In recent years, however, a consensus has evolved around the opinion that the opioid crisis must be addressed through the lens of public health policy. This belief is supported by research demonstrating how health professionals may have inadvertently contributed to the origins of the crisis. It is widely accepted that health professionals will play a necessarily critical role in any meaningful solutions.

In the opioid crisis's broader national context, there has been a persistent perception that California represents a relatively minor segment of an epidemic more typically identified with states like New Hampshire and West Virginia. However, there is significant evidence that communities in California have been much harder hit than may be generally believed. For example, in 2015, several rural counties in California saw as many or more drug overdose deaths per 100,000 residents than some Midwestern states. It has been reported than some small counties had more opioid prescriptions than residents. In total, the California Department of Public Health estimates that nearly 2,000 Californians died of an opioid overdose in 2016.

Naloxone hydrochloride and other opioid antagonists. Naloxone hydrochloride is an opioid antagonist. This means that naloxone acts blocks the effects of opioids on the central nervous system, stopping the effects of an opioid overdose such as suppressed breathing. Naloxone can be administered through an intravenous injection, through an intermuscular injection, or via a nasal spray (under the brand name Narcan). Naloxone was approved by the FDA for the treatment of opioid overdose in 1971 and is available as a generic medication. Because naloxone is relatively simple to administer and does not pose significant risk to the patient, it can be used by lay people with minimal instruction.

As California and other policymakers across the United States has worked to curb prescription drug abuse and diversion, a troubling rise in fentanyl overdoses and deaths has changed the nature of the discussion around how to approach the opioid crisis. Fentanyl is a synthetic opioid that is 50 to 100 times more potent than more commonly prescribed pain medications. According to the National Institute on Drug Abuse, fentanyl and similar synthetics are now the most common drugs involved in drug overdose deaths in the United States, with approximately 60 percent of opioid-related deaths involving fentanyl in 2017 compared to 14 percent in 2010.

The significantly increased strength of fentanyl compared to other controlled substances like oxycodone, hydrocodone, and codeine means that naloxone hydrochloride does not have the same effectiveness that it does for those less potent medications. In response, the manufacturers of Narcan are in the process of seeking approval for new rescue medication that, while similar to naloxone hydrochloride, is a chemically distinct form of opioid antagonist. This bill seeks to ensure that as new opioid antagonist drugs become approved by the FDA to reverse the effects of overdose from fentanyl and similar substances, they will be afforded the same availability as naloxone hydrochloride has been through prior passage of legislation aimed at reducing the rate of deaths from opioid misuse.

Current Related Legislation. AB 2055 (Low) would have transferred responsibility for the maintenance and operation of the CURES prescription drug monitoring program from the Department of Justice to a department specified by the Governor. *This bill was held on the Assembly Appropriations Committee's suspense file.*

Prior Related Legislation. AB 2760 (Wood, Chapter 324, Statutes of 2018) required a prescriber to offer a prescription for naloxone hydrochloride or another drug federally approved for the complete or partial reversal of opioid depression for patients when certain conditions are present and to provide specified education to those patients and provide education about how these drugs may be used to prevent an overdose.

AB 1535 (Bloom, Chapter 326, Statutes of 2014) authorized a pharmacist to furnish naloxone hydrochloride pursuant to standardized procedures or protocols developed and approved by the BOP and the Medical Board of California.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1293 (Bradford) – As Amended June 22, 2022

NOTE: This bill is double referred and previously passed the Assembly Committee on Revenue and Taxation as amended on a 9-2 vote.

SENATE VOTE: 27-7

SUBJECT: Income taxation: credits: cannabis: equity applicants and licensees

SUMMARY: Establishes a $10,000 Cannabis Equity Tax Credit for cannabis businesses and license applicants who were previously arrested for, or convicted of, a marijuana offense under prohibition; who reside in a low-income household; or who reside in an area with a population disproportionately impacted by past criminal justice policies implementing cannabis prohibition.

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) Authorizes the director of the DCC to appoint a deputy director of equity and inclusion. (BPC § 26010.5)

4) 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)

5) Provides the DCC 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) Establishes the California Cannabis Equity Act, enacted to ensure that persons most harmed by cannabis criminalization and poverty be offered assistance to enter the cannabis industry. (BPC §§ 26240 *et seq.*)

7) Defines "local equity program" as a local program that focuses on inclusion and support of individuals and communities in California's cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization as evidenced by the local jurisdiction's equity assessment. (BPC § 26240(e))

8) Defines "equity assessment" as an assessment conducted by a local jurisdiction that was used to inform the creation of a local equity program, and that assessment may include the following:

   a) Reference to local historical rates of arrests or convictions for cannabis law violations.

   b) Identification of the impacts that cannabis-related policies have had historically on communities and populations within that local jurisdiction.

   c) Other information that demonstrates how individuals and communities within the local jurisdiction have been disproportionately or negatively impacted by the War on Drugs.

   (BPC § 26240(b))

9) Defines "local equity applicant" as an applicant who has submitted, or will submit, an application to a local jurisdiction to engage in commercial cannabis activity within that jurisdiction and who meets the requirements of its local equity program. (BPC § 26240(c))

10) Defines "local equity licensee" as a person who has obtained a license from a local jurisdiction to engage in commercial cannabis activity within that jurisdiction and who meets the requirements of that jurisdiction's local equity program. (BPC § 26240(d))

11) Authorizes the DCC to provide technical assistance to a local equity program that helps local equity applicants or local equity licensees. (BPC § 26242)

12) Establishes a grant program wherein local jurisdictions may apply to the Governor's Office of Business and Economic Development (GO-Biz) for a grant to assist with the development of an equity program or to assist local equity applicants and local equity licensees through that local jurisdiction's equity program. (BPC § 26244)

13) Requires the DCC to serve as a point of contact for local equity programs and to publish on its internet website local equity ordinances that have been enacted by the legislative body of the respective local jurisdiction, and model local equity ordinances created by advocacy groups and experts. (BPC § 26246)

14) Requires GO-Biz to annually submit a report to the Legislature regarding the progress of local equity programs that have received funding. (BPC § 26248)

15) Requires the DCC to develop and implement programs to provide waivers and deferrals for application fees, licensing fees, and renewal fees for equity applicants and licensees whose businesses are no less than 50 percent owned by persons who satisfy one of the following:

a) They have previously been convicted of an offense related to the sale, possession, use, manufacture, or cultivation of cannabis, under past criminal justice policies implementing cannabis prohibition.

b) They have previously been arrested for an offense related to the sale, possession, use, manufacture, or cultivation of cannabis, under past criminal justice policies implementing cannabis prohibition.

c) Residence in a household with a household income less than or equal to 60 percent of the area median income for the applicable local jurisdiction.

d) Residence in an area with a population disproportionately impacted by past criminal justice policies implementing cannabis prohibition.

(BPC § 26249)

16) Establishes the Revenue and Taxation Code. (Revenue and Taxation Code §§ 1 *et seq.*)

17) Requires that any bill, introduced on or after January 1, 2020, that would authorize a new tax expenditure, including a tax credit, contain all of the following:

a) Specific goals, purposes, and objectives that the tax expenditure will achieve.

b) Detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets the goals, purposes, and objectives stated in the bill.

c) Data collection requirements to enable the Legislature to determine whether the tax expenditure is meeting, failing to meet, or exceeding those specific goals, purposes, and objectives. The requirements shall include the specific data and baseline measurements to be collected and remitted in each year the tax expenditure is in effect, in order for the Legislature to measure the change in performance indicators, and the specific taxpayers, state agencies, or other entities required to collect and remit data.

(RTC § 41)

18) Defines "net tax" as the sum of various taxes imposed on income and allows for credits against that tax in a specified order. (RTC § 17039)

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

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

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

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

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

THIS BILL:

1) Provides that for each taxable year beginning on or after January 1, 2022, and before January 1, 2027, there shall be allowed a credit under both the Personal Income Tax Law and Corporation Tax Law, to a qualified taxpayer in an amount equal to $10,000.

2) Defines "qualified taxpayer" as an equity applicant or licensee eligible for the DCC's fee waiver and deferral program.

3) Requires the DCC to annually provide the Franchise Tax Board with a list of equity applicants and licensees eligible for its fee waiver and deferral program for the purposes of administering the tax credit.

4) In cases where the Cannabis Equity Tax Credit exceeds the tax it is credited against, allows for that excess to be carried over to reduce taxes in the following taxable year, and succeeding seven years if necessary, until the credit is exhausted.

5) Subjects the Cannabis Equity Tax Credit to a sunset date of December 1, 2027.

6) Finds and declares that the specific goals, purposes, and objectives that the Cannabis Equity Tax Credit will achieve include all of the following:

    a) Provide relief for individuals who are low income or who have directly or indirectly been negatively impacted by past cannabis policies.

    b) Assist cannabis equity applicants and licensees to stay in business or grow their business.

FISCAL EFFECT: According to the Senate Committee on Appropriations, the Franchise Tax Board estimates of the revenue loss resulting from the bill and its implementation costs both have yet to be determined, and that the size of the target population suggests that the annual revenue loss could reach the low millions of dollars annually.

COMMENTS:

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

> "While California law has cleared the path for the cannabis industry to operate legally, many of the cannabis businesses are struggling to survive, especially those owned by equity operators. Equity operators report that they are in crisis and are on the verge of collapse, in part, due to the over taxation of the industry. One way to affect the goal of financially helping equity operators is through a state tax credit for cannabis business related expenses. Tax credits would reduce the tax liability of equity cannabis operators and provide some relief that may help their businesses survive."

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.

Equity Programs. Proponents of the AUMA argued that the state's legalization of recreational cannabis should be recognize and address the devastating impact of prohibition on the low-income and minority populations as a lawful industry begins to profit from the newly regulated marketplace. Throughout the decades in which the sale and use of cannabis was largely illegal, innumerable individuals—the majority of whom are people of color—were incarcerated for engaging in activities made lawful by Proposition 64. Many purport that with the passage of the AUMA representing the state's comfort with allowing for legal sales of cannabis to occur, those communities who were aggressively penalized by the product's previous illegality should be afforded an opportunity to participate in the marketplace.

However, many have pointed out that compliance with the requirements of MAUCRSA, in addition to standard business start-up costs, creates significant barriers to entering into the cannabis industry for populations without capital or financing. In response, many have advocated for programs specifically aimed at assisting economically disadvantaged communities enter into the cannabis industry through financial assistance. SB 1294 (Bradford)—cited as the California Cannabis Equity Act of 2018—was chaptered to codify the state's recognition of local equity programs designed to enable populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization to become approved participants in the cannabis marketplace.

Under the California Cannabis Equity Act, local jurisdictions may apply for and receive grant funding for purposes of providing assistance to local equity applicants or licensees seeking to gain entry to the state's regulated cannabis marketplace. Subsequent trailer bill language relating to cannabis modified the Act to provide that a local jurisdiction must make an "equity assessment" to inform the creation of a local program. These equity assessments include the following:

1. Reference to local historical rates of arrests or convictions for cannabis law violations.

2. Identification of the impacts that cannabis-related policies have had historically on communities and populations within that local jurisdiction.

3. Other information that demonstrates how individuals and communities within the local jurisdiction have been disproportionately or negatively impacted by the War on Drugs.

Once a local equity program has been established, the jurisdiction may receive grant funding to fund the administration of its local equity program. Under such a program, the local jurisdiction may provide assistance to applicants comprised of low-interest or no-interest loans to fund startup and ongoing costs such as rent, legal assistance, furniture, capital improvements, training, regulatory compliance, and the testing of cannabis. Equity funding may also be used by local jurisdictions to fund the provision of technical assistance and expenses associated with supporting efforts to provide sources of capital and assist in the development or administration of programs.

The Budget Act of 2021 included $20 million to fund the California Cannabis Equity Act. It also changed the grantmaking agency from the DCC to GO-Biz. The Budget additionally authorized the newly established DCC to appoint a Deputy Director of Equity and Inclusion to further the Department's mission to implement inclusive cannabis policies.

In 2019, SB 595 (Bradford) was enacted to provide further relief to equity applicants and licensees seeking to enter the marketplace by allowing the DCC to waive or defer fees. This provides another form of financial support for individuals seeking to become successful cannabis licensees who are already seeking or who are receiving support through a local equity program. SB 595 was conditioned on the allocation of funds to backfill lost revenue associated with the fee waiver or deferral prior to it being offered by the DCC. The Budget Act of 2021 allocated $30 million to implement the fee waiver and deferral programs and required the DCC to develop and implement a fee waiver program by January 1, 2022, and a fee deferral program by January 1, 2023, for all social equity applicants and who meet certain criteria.

In June of 2022, the DCC modified its interpretation of statute's definition for the term "equity applicants and licensees," increasing the gross revenues threshold applied in its previous regulations from $1.5 million to $5 million. In its Finding of Emergency and Notice of Proposed Readoption, the DCC explained the increase in the gross revenues threshold:

> "Based on feedback from licensees that currently participate in their local jurisdiction's equity programs, the Department determined that an expected gross revenue less than or equal to $5,000,000 more accurately corresponds to licenses held by equity commercial cannabis business operators. This subsection is necessary to ensure that fee waivers are appropriately allocated to the range of equity businesses, including retailers, which often have larger gross receipts. To ensure that licensees are aware of how to demonstrate their gross revenue, this subsection also provides an example of the types of financial data that is typically held by the applicant or licensee and may be submitted for the Department's consideration."

The DCC's regulations also provided that an applicant or licensee may be eligible if they have an immediate family member that was arrested or convicted of a cannabis related offense. In support of this change, the DCC argued that "when an immediate family member was arrested for, or convicted of, an offense related to cannabis activity, the disproportionate impact affected the entire family." The regulations define "immediate family member" as "a child, stepchild, parent, stepparent, brother, sister, half-brother, half-sister, stepsibling, legal guardian, grandparent or great grandparent. The Department identified these particular family members because such family members' cannabis arrests or convictions generally have had a direct impact on household income and stability of family structures."

This bill would take additional steps to help equity applicants and licensees enter and thrive in the legal cannabis industry by establishing a $10,000 credit against taxes collected under both the Personal Income Tax Law and the Corporation Tax Law. The tax credit would remain in effect until December 1, 2027 and could be carried forward over subsequent years until exhausted. The Legislature's 2022/23 Budget Agreement has already committed to provide $20 million to fund tax credits for equity operators. The goal of the author and the supporters of this bill is to use these tax credits as another means of ensuring that low-income communities and communities who have been disproportionately impacted by the War on Drugs may sufficiently benefit from the legalization of cannabis.

Current Related Legislation. SB 603 (Bradford) would create a Cannabis Equity Business Tax Credit equal to amounts paid or incurred by a qualified taxpayer on cannabis licensing fees. *This bill is pending in the Assembly Committee on Revenue and Taxation.*

SB 1336 (Wiener) would have allowed for a credit to a qualified taxpayer equal to 25% of the amount of the qualified taxpayer's qualified expenditures in the taxable year, limited to $250,000. *This bill was subsequently amended to address a different topic.*

Prior Related Legislation. SB 595 (Bradford, Chapter 852, Statutes of 2019) required the DCC to develop and implement a program that provides a fee deferral or waiver to obtain or renew a license for needs-based applicants and licensees.

SB 1294 (Bradford, Chapter 794, Statutes of 2018) authorized local jurisdictions to request technical assistance from the DCC to establish local equity programs and authorized, upon appropriation, the DCC to fund grants for the same purpose.

ARGUMENTS IN SUPPORT:

Origins Council supports this bill, writing: "Our rural legacy producing communities have been significantly impacted by the War on Drugs over many decades, and all six of our jurisdictions have local cannabis social equity programs launched or in development. As under-resourced rural communities, we are struggling to stabilize our local regulated cannabis industries due to a number of broadly impactful challenges, including: extreme drought conditions; the collapse of the wholesale market for cannabis; barriers to market access for small independent producers; and complex and expensive environmental licensing requirements for cultivation. Social equity applicants and operators in the regions we represent are disproportionately impacted by these broader regional challenges."

San Diego County also writes in support of this bill: "There are significant barriers to entry when starting a cannabis business such as costly licensing fees and complex state and local regulations to navigate. In response, some local agencies created local equity programs to reduce barriers to entry and encourage participation in the regulated cannabis economy for entrepreneurs from populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization. The County of San Diego is currently developing its own Socially Equitable Cannabis Program (Program). SB 1293 would provide tangible support for social equity cannabis applicants and licensees in the San Diego region by offering state tax relief to an applicant or licensee that operates under the purview of the County's Program once implementation occurs. The bill could also increase motivation for entrepreneurs from Black, Indigenous, and people of color (BIPOC) and other disadvantaged communities."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Cannabis Industry Association
County of San Diego
Office of Councilmember Al Austin, City of Long Beach, 8th District
Origins Council
The Parent Company

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1428 (Archuleta) – As Amended May 23, 2022

SENATE VOTE: 36-0

SUBJECT: Psychological testing technicians

SUMMARY: Requires an individual performing psychological or neuropsychological tests to register as a psychological testing technician (PTT) with the Board of Psychology (Board).

EXISTING LAW:

1) Establishes the Board under the jurisdiction of the Department of Consumer Affairs (DCA), responsible for the licensing and enforcement of the psychology profession in California. (BPC § 2920 *et seq.*)

2) Defines the practice of psychology as rendering psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships, as specified. (BPC § 2903(a))

3) Provides the application of the principles above to include, but is not restricted to: assessment, diagnosis, prevention, treatment, and intervention to increase effective functioning of individuals, groups, and organizations. (BPC § 2903(b))

4) Establishes the following licensure requirements, for a psychologist applicant:

    a) Earning a doctorate degree in psychology, educational psychology, or education with the field of specialization in counseling psychology or educational psychology, as specified.

    b) Accruing at least two years of supervised professional experience under supervision.

    c) Taking and passing an examination testing the knowledge in any theoretical or applied fields of psychology, as well as professional skills and judgement in the use of psychological techniques and methods and the ethical practice of psychology.

    d) Completing pre-licensure courses, including alcohol and chemical dependency detection and treatment, spousal or partner abuse assessment detection and intervention strategies, aging and long-term care, suicide risk assessment and intervention, as specified. (BPC § 2914, § 2915.5, and § 2915.4)

5) Establishes a "psychological assistant" registration category and allows registrants to perform psychological functions in preparation for full licensure as a psychologist if the registrant:

a) Meets educational requirements, such as completing a master's degree, or being admitted to candidacy for a doctoral degree, or having a doctorate degree in psychology, educational psychology, or education.

b) Is under the immediate supervision of a licensed psychologist or a licensed physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology or the American College of Osteopathic Board of Neurology and Psychiatry.

c) Complies with regulations adopted by the Board relating to continuing education requirements.

d) Does not provide psychological services to the public except as a supervisee. (BPC § 2913)

6) Prohibits a licensed psychologist or a board certified psychiatrist from supervising more than three psychological assistants at any given time. (BPC § 2913(c)(2))

7) Requires that protection of the public to be the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2920.1)

THIS BILL:

1) Effective January 1, 2024, authorizes an individual to provide psychological or neuropsychological test administration and scoring services if that individual is registered with the Board as a PTT and meets specified education requirements.

2) Defines a PTT as an individual who, if registered with the Board, can administer and score standardized objective psychological and neuropsychological tests, as well as observe and describe the client's behavior and responses during the test.

3) Prohibits a PTT from selecting tests, interpreting testing results, writing test reports, or providing test feedback to clients.

4) Specifies that PTTs may only use the terms "psychological testing technician" or "neuropsychological testing technician."

5) Creates a registration process for a PTT and requires the following information regarding their qualification to be submitted to the Board:

a) The applicant's name, registration number, and contact information.

b) The applicant's supervisor's name, license number, and contact information.

c) Verification of completion of a bachelor's degree or graduate degree, or proof of current enrollment in a graduate degree program, from a regionally accredited university, college, or professional school.

d) Disclosure of any conviction of any violation of the law in this or any other state, the United States or its territories, military court, or other country, omitting traffic infractions under five hundred dollars not involving alcohol, a dangerous drug, or a controlled substance, since the issuance or previous renewal of their registration.

e) Disclosure if the registrant has had a license or registration disciplined by a governmental agency or other disciplinary body, since the issuance or previous renewal of their registration.

f) Attestation under penalty of perjury that the information provided on the application is true and correct.

6) Requires a PTT to complete a minimum of 80 hours of education and training in specified topics relating to psychological or neuropsychological test administration and scoring.

7) Requires PTTs to have a bachelor's or graduate degree in psychology, educational psychology, counseling psychology or school psychology, or to be currently enrolled in a graduate degree program.

8) Provides that the above 80 hours of education and training may be done in an individual or group instruction provided by a licensed psychologist, engaging in independent learning, completion of graduate-level coursework, or taking continuing education.

9) Requires all PTTs to be under the direct supervision of a licensed psychologists and requires the supervisor to be:

a) Employed by the same work setting as the PTT.

b) Available in-person, by telephone or by other appropriate technology.

c) Responsible for the ensuring that the extent, kind, and quality of the services that the psychological testing technician provides are consistent with the psychological testing technician's training and experience, monitoring the PTT is in compliance with laws and regulations, and informing the client that a PTT will be rendering services.

10) Requires a PTT to notify the Board of any changes to their direct supervisor, submit specified information about their added supervisor, and pay a fee.

11) Requires a PTT to annually renew their registration with the Board and submit specified information and renewal fee.

12) Establishes a $75 fee for registration or renewal and a fee of $25 to add or change the psychological testing technician's supervisor.

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

COMMENTS:

Purpose. This bill is sponsored by the **California Psychological Association (CPA)**. According to the author, "Although exacerbated by the COVID-19 pandemic, the demand for psychological and neuropsychological services has been steadily increasing. Unfortunately, state statute does not define technician services in the practice psychology, creating significant delays to access for psychological testing services. This measure would allow 'psychological testing technicians' to administer and score psychological and neuropsychological tests under the direct supervision of licensed psychologists. The use of technicians primarily allows the psychologist to utilize their time more efficiently and productively, freeing them to engage in the interpretation of the results while also being able to provide additional services that require their specified skill-set, such as providing psychotherapy or cognitive rehabilitation, treatment planning, psychoeducational services, engaging in research, and supervising psychological associates."

Background.

Board of Psychology. The Board regulates licensed psychologists, psychological assistants, and registered psychologists through the enforcement of the Psychology Licensing Law. The Board protects consumers receiving psychological services and supports the evolution of the profession. In California, a licensed psychologists can practice psychology independently. Registered psychologists work and gain experience under direct supervision of a licensed psychologist within agencies that receive government funding. Psychological assistants provide psychological services under the supervision of a qualified licensed psychologist or board-certified psychiatrist in order to accrue the necessary supervised hours to obtain full licensure as a psychologist. In its 2020 sunset review report to the Legislature, the Board stated that it was experiencing a notable increase in the average time to process complete applications and a significant increase in the average time to process incomplete applications in the past three fiscal years. In fact, the number of pending applications outnumbered completed applications. Considering the Board's recognition of its backlog with processing applications in a timely manner, the Board should factor in an increased workload for reviewing PTT applications. According to the Board, amendments that include a PTT registration fee will cover the cost of the work to implement the bill.

Access to Mental Health Services. California is facing an increased need for mental health access and professionals to provide critical services. To address the growing need and access to mental health providers, Governor Newsom proposed a Community Assistance, Recovery, and Empowerment Court that is aimed "to assist people living with untreated mental health and substance abuse challenges." Additionally, in 2022, Senator Weiner introduced SB 964 (Weiner) which calls for an analysis of the practice laws for behavioral health workers, as well as health plan hiring guidelines and practices for different behavioral health certification and license types. Mental health providers are critical for patient health and in order to meet the current demand for services, it is necessary to keep access to entry to this profession reasonable and appropriate. According to the Board, psychological testing technicians will fill a crucial service gap in California's mental health system. As California continues to face a mental health provider shortage, patients scheduled for psychological testing, particularly in rural areas and in need of services covered by Medicare and Medicaid, face higher costs and longer wait times.

Neuropsychological and psychological testing. A neuropsychological evaluation is a test to measure how well a person's brain is working and responding. On average, these tests take six to eight hours to perform. The abilities tested include reading, language usage, attention, and learning, processing speed, reasoning, remembering, problem solving, mood, and personality. Neuropsychological testing is used to determine diseases and disorders such as Alzheimer's. Psychological testing is used to diagnose and identify psychiatric and developmental disorders, such as anxiety, depression, ADHD, and Autism spectrum disorders (ASD). These test are completed for specific diagnoses, such as receiving a determination of traumatic brain injury for the purposes of a disability claim, insurance lawsuit, or care determination. Relatedly, diagnoses of ASD are established for determining a student's individualized education plan (IEP) in school settings. In these cases, any delay for individuals seeking psychological testing services could pose significant harm to receiving a proper diagnosis and treatment plan.

The Center for Medicare and Medicaid Services (CMS) currently allows for technicians to perform psychological services. According to CMS, "Psychological testing requires a clinically trained examiner." CMS guidelines is arguably a primary reason for establishing a registration process. The Centers for Medicare and Medicaid Services (CMS) manual indicates that psychologists can, in fact, allow technicians to perform psychological services, pursuant to state laws and regulations.

It is unclear if technicians are in practice in California outside of federally-regulated practice settings, such as the Veterans Administration Health System, or other regulated practice settings, such as academia or limited private pay settings. General work of a technician, as defined in this measure, can be referred to as either "testing technician" or "psychometrist," although, the latter term is clearly defined in California statute as the practice of psychology and only to be done by a licensee. According to the California Psychological Association (CPA), it is estimated that there may be close to 100 individuals currently working in California who could be eligible to administer tests as described in this bill. This estimated number would exempt those practitioners who already meet the minimum qualifications as a psychological associate, trainee, or licensee. Additionally, CPA estimates almost all the technicians surveyed by the association, as well as the psychologists and neuropsychologists who would utilize technicians and under whose license they would practice, are supportive of this effort and clarification of current law. CPA has surveyed its membership and reached out to providers of mental and behavioral health services, such as managed care organizations, behavioral health provider unions, and county behavioral health offices; these providers agree this bill would provide necessary clarity for technicians and their supervisors. As mentioned earlier in the analysis, psychologists report long wait times of several months to access testing services. Clear regulation of testing technicians would expand timely access to testing services by expanding the workforce in this area.

Education. The "Standards for Educational and Psychological Testing" are developed by a task force convened by the American Psychological Association to inform faculty, supervisors, students and the public on quality practices for education and training in psychological assessment. The standards are periodically reviewed and revised to reflect developments in discipline. These standards are referred to as the "gold standard" for testing technicians to learn how to properly administer testing The American Psychological Association's Model Act for State Licensure of Psychologists suggests that states adopt the following:

Nothing in this section shall be construed to apply to any person other than ... (c) a qualified assistant, technician, or associate employed by, or otherwise directly accountable to, a licensed psychologist. Such individuals may, among other things, administer and score neuropsychological tests at the request of the supervising psychologist, but may not interpret such tests. The Board in regulations shall determine the number of assistants, technicians and associates that a psychologist may employ and the conditions under which they will be supervised.

The suggestion outlined above is far less burdensome for PTTs than the requirements outlined in this measure. This bill adds 80-hours of additional education with a registration process. The American Psychological Association (APA), the national trade association for psychologists, and National Academy of Neuropsychology (NAN) maintain information publicly available on their websites to help consumers understand psychological testing, and further information providing a national model for the practice of testing technicians, including best practices. Currently, there is no specific method to hold technicians accountable since no California agency, board, bureau, or department maintains their ability to practice legally within California. Consumers would be able to hold licensed psychologists accountable via complaints to the Board or lawsuits. As mentioned throughout this analysis, since there is no state body that regulates the practice of testing technicians there is no specific remedy to address any consumer injury or abuse by a technician short of holding a licensed psychologist to account for that technician's actions or complaining to the Board that a technician is practicing psychology without a license. Further, this lack of registration means that a licensed psychologist is solely responsible for vetting the education and training of a testing technician in their service, and is wholly liable if that individual has deceived the licensee and led to patient harm.

Licensure, Recognition and Regulation. There is no definition in current law of psychological testing technicians. A California psychologist who employs a technician to perform administration and scoring of psychological testing may be subject to liability imposed by the Board subject to civil and even criminal charges. Moreover, billing of any services provided by the unlicensed technician may risk liability to third-party payers. Current law defines the practice of psychology to explicitly include constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations through means of assessment. The use of neuropsychological technicians has been a nationally established standard of practice in the field for more than almost five decades. The practice of using technicians in psychological and neuropsychological practice has been supported by the American Academy of Clinical Neuropsychology and is also consistent with policies and procedures defined by the American Psychological Association. Utilization of technicians is similar to other doctoral-level professionals employing technicians, such as neurologists with their EEG technicians or radiologists with x-ray technicians, as a means of extending the services they provide under their scope of practice. A national survey conducted in 2002 indicated that over half of neuropsychologists that responded indicated that they employ technicians in their practice.

California laws governing the practice of psychology do allow for registered psychological associates to perform testing technician services, under the supervision of a licensed psychologist. However, the scope of registered psychological associates is much broader than that of simply administration and scoring of tests, as these individuals have completed their

graduate training and are performing more complex roles that will eventually lead to them becoming licensed psychologists. Technicians, as defined by national standards, are not independent practitioners. Technicians work under the supervision of the employing psychologist or neuropsychologist. Technician's scope of practice is limited to the administration, scoring, and behavioral observations of examinees during testing. The technician's scope does allow for engaging in the selection of tests, interpretation of data, or report-writing, which is performed by the doctoral-level, employing clinician.

Additionally, there are similar cognitive tests employed by licensed psychologists commonly used by other disciplines, such as occupational therapists or speech and language pathologists, which require a bachelor's or master's degree. These fields also engage in interpretation of the test results, with less training than what is required for licensed psychologists. Current Procedural Terminology (CPT) codes that are accepted by medical insurance companies recognize billings codes that are uniquely specific to using a technician to administer and score psychological and neuropsychological testing, which is separate from a code that is used when a psychologist performs direct services.

Licensed Marriage and Family Therapists (LMFTs) and Licensed Professional Clinical Counselors (LPCCs) both receive training in psychological testing as a requirement of licensure and the explicit ability to "assess" patients in the discharge of their profession. However, there is a limitation to what constitutes "assessment" under current law, as LPCCs may not use projective techniques in the assessment of personality, individually administered intelligence tests, neuropsychological testing, or utilization of a battery of three or more tests to determine the presence of psychosis, dementia, amnesia, cognitive impairment, or criminal behavior. Taking all of that in consideration, there is nothing in this measure that should be interpreted as limiting the scope of education, training, or practice for any other category of mental health licensee to perform the function of testing or assessing their clients within their own scope to determine an appropriate clinical response.

According to background provided by the sponsor and impacted practitioners, the benefits from codifying the practice of testing technicians will ultimately result in a direct increase in the volume and availability of psychological services. Utilization of technicians to perform the standardized testing administration allows psychologists more time, on average six to eight hours, to engage with patients on complex activities that require a psychologist's expertise. Any delay in services impacts individuals living with neurodegenerative conditions. For example, some conditions include Alzheimer's disease or traumatic brain injury and neurodevelopmental disorders, such as Autism spectrum disorder or intellectual disability. The consumer and families of these services is reliant upon the practitioner to assist the individual in responding to testing and collecting accurate data regarding test responses. By ensuring that services are provided in a timely manner by regulated, educated, and trained professionals, consumers will receive the same level of quality in administration of psychological tests while improving access to care and treatment plan.

Other State's Related Efforts: Currently, Arkansas, New York, North Carolina, and Oregon have laws in place providing registration and oversight of psychological testing technicians.

- Arkansas has requirements in place for neuropsychological technicians. The law requires a supervising psychologist to be approved by the Arkansas Psychology Board to practice

neuropsychology (independently); to have at least three (3) years of post-licensure experience and had training or experience, or both, in supervision; to be ethically and legally responsible for all the professional activities of the technician; and to have adequate training, knowledge, and skill to render competently any neuropsychological service which the employed technician undertakes. Each psychologist and neuropsychological technician must have their applications and credentials approved by the Board during a meeting. Neuropsychological technicians must annually renew their registration by June 30th of every year.

- New York allows testing technicians, who meet certain specified requirements, to administer and score standardized objective (non-projective) psychological or neuropsychological tests which have specific predetermined and manualized administrative procedures which entail observing and describing test behavior and test responses, and which do not require evaluation, interpretation or other judgments. Such testing technicians may provide services in those settings that may legally engage in the practice of psychology and they must be supervised by a licensed psychologist, who must attest to such supervision, as well as to the education and training of the testing technicians, as prescribed in statute. All licensed psychologists who use a testing technician must complete the form entitled "Licensed Psychologist Attestation of Supervision of a Testing Technician" and submit it to the Department before providing the activities or services of the testing technician.

- North Carolina allows unlicensed individuals to perform tasks related to psychological testing, upon determination by a licensed psychologist that the individual can perform the tasks, given the client or patient's characteristics and circumstances, in a manner consistent with the unlicensed individual's training and skills. A psychologist who employs or supervises unlicensed individuals to provide the services described shall comply with documentation and supervision requirements.

- Oregon may delegate a licensee administration and scoring of tests to technicians if the licensee ensures the technicians are adequately trained to administer and score the specific test being used. The licensee must also ensure that the technicians maintain standards for the testing environment and testing administration as set forth in the APA Standards for Educational and Psychological Tests (1999) and APA Ethical Principles for Psychologists (2002).

- Texas allows licensed psychologist to delegate testing or a service if the psychologist determines the person can properly and safely perform, the person does not represent to the public they can practice psychology and is performed in a customary manner. Texas law also states that for purpose of billing the test or service is considered to be delivered by the delegating psychologist.

Prior Related Legislation.

SB 801 (Archuleta & Roth, Chapter 647, Statutes of 2021): Established various changes to the regulation of a number of licensed professionals by the Board of Behavioral Sciences (BBS) and to the Board intended to improve oversight of licensees stemming from the joint sunset review

oversight of the BBS and the Board. Revised and recast the pathway for licensure as a psychologist, replace "psychological assistant" with "registered psychological associate," added an additional foreign degree evaluator permitted by the Board, permitted closed session for a Board-designated committee, clarified licensure surrender and reinstatement provisions, extended the sunset date of both the Board and the BBS by four years, until January 1, 2026, and made other technical changes.

ARGUMENTS IN SUPPORT:

The sponsor, the **California Psychological Association (CPA)**, writes in support of the bill: "California is experiencing a dire shortage of mental health professionals and is grappling with meeting this need. According to the Healthforce Center at UCSF, California is on track to lose at least 11% of its psychologists in the next decade. This is on top of the existing scarcity and workforce challenges exacerbated by the COVID-19 pandemic – and the demand for psychological and neuropsychological services has been steadily increasing. We know that there are extensive wait times for psychological testing. This is challenging when families are waiting on educational testing, or someone is waiting on testing to determine the effects of traumatic brain injuries or for a diagnosis related to dementia. In all of these situations, time is of the essence in order to provide much needed treatment. These technicians would be registered and well regulated by the Board of Psychology. Technicians would not select the tests nor interpret tests. That is the purview of a licensed psychologist. The use of technicians allows the psychologist to utilize their time more efficiently and productively, freeing them to engage in the interpretation of the test results, develop an appropriate treatment plan, and work directly with patients. We believe this will improve access to care for consumers."

The **Board of Psychology** supports the bill and states, "The bill includes further clarification on requirements pertaining to education, registration, renewal, supervision, implementation date, and enforcement, including fees related to psychological testing technicians. The amendments from May 23rd make the proposal cost neutral and allow the Board to implement the bill without extensive regulations. Additionally, this bill does not allow psychological testing technicians to choose the type of tests to administer or interpret the test results, as licensed psychologists are properly trained on these tasks. States such as New York, North Carolina, and Oregon have implemented laws that allow trained and credentialed or licensed individuals to provide psychological testing services."

The **County Behavioral Health Directors Association (CBHDA)** supports the bill and points out, "Individuals who have received traumatic brain injuries (TBI), are affected by a psychological disorder, or require an assessment as part of a legal or educational proceeding rely on the work done by licensed psychologists. Psychologists perform batteries of psychological tests that can vary in length; it is not unusual for them to require one to two full days for the administration of certain psychological tests for a single patient. Our members are excited about this bill and feel it would have a positive impact on addressing the workforce challenges experienced by the public behavioral health system, particularly in freeing up capacity for licensed psychologists."

ARGUMENTS IN OPPOSITION:

No opposition on file.

POLICY ISSUES:

The majority of the concerns raised in the Senate Business, Professions, and Economic Development Committee's analysis dated April 4, 2022 have been addressed through amendments made on the Senate Floor on May 23, 2022. Specifically, SB 1428 was amended to provide further clarification on requirements pertaining to education, registration, renewal, supervision of PTTs, and enforcement, including fees related to PTTs. The amendments also delayed the implementation date to January 1, 2024, allowing the Board and the profession to implement the bill's new requirements relating to psychological testing technician's registration requirements with the Board.

However, concerns relating to whether registration may become a barrier to employment remain. In recent years, a number of published reports have called for reforms to California's licensure scheme, criticizing the state's regulation of occupations and professions as needlessly burdensome and complex. These reports typically follow a libertarian philosophy in favor of smaller government, arguing that regulation should only exist in situations where clear consumer harm is likely absent government intervention. Barriers to entry such as licensing fees, education requirements, examinations, criminal history disqualifications, and other prerequisites are all then presumed undesirable unless proven necessary for the public interest.

The Little Hoover Commission's *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers* refers to the boards and bureaus under the DCA as a "nearly impenetrable thicket of bureaucracy for Californians" and advocates for the state to "review its licensing requirements and determine whether those requirements are overly broad or burdensome to labor market entry or labor mobility." The Institute for Justice's *License to Work: A National Study of Burdens from Occupational Licensing*, now in its second edition, ranks California as the "most burdensome state" when accounting for both the number of lower-income occupations licensed and the average burden of licensing requirements. Other reports published by both public and private research institutions are less aggressively critical in tone, but offer similar assessments as to the possibility that California may arguably overregulate in its licensure of professions and occupations.

Nevertheless, providing clarification surrounding PTTs educational requirements, supervision, and Board registration would help ensure that vulnerable populations in need of psychological or neuropsychological testing receive quality services from a qualified workforce of registered PTTs. It is arguably crucial that individuals administering these tests follow standardized testing procedures from patient to patient. Without clear guidelines, education, training, registration requirements, the validity of test results may be in question and impact a diagnosis and treatment.

REGISTERED SUPPORT:

California Psychological Association *(Sponsor)*
The California Board of Psychology
County Behavioral Health Directors Association
National Union of Healthcare Workers

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1433 (Roth) – As Amended June 22, 2022

SENATE VOTE: 36-1

SUBJECT: Private postsecondary education: California Private Postsecondary Education Act of 2009

SUMMARY: Extends the sunset date for the Bureau for Private Postsecondary Education (BPPE) until January 1, 2027 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the BPPE's sunset review oversight process.

EXISTING LAW:

1) Enacts the California Private Postsecondary Education Act (Act) to provide for the regulation and oversight of private postsecondary schools, subject to repeal on January 1, 2023. (Education Code (EDC) §§ 94800 *et seq.*)

2) Establishes the BPPE within the Department of Consumer Affairs (DCA) to regulate private postsecondary educational institutions under Act. (EDC § 94820)

3) Exempts the institutions from the Act, as specified. (EDC § 94874)

4) States that as of January 1, 2016, an institution that is approved to participate in veterans' financial aid programs that is not an independent institution of higher education shall not be exempt from the Act. (EDC § 94874.2)

5) Requires institutions exempt from the Act to still comply with laws relating to school closure and laws relating to fraud, abuse, and false advertising. (EDC § 94874.9)

6) Makes various findings and declarations regarding private postsecondary schools, including a finding that numerous reports and studies have concluded that California's regulation of private postsecondary schools has consistently failed to ensure student protections or provide effective oversight of private postsecondary schools. (EDC § 94801)

7) Defines "postsecondary education" as a formal institutional educational program whose instruction is designed primarily for students who have completed or terminated their secondary education or are beyond the compulsory age of secondary education, including programs whose purpose is academic, vocational, or continuing professional education. (EDC § 94857)

8) Defines "private postsecondary educational institution" as a private entity with a physical presence in the state that offers postsecondary education to the public for an institutional charge. (EDC § 94858)

9) Defines "out-of-state private postsecondary educational institution" as a private entity without a physical presence in this state that offers distance education to California students for an institutional charge, regardless of whether the institution has affiliated institutions or institutional locations in California. (EDC § 94850.5)

10) Includes in the definition of "public higher education" the California Community Colleges, the California State University, and the University of California; defines "independent institutions of higher education" as nonpublic higher education institutions that grant undergraduate degrees or graduate degrees and are accredited by an agency recognized by the United States Department of Education. (EDC § 66010)

11) Requires the BPPE to adopt regulations establishing minimum operating standards for a private postsecondary educational institution, as specified. (EDC § 94885)

12) Authorizes the BPPE to grant approval to operate only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards; requires the BPPE to deny an application for an approval to operate if the application does not satisfy those standards. (EDC § 94887)

13) Provides that a standard approval to operate shall be valid for five years. (EDC § 94888)

14) Requires the BPPE to grant an institution that is accredited an approval to operate by means of its accreditation. (EDC § 94890)

15) Requires an institution to seek approval from the BPPE if it intends to make a substantive change to its approval to operate, such as changes in its education objectives, the addition of a new degree program, a change in ownership, or a change in name. (EDC § 94893)

16) States that an institution is prohibited from doing any of the following:

    a) Use of the Great Seal of the State of California on a diploma.

    b) Promising or guaranteeing employment, or overstate the availability of jobs upon graduation.

    c) Advertising concerning job availability, degree of skill, or length of time required to learn a trade or skill unless the information is accurate and not misleading.

    d) Advertising, or indicating in promotional material, without including the fact that the educational programs are delivered by means of distance education.

    e) Advertising, or indicating in promotional material, that the institution is accredited if it is not.

    f) Soliciting students for enrollment by causing an advertisement to be published in "help wanted" columns in a magazine, newspaper, or publication, or use "blind" advertising that fails to identify the institution.

g) Offering to compensate a student to act as an agent of the institution with regard to the solicitation, referral, or recruitment of any person for enrollment in the institution.

h) Paying any consideration to a person to induce that person to sign an enrollment agreement.

i) Using a name in any manner improperly implying that the school is affiliated with a government agency, is a public institution, or grants degrees if it does not.

j) In any manner making an untrue or misleading statement related to a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information.

k) Willfully falsify, destroy, or conceal any document of record.

l) Using the terms such as "approval" without stating clearly and conspicuously that approval to operate means compliance with state standards.

m) Directing any individual to perform an unlawful act, to refrain from reporting unlawful conduct to the BPPE, or to engage in any unfair act to persuade a student not to complain.

n) Compensating an employee involved in recruitment, enrollment, admissions, student attendance, or sales of educational materials to students on the basis of a commission, commission draw, bonus, quota, or other similar method related to the recruitment, enrollment, admissions, student attendance, or sales of educational materials to students.

o) Requiring a prospective student to provide personal contact information in order to obtain, from the institution's website, educational program information that is required to be contained in the school catalog.

p) Offering an associate, baccalaureate, master's, or doctoral degree without disclosing to prospective students prior to enrollment whether the institution or the degree program is unaccredited and any known limitation of the degree.

(EDC § 94897)

17) Requires an institution that offers an educational program in a profession, occupation, trade, or career field that requires state licensure to have an educational program approval from the appropriate state licensing agency to conduct that educational program in order that a student who completes the educational program is eligible to sit for any required licensure examination. (EDC § 94899)

18) Requires an institution's recruiters to be its employees. (EDC § 94901)

19) Requires an enrollment agreement to be written in language that is easily understood. (EDC § 94905)

20) Requires an institution to provide a prospective student with a school catalog containing various program information and policies. (EDC § 94909)

21) Requires an institution to provide a prospective student with a School Performance Fact Sheet containing information including but not limited to completion rates, placement rates for each program, license examination passage rates, starting salary or wage information, and information about how to contact the BPPE. (EDC § 94910)

22) Requires an institution to post its school catalog, School Performance Fact Sheet, and student brochures on its website. (EDC § 94913)

23) Establishes the Student Tuition Recovery Fund (STRF) to relieve or mitigate economic loss suffered by a student while enrolled in an institution at the time that institution, location, or program was closed or discontinued. (EDC § 94923)

24) Requires an institution to annually report to the BPPE, as part of an annual report, and publish in its School Performance Fact Sheet, all of the following:

    a) The job placement rate for each program that is either designed, or advertised, to lead to a particular career, or advertised or promoted with any claim regarding job placement.

    b) The license examination passage rates for the immediately preceding two years for programs leading to employment requiring passage of a state licensing examination.

    c) Salary and wage information, consisting of the total number of graduates employed in the field and the annual wages or salaries of those graduates stated in increments of $5,000.

    d) If applicable, the most recent official three-year cohort default rate reported by the United States Department of Education for the institution and the percentage of enrolled students receiving federal student loans.

    (EDC § 94929.5)

25) Requires the Director of Consumer Affairs to provide written updates to the Legislature describing the BPPE's progress in protecting consumers and enforcing the provisions of the Act. (EDC § 94948)

26) Establishes the Office of Student Assistance and Relief (OSAR) for the purpose of advancing and promoting the rights of prospective students, current students, or past students of private postsecondary educational institutions. (EDC § 94949.7)

27) Subjects the BPPE to legislative oversight through the sunset review process, which provides for the Act and the authority of the BPPE to be automatically repealed as of January 1, 2022 unless a later enacted statute deletes or extends that date. (EDC § 94950)

THIS BILL:

1) Exempts from the Act a higher education institution that does not award degrees and that solely provides educational programs for total charges of $2,500 or less when no part of the total charges is paid from state or federal student financial aid programs.

2) Allows the BPPE may adjust the above charge threshold based upon the California Consumer Price Index and post notification of the adjusted charge threshold on its internet website as the bureau determines, through the promulgation of regulations, that the adjustment is consistent with the intent of the Act.

3) Authorizes the BPPE to establish through regulation thresholds of California-based activity that constitute limited physical presence, with those institutions subject to registration requirements defined through regulation, and minimal levels of California-based activity that do not require institutional approval by, nor registration with, the BPPE.

4) Specifies that an institution is considered to have a physical presence in the state if it offers instruction or core academic support services from a physical location owned, operated, or rented by or on behalf of the institution in California.

5) Updates the definition of "to operate" to mean to establish, keep, or maintain any facility or location in this state where, or from which, or through which, postsecondary educational programs are provided, *or to enroll California residents in postsecondary educational programs in an institution based outside of the state via distance education. (Emphasis added to distinguish between existing law and this bill,)*

6) Requires institutions that are approved by means of accreditation and accredited by an agency that loses recognition by the United States Department of Education, to submit to the BPPE an application, as specified, for approval to operate an institution unaccredited within six months of the agency's loss of recognition.

7) Specifies that if the institution fails to submit the required application and accreditation plan within six months of its accreditor's loss of recognition, the institution will lose its approval to operate.

8) Requires the BPPE to review the submitted application and accreditation plan and issue the institution a provisional approval to operate degree programs within 18 months of the accreditor's loss of recognition or deny the application, at which time the institution loses its approval to operate.

9) Prohibits an institution from seeking BPPE approval for additional degree programs until the institution regains accreditation.

10) Provides that when an institution offering at least one degree program has ceased to be accredited by an accrediting agency recognized by the United States Department of Education, the institution must notify the BPPE immediately, but no more than seven days after it ceases to be accredited. The institution's approval to operate degree programs will become provisional as of the date that the institution ceases to be accredited.

11) States that an institution that has had its approval to operate degree programs become provisional shall satisfy the following requirements in order to maintain its provisional approval to operate degree programs from the BPPE:

a) The institution cannot seek bureau approval for additional degree programs until the institution regains accreditation.

b) Within six months of its approval to operate degree programs becoming provisional, the institution must submit an accreditation plan, as specified, to be approved by the BPPE, for the institution to become fully accredited within five years of the date of its provisional approval to operate degree programs.

c) The institution must submit to the BPPE all additional documentation the BPPE deems necessary to determine if the institution will become fully accredited within five years of its approval to operate degree programs being deemed provisional.

12) Requires an institution that satisfies the requirements of the above to comply with both of the following:

a) Notify students seeking to enroll in the institution, in writing, before the execution of the student's enrollment agreement, that the institution's approval to operate a degree program is contingent upon the institution being subsequently accredited.

b) Within the first two years of the institution's approval to operate degree programs being deemed provisional, a visiting committee, empaneled by the BPPE must review the institution's documentation of provisional approval and its accreditation plan, and make a recommendation to the BPPE regarding the institution's progress toward achieving full accreditation.

13) Requires the BPPE to, upon the timely submission of sufficient evidence, as specified, that an unaccredited institution is making strong progress toward obtaining accreditation, grant an institution's request for an extension of time, not to exceed five years in total.

14) Requires the above evidence to include an amended accreditation plan adequately identifying why pre-accreditation, accreditation candidacy, or accreditation outlined in the original plan submitted to the BPPE was not achieved; active steps the institution is taking to comply with this section; and documentation from an accrediting agency demonstrating the institution's likely ability to meet requirements under the Act.

15) Stipulates that any institution that fails to comply with the requirements above by a specific date will have its provisional approval to operate degree programs automatically suspended on the applicable date.

16) Authorizes an institution to voluntarily stop pursuing accreditation, as specified.

17) Allows an institution offering both degree and nondegree programs that has its provisional approval to operate degree programs suspended or that voluntarily ceases to pursue accreditation to continue to offer its nondegree programs.

18) Prohibits an institution that is pursuing accreditation from making a change in ownership, change in control, or change in business organization form until the institution obtains full accreditation.

19) Authorizes the BPPE to deny an application for an approval to operate for institutions that would be owned by, have person in control, or employ managers that had knowledge of, should have known, or knowingly participated in any conduct that was the cause for revocation or unmitigated discipline at another institution.

20) Specifies that a change in ownership, institution manager, or person in control is considered a substantive change and requires prior authorization from the BPPE.

21) Prohibits an institution from doing any of the following:

    a) In any manner committing fraud against, or making an untrue or misleading statement to, a student or prospective student under the institution's authority or the pretense or appearance of the institution's authority.

    b) Charging or collecting any payment for institutional charges that are not authorized by an executed enrollment agreement.

    c) Refusing to provide a transcript for a current or former student on the grounds that the student owes a debt; Conditioning the provision of a transcript on the payment of a debt, other than a fee charged to provide the transcript; Charging a higher fee for obtaining a transcript, or providing less favorable treatment of a transcript request because a student owes a debt; or using transcript issuance as a tool for debt collection.

    d) Requiring a prospective, current, or former student or employee to sign a nondisclosure agreement pertaining to their relationship to, or experience with, the institution.

    e) Failing to maintain policies related to compliance or adhere to the institution's stated policies.

22) Provides that an institution offering an educational program requiring approval from another state licensing agency that subsequently loses that approval shall have their approval to operate the program automatically suspended by the BPPE. The institution must notify the BPPE within 10 days of its loss of approval to offer the educational program, and stop offering the program within 30 days of the loss of the approval to offer the educational program, or by an earlier date as required by the other state licensing agency. Reinstatement of the approval to operate may be made at any time following the suspension by providing proof satisfactory to the BPPE that the license is properly approved and in compliance with all BPPE requirements.

23) Requires an institution's school catalog to contain the following disclosure: "The Office of Student Assistance and Relief is available to support prospective students, current students, or past students of private postsecondary educational institutions in making informed decisions, understanding their rights, and navigating available services and relief options. The office may be reached by calling (toll-free telephone number) or by visiting (internet website address)."

24) Stipulates that a note, instrument, or other evidence of indebtedness relating to payment for an educational program is *void and* not enforceable unless, at the time of execution of the

note, instrument, or other evidence of indebtedness, the institution held an approval to operate *or valid out-of-state registration with the BPPE*. *(Emphasis added to distinguish between existing law and this bill.)*

25) Clarifies that authority granted to the BPPE does not preclude the authority of the Department of Financial Protection and Innovation over, and application of the California Consumer Financial Protection Law.

26) Provides that an institution's approval to operate is automatically terminated on the date of its closure or when its exemption has been verified by the BPPE. If an institution does not identify a date of closure one will be selected by BPPE.

27) Prohibits a terminated license from being reinstated.

28) Requires the BPPE to provide an institution with the opportunity to remedy noncompliance, impose fines, place the institution on probation, or suspend or revoke the institution's approval to operate, as it deems appropriate based on the severity of an institution's violations, and the harm that results *or may result* to students. *(Emphasis added to distinguish between existing law and this bill.)*

29) Requires an institution with an approval to operate that knows that it is being investigated by an any *governmental agency or accrediting agency* other than the BPPE to report that investigation, including the nature of that investigation, to the BPPE *in writing* within 30 days of the institution's first knowledge of the investigation. *(Emphasis added to distinguish between existing law and this bill.)*

30) Specifies that a citation may contain an order to compensate students for harm that resulted *or may have resulted*, including a refund of moneys paid to the institution by or on behalf of the student, as determined by the BPPE. *(Emphasis added to distinguish between existing law and this bill.)*

31) States that maximum fine for unlicensed activity is separate and not inclusive of fines for other violations or refunds ordered.

32) Allows an out-of-state public institution of higher education, as specified, that maintains a physical presence in this state to apply for an approval to operate from the BPPE.

33) Specifies that a public institution of higher education approved to operate in this state is subject to the provisions of the Act and related regulations in the same manner and to the same extent as if it was a private postsecondary educational institution, as defined.

34) Extends the sunset for the BPPE from January 1, 2023 to January 1, 2027.

35) Make additional technical and clarifying changes.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill will result in an annual cost of approximately $25.2 million (Private Postsecondary Education Administration Fund) and 109.0 positions to support the continued operation of the BPPE's activities.

COMMENTS:

Purpose. This bill is one of five sunset bills sponsored by the author. According to the author, "this bill is necessary to make changes to the Act and the Bureau operations in order to improve oversight of private postsecondary education institutions."

Background.

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

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

History and Function of the Bureau for Private Postsecondary Education (BPPE).

Prior to 1990, a division within the California Department of Education loosely carried out regulation of the private postsecondary education industry in California. In response to concerns that the structure failed to provide appropriate oversight of the sector, the Private Postsecondary and Vocational Education Reform Act (Morgan), Chapter 1307, Statutes of 1989, overhauled the regulatory program and the Maxine Waters School Reform and Student Protection Act (Waters) Chapter 1239, Statutes of 1989, expanded student protections. The framework established by merging the Acts led to duplicative and conflicting statutory provisions. Numerous sunset review reports document California's struggles to provide appropriate oversight of private postsecondary institutions. The former Bureau for Private Postsecondary and Vocational Education (BPPVE) sunset on January 1, 2007.

The BPPE and the Act were established by AB 48 (Portantino), Chapter 310, Statutes of 2009, after several failed legislative attempts to remedy the BPPVE structural challenges. AB 48 took effect January 1, 2010, and provided the BPPE responsibility for oversight of private postsecondary educational institutions operating with a physical presence in California. While the Legislature has amended the Act several times since the initial passage of AB 48, it has consistently directed BPPE to make protection of the public the highest priority in performing duties and exercising powers.

The Act requires all unaccredited colleges in California to be approved by the BPPE, and all nationally accredited colleges to comply with numerous student protections. It also establishes prohibitions on false advertising and inappropriate recruiting. The Act requires disclosure of

critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also guarantees students can complete their educational objectives if their institution closes its doors while providing the BPPE with enforcement powers necessary to protect consumers.

In 2014, SB 1247 (Lieu), Chapter 840, Statutes of 2014, amended the Act to require degree-granting institutions to be accredited, prohibit an institution that participates in federal veterans' aid funding from claiming an exemption from the Act, and expanded the use of Student Tuition Recovery Fund (STRF) payments to cover economic loss. Today, the STRF relieves or mitigates losses suffered by students who attend approved institutions, such as when institutions close, fail to pay or reimburse loan proceeds under a federally guaranteed student loan program, or fail to pay judgments against them. The Act leaves the bulk of STRF rules and administration to the regulatory process via regulations promulgated by the BPPE, but states that the balance of the STRF may not be in excess of $25 million at any time. Students seeking reimbursement from STRF must submit a claim and supporting documents to BPPE at which point staff review the claim application to determine whether adequate supporting materials were provided, among other items, and determine whether to approve or deny the claim. Approved STRF claims result in payment from the STRF to the student.

The Act was subsequently amended by SB 1192 (Hill), Chapter 593, Statutes of 2016, to extend the BPPE sunset date until 2021. SB 1192, among other things, required an out-of-state online institution to register with and pay a fee to the BPPE, extended the sunset date for a degree-granting institution to obtain accreditation, increased certain institutional fees, and established OSAR to provide outreach and individualized assistance to students impacted by unlawful activities or closure of a BPPE-approved institution. Students are assigned to a specific OSAR staff who assist students by performing the following activities:

- Informing students of their general rights and options when impacted by a school closure;
- Directing students to state and federal tuition reimbursement and loan forgiveness programs and assisting them with applying for such relief;
- Providing assistance in obtaining key academic and financial documents;
- Connecting students with available transfer and teach-out opportunities; and,
- Training students on how to best research colleges and in making informed decisions related to their higher education goals.

Since its inception, OSAR has conducted a total 63 closed school workshops. Further, OSAR collaborates with state and federal agencies to ensure that the needs of Californians attending private postsecondary educational institutions are addressed.

SB 802 (Roth, Chapter 552, Statutes of 2021) made various changes to the Act, including an extension until January 1, 2023. SB 802 also updated various definitions and exemption criteria, allowed the BPPE to extend deadlines by which approved institutions must be accredited according to certain conditions, and made various other changes intended to strengthen the BPPE's role in protecting students.

Today, the Act expresses Legislative intent that BPPE:

1) Ensure minimum educational quality standards and opportunities for success for California students attending private postsecondary schools in California;
2) Provide meaningful student protections through essential avenues of recourse for students;
3) Establish a regulatory structure that provides an appropriate level of oversight;
4) Provide a regulatory structure that ensures all stakeholders have a voice and are heard in policymaking by the BPPE;
5) Ensure accountability and oversight by the Legislature through program monitoring and periodic reports;
6) Prevent harm to students and the deception of the public that results from fraudulent or substandard educational programs and degrees.

Issues Raised throughout the Sunset Review Process. On March 23, 2021, the Senate Business, Professions, and Economic Development Committee convened a joint hearing that included the Senate Education, Assembly Higher Education, and Assembly Business and Professions committees. The background paper prepared by the Senate Business, Professions, and Economic Development Committee for the hearing identified 17 different issues for consideration at the hearing, including those related to student protection, licensing, exemptions, enforcement, approval, and accountability. Additionally, as a follow-up to the sunset review report submitted to the Legislature in 2019 and in light of the one-year extension, the BPPE provided an addendum to its report with key developments and recommendations for the Legislature to consider. While some of those issues raised in the hearing were addressed in SB 802 (Roth), Chapter 552, Statutes of 2021, there are still a number of remaining areas where statutory updates to the Act may be necessary. Some of the remaining issues are addressed in this bill, including:

Approval by Means of Accreditation. BPPE grants institutions one of two types of approvals to operate: an approval to operate (informally regarded as a "full" approval), and an approval to operate by means of accreditation. The type of approval for which an institution applies is dependent upon whether the institution is accredited and, if accredited, is based on an accredited institution's application option. The intent of approval by means of accreditation is interpreted to mean that the BPPE will rely on the institution's accreditor to ensure the institution has the capacity to satisfy the minimum operating standards and to ensure the institution is offering quality educational programs. BPPE has found that institutions approved by means of accreditation often have compliance issues related to the catalog, enrollment agreement, website requirements, financial responsibility, and educational quality, despite the oversight of the accrediting agencies in tandem with that of the BPPE.

This bill would allow the BPPE to address situations where accrediting agencies lose federal recognition by the United States Department of Education, address situations where institutions lose accreditation by a recognized agency, automatically suspend approval of programs that lose approval of required licensing agencies, and terminate approvals to operate upon institutional closure and/or verification of exemption.

Distance Education and Out-of-State Public and Nonprofit Institutions. The BPPE has traditionally regulated only institutions with a "physical presence" in California. As a growing number of public and private institutions organized or incorporated outside California serve California students through online and hybrid instruction, the need for Bureau oversight has increased. The Legislature has expanded some areas of oversight, providing a registration process for out-of-state for-profit institutions and requiring their participation in the STRF. Public and non-profit institutions, however, remain outside of BPPE's purview – and increasingly, public institutions are adopting methods of program delivery modeled after for-profit institutions. Still, it has been challenging for BPPE to define a line of when an institution has a physical presence, and when it does not. Education Code Section 94858 defines a "Private Postsecondary Educational Institution" as a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge. The statute, however, is silent on what constitutes a physical presence.

This bill stipulates that an institution is considered to have a physical presence in California if it offers instruction or core academic support services from a physical location owned, operated, or rented by or on behalf of the institution in California.

This bill also authorizes the BPPE to establish through regulation thresholds of California-based activity that constitute limited physical presence, with those institutions subject to registration requirements defined through regulation, and minimal levels of California-based activity that do not require institutional approval by nor registration with the BPPE.

This bill also provides a process for out-of-state public institutions to apply for an approval to operate from the BPPE, and would be subject to the provisions of, and the regulations adopted pursuant to, the Act in the same manner and to the same extent as if it was a private postsecondary educational institution, including the provisions related to fees, annual reports, compliance inspections, and the STRF.

This bill also clarifies and focuses registration requirements for out-of-state institutions.

California Law does not align with Federal Law Regarding Loss of Accrediting Agency Recognition. California law provides accredited institutions a streamlined path for obtaining approval to operate by means of their accreditation and allows them to offer degree programs. However, unlike federal law, California law does not provide institutions with a grace period when their accrediting agencies lose federal recognition. A grace period would allow the institution to help students complete their programs and also apply for new approvals. California law further does not clearly articulate a path for institutions in this predicament to regain full approval to operate once accreditation has been lost. This creates confusion with the potential to lead to sudden and devastating impacts for both students and institutions faced with this situation.

This bill requires institutions that are approved by means of accreditation and accredited by an agency that loses recognition by the United States Department of Education, to submit to the BPPE an application, as specified, for approval to operate an institution unaccredited within six months of the agency's loss of recognition.

This bill specifies that if the institution fails to submit the required application and accreditation plan within six months of its accreditor's loss of recognition, the institution will lose its approval to operate.

This bill requires the BPPE to review the submitted application and accreditation plan and issue the institution a provisional approval to operate degree programs within 18 months of the accreditor's loss of recognition or deny the application, at which time the institution loses its approval to operate.

This bill prohibits an institution from seeking BPPE approval for additional degree programs until the institution regains accreditation.

Lack of Awareness of OSAR. OSAR is tasked with outreach to students adversely impacted by institutional closures yet lack of awareness about OSAR can inhibit its effectiveness at reaching harmed students.

This bill requires institutions to add information about OSAR, its services, its website, and contact information to required school catalog disclosures.

***Incomplete Requirements for Institutions to Disclose Government Investigations*.** Current law requires that BPPE-approved institutions report to the BPPE when they are under investigation by certain government entities. However, this reporting requirement excludes some governmental agencies and oversight entities the BPPE interacts with regularly, including state agencies and city and county district attorney's offices that are conducting criminal investigations and/or pursuing criminal charges.

This bill requires institutions to notify the BPPE regarding investigations from any government agency.

Gaps in Prohibited Business Practices. Through its role in investigating complaints filed by private postsecondary education students, the BPPE has encountered situations in which students are being harmed by institutional conduct that is generally prohibited by California law outside of the Private Postsecondary Education Act. However, the BPPE has limited ability to independently discipline institutions for these same violations. Examples include situations when an institution misrepresents itself to the public, gathers personal information from prospective students under false pretexts, or transcripts are withheld due to debt owed.

This bill expands the prohibited business practices in the Act for which the BPPE is appropriately positioned to address, to include acting in any manner to commit fraud against or make an untrue or misleading statement to a student or prospective student under the institution's authority or the pretense or appearance of the institution's authority.

This bill also specified that the maximum fine for unlicensed activity ($100,000) is in addition to the fines for other violations and any refunds.

Inability to Acknowledge Individual Responsibility in the Context of Institutional Licensees. Unlike other boards and bureaus, the BPPE licenses, oversees, and disciplines institutions and

has very limited ability to hold accountable the individuals who own, control, or manage institutions violate the Act or regulations adopted pursuant to it.

This bill authorizes the BPPE to deny an application for an approval to operate for institutions that would be owned by, have person in control, or employ managers that had knowledge of, should have known, or knowingly participated in any conduct that was the cause for revocation or unmitigated discipline at another institution.

This bill also prohibits an institution that is pursuing accreditation from making a change in ownership, change in control, or change in business organization form until the institution obtains full accreditation.

Exemptions. The Act contains a number of exemptions for a variety of types of institutions. The Legislature is continuously asked to expand exemptions through legislative proposals that aim to carve out one specific school or one type of educational entity.

This bill exempts a higher education institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars ($2,500) or less when no part of the total charges is paid from state or federal student financial aid programs. The BPPE may adjust this charge threshold based upon the California Consumer Price Index.

Technical Changes. Technical clarifications may improve BPPE operations and application of the Act.

This bill makes a handful of technical and clarifying changes.

Continued Regulation by the BPPE. The BPPE is charged with regulating private colleges and universities that range from small colleges with single, specialized certificate programs to large publicly traded institutions with multiple degree programs. The landscape of schools regulated by the BPPE has evolved significantly in recent decades. These institutions receive significant public funds; under federal law, up to 90% of revenues can come from the Title IV financial aid program. High-profile state and federal investigations have revealed deceptive and illegal practices by some institutions within the sector.

This bill extends the sunset from January 1, 2023 to January 1, 2027.

Ongoing Issues.

The BPPE's sunset review background paper included several additional issues that were discussed but not subsequently addressed by this bill:

Operational Costs, Fees, and Funding. The BPPE's main source of revenue is an annual institution fee, based on a percentage of annual revenue reported by licensed institutions. Currently, the BPPE's fund has a significant structural imbalance - annual expenditures exceed annual revenue intake, which draws down the balance of the fund. The fund's balance has been declining over the last several years. The DCA states, "this revenue source is unconventional when compared to other DCA programs, due to it being based on an institution's profitability,

which can lead to unpredictable revenue collections year to year based on a multitude of economic factors including school closures." The BPED background paper suggested that in evaluating proposed fee levels, the Committees should consider the scope of the BPPE's activities and whether priorities align to Legislative intent. The background paper also requested the BPPE and DCA to inform the Committees about efficiencies that have been undertaken to ensure the BPPE is doing necessary work, including reorganization, staffing adjustments, and efforts to achieve cost savings.

Income Share Agreements. An Income Share Agreement (ISA) is a contract in which a person agrees to pay a fixed percentage of their income for a defined length of time, in exchange for up-front funding or services. In higher education, this contract is typically between a student and institution. An ISA differs from a loan in how the amount owed is calculated. In a loan, the individual makes payments based on an interest rate until their principal balance is reduced to zero. With an ISA, the individual pays a percentage of their income for a set period of time regardless of the total amount paid. There is no outstanding "balance." Recent action by the California Department of Financial Protection and Innovation subjects income share agreements services to state licensing and regulation. Effectively, this treats ISAs like student loans to protect student borrowers and provide greater oversight of the industry.

The BPPE discussed ISAs at a 2019 Advisory Committee meeting, during which the BPPE's staff counsel advised that the Act does not specifically address this model but does intend for students to enroll or start and education program only after the total charges of the program are disclosed. Questions were raised about whether enrollment agreements fully present program charges, including financing, given that interest charges may not be known up front, although traditional financing includes a set interest rate percentage which achieves the requirement for up-front information to be provided. According to media reports, as a workaround in the BPPE's consideration for approval of an institution that utilizes ISAs, the institution stopped offering ISAs and instead offered a similar model where graduates don't pay until they secure a job at a minimum salary, but payments back to the school for training are a percentage of their monthly income. Rather than providing a time limit for this arrangement (such as only paying for a certain amount of time), a California student at this institution would keep paying monthly until the full tuition is paid.

Minimum Operating Standards. Existing statutory authority requires the BPPE to adopt by regulation minimum operating standards for institutions. Among other requirements, the BPPE must ensure that the content of each educational program can achieve its stated objective, the facilities, instructional equipment, and that materials are sufficient to enable students to achieve the educational program's goals; the institution maintains a withdrawal policy and provides refunds; the director, administrators, and faculty are properly qualified; and that adequate records and standard transcripts are maintained and are available to students. The BPPE believes these provisions limit its authority to establish appropriate and necessary additional operating standards and has requested additional minimum operating standards to address the cost of an educational program, student outcomes, institutional improvement, and educational quality.

Student Tuition Recovery Fund. The STRF exists to relieve or mitigate economic loss suffered by students enrolled at a non-exempt private postsecondary education institution due to the institutions' closure, the institutions' failure to pay refunds or reimburse loan proceeds, or the

institutions' failure to pay students' restitution award for a violation of the Act. Institutions are required to assess students an amount established in regulation by the BPPE and remit fund to the BPPE for STRF. Under current law, when the STRF balance exceeds $25 million, the BPPE is required to temporarily stop collecting from institutions and when the STRF balance drops below $20 million, the BPPE is to resume collecting. In 2015, the STRF fee was fifty cents per every one thousand dollars in institutional charges assessed on a student, the funds exceeded the $25 million threshold, and the BPPE stopped collecting and amended the regulations to a collection rate of zero. In February 2021, the STRF dropped below the $20 million threshold and the BPPE resumed collection of the fifty cents per thousand dollars in March 2021. According to the BPPE, notifications were sent to the institutions on this fee change. The BPPE also provided institutions notification at the December 2020 and February 2021 Advisory Committee Meetings that the assessment would be effective very shortly. However, some schools were unable to update enrollment agreements in time to reflect the additional charge and were out of compliance with the Act.

Surety Bonds. According to the BPPE, the precipitous closures of several large private postsecondary education institutions in California over the last several years has resulted in direct and devastating harm to thousands of students who invested significant time and money but were not able to complete their programs of study as promised by the institutions. While STRF exists in California to mitigate economic loss suffered by a California resident who was enrolled in a California residency program and who prepaid tuition, the statutory limitations on the utilization of STRF funds fail to allow for a broader range of economic relief that may be in the best interest of the students. Additionally, the direct costs to the BPPE are proportional to the size of the institution with large-scale closures using significant financial and personnel resources.

Several states require private postsecondary institutions to post a surety bond as part of the states' process for submission of an application for approval to operate. States such as Arizona, Alaska, Florida, Georgia, Maryland, Nebraska, New Mexico, South Carolina, Tennessee, Texas, and Utah all require postsecondary school bonds. In the event of a precipitous school closure, the funds may be used for several purposes, including but not limited to:

- Compensation of students or students' parents for lost prepaid tuition;
- Payment of reasonable expenses related to the storage, maintenance and availability of student records;
- Compensation for faculty to remain on a temporary basis to complete instruction through the end of a term or course; and,
- Reimbursement of former students of the closed institution for the cost of obtaining academic records.

The BPPE argues that funds from a surety bond could have been used in some cases for the temporary continuity of instruction for students near the completion of their programs to finish or to fund the storage and maintenance of student records, or to provide the funding for school staff to remain on temporarily to assist students in transferring to other institutions.

For more information about the BPPE, please refer to the background paper for the BPPE's March 16, 2021, Joint Sunset Review Oversight Hearing, which is available on the Assembly Business and Professions Committee's website: https://abp.assembly.ca.gov/.

Current Related Legislation.

AB 2671 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the California Board of Occupational Therapy. *AB 2671 is pending in the Senate Business, Professions, and Economic Development Committee.*

AB 2684 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the Board of Registered Nursing. *AB 2684 is pending in the Senate Business, Professions, and Economic Development Committee.*

AB 2685 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the Naturopathic Medicine Committee. *AB 2685 is pending in the Senate Business, Professions, and Economic Development Committee.*

AB 2686 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board.

AB 2687 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the California Massage Therapy Council. *AB 2687 is pending in the Senate Business, Professions, and Economic Development Committee.*

SB 1434 (Roth) of 2022 is the sunset review vehicle for the State Board of Chiropractic Examiners. *SB 1434 is pending in this committee.*

SB 1436 (Roth) of 2022 if the sunset review vehicle for the Respiratory Care Board. *SB 1436 is pending in this committee.*

SB 1437 (Roth) of 2022 is the sunset review vehicle for the California Council for Interior Design Certification. *SB 1437 is pending in this committee.*

SB 1438 (Roth) of 2022 the sunset review vehicle for the Physical Therapy Board of California. *SB 1438 is pending in this committee.*

Prior Related Legislation.

SB 802 (Roth) Chapter 552, Statutes of 2021, made various changes to the Act, including an extension until January 1, 2023. SB 802 also updated various definitions and exemption criteria, allowed the BPPE to extend deadlines by which approved institutions must be accredited according to certain conditions, and made various other changes intended to strengthen the BPPE's role in protecting students.

AB 70 (Berman), Chapter 153, Statutes of 2020, prohibits the BPPE from approving an exemption or handling complaints for a nonprofit institution that the AG determines does not meet specified criteria of a nonprofit corporation. The BPPE should inform the Committees about efforts being undertaken with the Office of the Attorney General to implement this law.

AB 1340 (Chiu), Chapter 519, Statutes of 2019, requires the BPPE to collect loan data for all graduates and reconcile the information with wage data from Employment Development Department (EDD). The BPPE would be required to post a Labor Market report of institutions and programs, on the BPPE website. At minimum, the report would include loan and income statistics at two and five years from graduation. The BPPE would also share data with EDD for the federal Workforce Innovation and Opportunity Act compliance.

AB 1344 (Bauer-Kahan), Chapter 520, Statutes of 2019, requires that out-of-state institutions registering with the BPPE, either at the time of registration, or within 30 days if currently registered, to notify the BPPE if specific actions are taken against the institution. Currently registered institutions will be required to submit a written statement as to why they should be allowed to continue enrolling California students. This bill allows the BPPE to take action against the institution based on consultation with the Attorney General.

AB 1346 (Medina), Chapter 521, Statutes of 2019, expends the definition of "economic loss" for the purposes of recovery through the STRF to include all amounts paid to the institution and amounts paid in connection with attending the institution. The bill also expands eligibility for students affected by the closure of Corinthian.

SB 1348 (Pan), Chapter 901, Statutes of 2018, requires California Community Colleges and Private Postsecondary institutions overseen by the BPPE that have educational programs that offer certificates or degrees related to allied health professionals to include specific information regarding clinical training with the Annual Report.

SB 1192 (Hill), Chapter 593, Statutes of 2016, extended the sunset for the BPPE and made numerous changes, including:

1) Creation of an out-of-state registration system to allow California students in distance education to be eligible for STRF;

2) Removal of exemptions for the "good school exemption" and any schools participation in federal Title 38 veterans' financial aid;

3) Reduction of the period for verification of exemption to two years from an indefinite Verification;

4) Elimination of two positions from the BPPE's advisory committee;

5) Granting to the BPPE the discretionary authority to extend the timelines for the accreditation requirement for degree programs;

6) Provision of authority for the BPPE to create an "inactive status;"

7) Addition of requirements for disclosures regarding both voluntary and required
8) Licensure;

9) Changes to STRF eligibility and requirements;

10) Changes to the BPPE's annual fee rate and structure;

11) Modification of law to allow evidence from an inspection to be used as part of an enforcement action;

12) Creation of a reporting requirement from schools under investigation by "oversight authorities;"

13) Increase of the fine for operating without approval from $50,000 to $100,000;

14) Creation of OSAR; and,

15) Extending of the BPPE's sunset date to January 1, 2021.

ARGUMENTS IN SUPPORT:

The *Children's Advocacy Institute*, *Consumer Protection Policy Center*, and *Veterans Legal Clinic* at the *University of San Diego School of Law*, in conjunction with the *East Bay Community Law Center, Housing and Economic Rights Advocates, Public Counsel, Public Law Center, NextGen California, The Century Foundation*, and *The Institute for College Access and Success* collectively write in support:

> The Bureau serves an essential function for the state of California, tasked with serving as the first line of defense for students who enroll in private postsecondary programs and the primary state-level regulator of for-profit schools in California. The Bureau's enacting statute prioritizes student and consumer needs, stating that "…protection of the public shall be the bureau's highest priority."
>
> In the past, the overlap of an economic recession and a loose postsecondary education regulatory environment has led to significant increases in enrollment at for-profit colleges, as predatory programs target the unemployed with aggressive recruiting efforts. Unfortunately, the impact of the pandemic and regulatory rollbacks by the Trump administration have resulted in similar problematic patterns; there have been significant decreases in enrollment at community colleges and other public and nonprofit universities, and more students are enrolling in for-profit institutions. The most vulnerable students -including veterans, foster youth, students, and single mothers - are often targeted by predatory programs, bear a disproportionate risk, and suffer the consequences. And unfortunately, students at for-profit institutions are less likely to graduate and more likely to have significant debt and default on their loans, compared to their traditional 4-year-degree counterparts.
>
> It is essential that the Bureau be reauthorized this year, and imperative that the Bureau has sufficient authority and capacity to carry out its responsibilities.

Ember Education, *Carrington College*, and the *San Joaquin Valley College* collectively write in support, if amended:

While our colleges are generally supportive of many of the policy proposals considered in [this bill], we have specific concerns with several provisions of the current bill in print as of 06/22/22.

First, we are concerned with two of the prohibited business practices provisions in Education Code Section 94897, labeled as (q) through (u).

Subdivision (q) equates "making an untrue or misleading statement" to committing fraud. This broad language would include simple mistakes and immaterial errors of fact. As written, this provision would subject an institution to risk or corrective action because a faculty or staff member simply made a mistake. Even within the clear legislative intent for this prohibited business practice, such as material misrepresentations in connection with the pre-enrollment process, a simple mistake regarding the date and time of an orientation session could be labeled a prohibited business practice under proposed subdivision (q).

We are committed to ensuring that students receive reliable and accurate information, and we clearly condemn any attempts to mislead students in a malicious manner. We request that this provision be amended to add a reasonable threshold of materiality and harm. We recommend that the committee adopt the following amendment:

(q) In any manner commit fraud against or make an untrue or misleading statement a material false statement that would constitute civil fraud to a student or prospective student under the institution's authority or the pretense or appearance of the institution's authority.

Subdivision (t) prohibits the use of non-disclosure agreements (NDAs) with students or employees pertaining to their relationship or experience with the institution. This blanket prohibition is overly broad and would have an unintended chilling effect on the effective, timely and mutually beneficial settlement of student or employee disputes that are wholly unrelated to the legislative intent of student consumer protection. We propose the following amendment to SB 1433 to prohibit NDAs only in circumstance that ensure California's consumer protection goals:

(t) Require a prospective, current, or former student or employee to sign a non-disclosure agreement pertaining to their relationship to or experience with the institution in connection with the settlement of a claim alleging the institution violated any state or federal misrepresentation laws and regulations.

Second, we are concerned that the text proposed for 94899(b) could be interpreted to apply to non-California state licensing agencies. This language should be corrected to read:

(b) An institution offering an educational program requiring approval from another California state licensing agency that subsequently loses that approval shall have their approval to operate the program automatically suspended by the bureau by operation of law.

ARGUMENTS IN OPPOSITION:

The *University of Phoenix* writes in opposition:

> 94885.X (d) provides that the Bureau may promulgate regulations without being subset to the Administrative Procedures Act. There is no basis to emiliate the requirement that such rules go through normal procedures for oversight, review and involvement of stakeholders in the rulemaking process.
>
> 94885.X (f)(3) provides that an institution that is pursuing accreditation after loss of an accreditation under this section cannot make a change in ownership, change in control, or change in business structure until the institution once again obtains full accreditation This is problematic in that it can take several years for an institution to receive full accreditation. Neither an institution nor its ownership should be hamstrung from pursuing such changes when they are in the best interests of the institution and its students.
>
> 94899 (B) provides that if a program approval is lost from another state licensing agency, the bureau's approval to operate the program is automatically suspended and the institution shall cease offering the program within 30 days. This is very problematic. The approval to offer a licensed program by any individual state licensing agency is unique and specific to that state. Most often, any loss of approval is particular to that state's specific licensing standards and remediation is most often also specific to that state. While this should be a cause of notification and review by the bureau, it is not justified to automatically require the institution to suspend and cease offering the program in California.
>
> 94934.5. provides that an institution must notify the BPPE is they are the subject of an investigation by "any government agency." This could quite literally relate to any number of non-education related issues, i.e., disputes over property valuations, health and safety code allegations, lobbying registration, etc. This should be limited to investigations by governmental agencies that are specifically germane to the offer of higher education, financial aid, or obligations to students.
>
> 94869 proposed to clarify that "operate" includes the enrollment of Californians by institutions based outside of the state. This is problematic and will conflate the offering of education programs by institutions from a physical location in California which requires an approval to operate vs. the current and accurate definition in 94850.5 that correctly defines an out-of-state private postsecondary educational institution as a private entity **without a physical presence in this state that offers distance education** to California students. University of Phoenix physically operates in CA and has an approval to operate its campuses form the bureau. In addition, UOPX holds an out-of-state institution remigration pursuant to Sex. 94801.5 for offering online distance education programs to CA students that originate from our Arizona headquarters. The bureau should not conflate these two different structures and definitions. Furthermore, and most importantly, the bureau has no legal authority of basis to set up selective standards for certain out-of-state institutions as it relates to

the grant of authority to offer distance education. The registration process must be an equal standard that applies to all out-of-state schools offering distance education to CA residents. California has no legal authority to place additional restrictions or burdens on out-of-state schools, or a sub-set of those out-of-state schools. Doing so would invoke constitutional challenges under the dormant aspect of the Commerce Clause as this creates a barrier to entry and operation of certain types of institutions to offer distance education to California residents but not others. Because California does not participate in the State Authorization Reciprocity Agreement compact (SARA), the bureau is the only entry point for approval to offer fully distance education programs to CA residents.

94898 includes added terms that are not defined and holds individuals to a "know" or "should have known" standard without any legal determination. The language should be struck or modified to require a legal determination or adjudication that an individual had knowledge, should have known, or knowingly participated in conduct that was the cause of revocation or other discipline.

REGISTERED SUPPORT:

Carrington College *(If amended)*
Ember Education *(If amended)*
Institute of Contemporary Psychoanalysis *(If amended)*
Los Angeles Institute and Society for Psychoanalytic Studies *(If amended)*
New Center for Psychoanalysis *(If amended)*
Newport Psychoanalytic Institute*(If amended)*
Psychoanalytic Center of California *(If amended)*
Psychoanalytic Institute of Northern California *(If amended)*
San Francisco Center for Psychoanalysis *(If amended)*
San Joaquin Valley College *(If amended)*
Children's Advocacy Institute
Consumer Protection Policy Center/USD School of Law
East Bay Community Law Center
Housing and Economic Rights Advocates
Nextgen California
Public Counsel
Public Law Center
The Century Foundation
The Institute for College Access and Success
Veterans Legal Clinic
University of San Diego School of Law

REGISTERED OPPOSITION:

University of Phoenix *(Unless amended)*

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1434 (Roth) – As Amended June 20, 2022

SENATE VOTE: 39-0

SUBJECT: State Board of Chiropractic Examiners

SUMMARY: Extends the review date for the Board of Chiropractic Examiners (BCE) to January 1, 2027, requires the BCE to include contact information in its licensee directory, renews the requirement that the BCE report on its fee structure, adjusts various fees, and deletes exemptions from a probation disclosure requirement.

EXISTING LAW:

1) Regulates the practice of chiropractic and establishes the BCE to administer and enforce the relevant laws and licensing requirements. (Business and Professions Code (BPC) §§ 1000-1058; Initiative Act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith," adopted by the electors November 7, 1922)

2) Requires the BCE to be reviewed as if the laws regulating the practice of chiropractic were scheduled to be repealed on January 1, 2023. (BPC § 1000(c))

3) Requires the BCE to compile a directory of all licensed chiropractors within the state. (BPC § 1001)

4) Requires licensed chiropractors, if on probation pursuant to a probationary order made on and after July 1, 2019, to disclose to a patient or the patient's guardian or health care surrogate before the patient's first visit the licensee's probation status, the length of the probation, the probation end date, all practice restrictions, the BCE's telephone number, and an explanation of how the patient can find further information on the licensee's profile page on the BCE's website. (BPC § 1007)

5) Exempts a licensee the disclosure requirement in the following situations:

    a) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy. (BPC § 1007(c)(1))

    b) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities. (BPC § 1007(c)(2))

    c) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit. (BPC § 1007(c)(3))

d) The licensee does not have a direct treatment relationship with the patient. (BPC § 1007(c)(4))

6) Establishes various licensing and administrative fees that the BCE may collect. (BPC § 1006.5)

THIS BILL:

1) Extends the BCE's review date to January 1, 2027.

2) Requires the BCE to include the telephone number and email of licensees in its directory and requires licensees to immediately report changes to their contact information.

3) Authorizes the BCE to lower fees in regulation.

4) Adjusts the BCE's fees as follows:

a) Reduces the fee to apply for a license to practice chiropractic from $371 to $345.

b) Reduces the fee for initial license to practice chiropractic from $186 to $137.

c) Increases the fee to renew an active or inactive license to practice chiropractic: $313 to $336, and may be further increased to $500. If the BCE lowers the fee, it must be an amount sufficient to support the BCE's functions.

d) Increases the fee to apply for approval as a continuing education provider from $84 to $291.

e) Increases the biennial continuing education provider renewal fee from $56 to $118.

f) Increases the fee to apply for approval of a continuing education course from $56 per course to $116 per hour of instruction.

g) Increases the fee to apply for a satellite office certificate from $62 to $69.

h) Increases the fee to renew a satellite office certificate from $31 to $50.

i) Reduces the fee to apply for a license to practice chiropractic using a license from another state from $371 to $283.

j) Reduces the fee to apply for a certificate of registration of a chiropractic corporation from $186 to $171.

k) Increases the fee to renew a certificate of registration of a chiropractic corporation from $31 to $62.

l) Increases the fee to file a chiropractic corporation special report from $31 to $98.

m) Reduces the fee to apply for approval as a referral service from $557 to $279.

n) Reduces the fee for an endorsed verification of licensure from $124 to $83.

o) Increases the fee for replacement of a lost or destroyed license from $50 to $71.

p) Increases the fee for replacement of a satellite office certificate $50 to $71.

q) Increases the fee for replacement of a certificate of registration of a chiropractic corporation $50 to $70.

r) Increases the fee to apply for approval to serve as a preceptor from $31 to $72.

s) Increases the fee to petition for reinstatement of a revoked license from $371 to $4,185.

t) Increases the fee to petition for early termination of probation from $371 to $3,195.

u) Increases the fee to petition for reduction of penalty from $371 to $3,195.

5) Deletes the following exemptions from the probation disclosure requirement:

a) When the visit is at an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

b) When the licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

FISCAL EFFECT: According to the Senate Committee on Appropriations analysis of the April 19, 2022, version of this bill, annual cost of approximately $4.7 million (State Board of Chiropractic Examiners Fund) and 19.4 positions to support the continued operation of the Board's licensing and enforcement activities.

COMMENTS:

Purpose. This bill is one of five sunset bills sponsored by the author. According to the author, this bill "makes changes to the Chiropractic Act intended to improve oversight of chiropractic and chiropractic licensees stemming from the sunset review oversight of the State Board of Chiropractic Examiners."

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

Each board subject to review has an enacting statute that has a repeal date, which means each board requires an extension before the repeal date. This bill is one of the "sunset" bills that are intended to extend the repeal date of the boards undergoing sunset review, as well as include the recommendations from the sunset review oversight hearings. While the BCE cannot be repealed

by the Legislature because it is established by initiative, this bill would extend the statutory review date.

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

BCE. The BCE is a licensing entity within the DCA and is responsible for administering and enforcing the initiative act and other laws related to chiropractors. The initiative act establishes the BCE and outlines the regulatory framework for the practice, licensing, education and discipline of chiropractors. The BCE's purpose is to protect consumers from incompetent, unprofessional, and fraudulent practice through regulation of practitioners. To that end, the initiative act makes it unlawful to practice or offer to practice chiropractic or claim to be a chiropractor unless licensed by the BCE. Currently, the BCE oversees approximately 12,500 licensees.

SUNSET ISSUES:

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

1) *Issue #14: Legislative Oversight Review Extension for the BCE*. The BCE is currently set to be reviewed as if it were scheduled to be repealed on January 1, 2023. The Committees conducted an oversight hearing of the BCE in March of 2022.

   Recommendation and Proposed Statutory Change: The Committees recommended extension of the BCE oversight review date. Accordingly, this bill will require the BCE to be subject to policy committee review by January 1, 2027.

2) *Issue #4: Licensing and Regulatory Fee Restructuring*. The BCE budget is funded exclusively by the profession through licensing and other regulatory fees. The BCE's current budget is currently imbalanced, as operating costs are exceeding annual revenue and according to the BCE's budget projections is at risk of insolvency in FY 2023-24. The BCE contracted with Matrix Consulting Group to complete a fee audit study in 2021 and found that the BCE is under-recovering costs by approximately $1.4 million. The BCE has worked with the DCA's Budget Office to develop a final proposed fee schedule that will equitably distribute BCE's operational costs between applicants, licensees, and Continuing Education providers based on their utilization of BCE's services and provide long-term stability for BCE's fund.

   Recommendation and Proposed Statutory Change: The Committees requested an update from the BCE on proposed increases to licensing and regulatory fees and for the BCE to work with the DCA to assess proposed changes to licensing and regulatory fee restructuring. This bill contains the fees that resulted from that recommendation.

3) *Issue #11: Probationary Status Disclosures*. Existing law requires licensees placed on probation on or after July 1, 2019, to provide a separate disclosure regarding the licensee's probation status and to obtain a signed copy of that disclosure from the patient, or the patient's guardian or health care surrogate, except under the following conditions:

   a) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

   b) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

   c) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

   d) The licensee does not have a direct treatment relationship with the patient.

   BCE's Enforcement Unit conducts intake interview sessions with each licensee placed on probation to ensure they understand and will comply with the terms and conditions of their probation. Since this notification requirement became effective, BCE staff report consistent questions from probationers related to the exemptions for "unscheduled visits" and when "the licensee is not known to the patient until immediately prior to the start of the visit," possibly in an attempt to find a way around the patient notification requirement. In those two situations, patients may not have had the opportunity to independently research the licensee's background using BCE's license search system prior to the visit. The BCE writes that "These exemptions are not applicable to doctors of chiropractic and can be misused by licensees to avoid notifying patients of their probationary status."

   Recommendation and Proposed Statutory Change: The background paper recommended the removal of the exemptions, which is reflected in this bill.

Current Related Legislation. AB 2671 (Committee on Business and Professions), which is pending in the Senate, is the sunset bill for the California Board of Occupational Therapy.

AB 2684 (Committee on Business and Professions), which is pending in the Senate, is the sunset bill for the Board of Registered Nursing.

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

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

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

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

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

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

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

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

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 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1436 (Roth) – As Amended June 21, 2022

SENATE VOTE: 37-0

SUBJECT: Respiratory therapy

SUMMARY: Extends until January 1, 2027, the provisions establishing the Respiratory Care Board (Board) and makes additional technical changes and reforms in response to issues raised during the Board's sunset review oversight process.

EXISTING LAW:

1) Establishes the Board within the Department of Consumer Affairs to administer and enforce the Respiratory Care Practice Act (Act), subject to repeal on January 1, 2023. (Business and Professions Code (BPC) §§ 3700 *et seq.*)

2) Provides that the practice of respiratory care shall be performed under the supervision of a medical director in accordance with a prescription of a physician and surgeon or pursuant to respiratory care protocols. (BPC § 3703 (b))

3) Defines respiratory care practice as a health care profession employed under the supervision of a medical director in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions, as specified. (BPC §§ 3702, 3702.7)

4) Specifies activities that are not prohibited by the Respiratory Care Act, including:

    a) The performance of respiratory care that is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

    b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold themselves out to be a respiratory care practitioner licensed under the provisions of the Act.

    c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

    d) The performance of respiratory care in an emergency situation by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their specialty.

    e) Respiratory care services in case of an emergency, which includes an epidemic or public disaster.

f) Persons from engaging in cardiopulmonary research.

g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication.

h) The performance by a person employed by a home medical device retail facility or by a home health agency licensed by the State Department of Public Health of specific, limited, and basic respiratory care or respiratory care related services that have been authorized by the board. (BPC § 3765)

5) Requires any employer of a Respiratory Care Practitioner (RCP) to report to the Board the suspension or termination for cause; provides that the above required reporting shall not act as a waiver of confidentiality of medical records, and that the information reported or disclosed shall be kept confidential, except as specified, and shall not be subject to discovery in civil cases. (BPC § 3758 (a))

6) Defines "suspension of termination for cause" to mean suspension or termination from employment for any of the following reasons:

a) Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care.

b) Unlawful sale of controlled substances or other prescription items.

c) Patient neglect, physical harm to a patient, or sexual contact with a patient.

d) Falsification of medical records.

e) Gross incompetence or negligence.

f) Theft from patients, other employees, or the employer.

(BPC § 3758 (b))

7) Provides that failure of an employer to make a required is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation. (BPC § 3758 (c))

THIS BILL:

1) Extends the sunset date of the Board until January 1, 2027.

2) Adds additional categories, such as "leave, resignation, suspension, or termination," for a RCP employer to the list of mandated reporting requirements that would be subject to mandatory reporting for violations already defined in law.

3) Allows licensed vocational nurses who have received training satisfactory to their employer, and when directed by a physician and surgeon, to perform basic respiratory tasks and services that do not require a respiratory assessment and only require manual, technical skills, or data collection.

4) Clarifies who may perform respiratory care services during a declared state of emergency.

FISCAL EFFECT: According to the Senate Appropriations Committee, this measure would impose an annual cost of approximately $3.98 million (Respiratory Care Fund) and 17.4 positions to support the continued operation of the Respiratory Care Board of California's licensing and enforcement activities.

COMMENTS:

Purpose. This measure is one of five sunset bills sponsored by the author. According to the Author, "this bill is necessary to make changes to the Board's improve oversight of respiratory care professionals (RCPs) and services."

Background.

In 1982, legislation was signed into law that allowed for the licensure of RCPs through the prior oversight of the Respiratory Care Examining Committee. In 1994, the Respiratory Care Examining Committee was changed to the Board. The Board is comprised of nine members, including four public members, four RCP members, and one physician and surgeon member. Each appointing authority— the governor, the Senate Rules Committee, and the Speaker of the Assembly— appoints three members. The Board's purpose is to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care (BPC § 3701). The Board is also tasked to ensure protection of the public shall be the highest priority in exercising its licensing, regulatory, and disciplinary functions. According to current law, whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

The Board's current mission statement is as follows: *"To protect and serve consumers by licensing qualified respiratory care practitioners, enforcing the provisions of the Respiratory Care Practice Act, expanding the availability of respiratory care services, increasing public awareness of the profession, and supporting the development and education of respiratory care practitioners."*

Along with physicians and nurses, RCPs work at patients' bedsides. Under the direction of a medical director, RCPs specialize in evaluating and treating patients with breathing difficulties as a result of heart, lung, and other disorders, as well as providing diagnostic, educational, and rehabilitation services. RCPs are present and offer care in practically every health care setting. RCPs provide services to a wide range of patients from premature infants to older adults. RCPs provide treatments for patients who have breathing difficulties, care for those who are dependent upon life support and unable to breathe on their own. RCPs treat patients with acute and chronic diseases, which include chronic obstructive pulmonary disease (COPD), trauma victims, and surgery patients.

Common conditions of RCP patients include individuals suffering from:

- Asthma Bronchitis
- Heart attack

- Cystic fibrosis
- Emphysema Stroke
- Lung cancer
- Premature infants and infants with birth defects
- High-risk influenza/COVID-19

The following issues were raised in the Board's most recent sunset review background paper and are addressed through language in this bill.

Issue 6: Mandatory Reporting Requirement. RCPs are not reported by facilities in circumstances when they were advised to resign instead of face termination. Facilities claim they are not required to report RCPs who were employed by registries. As a result, facilities using registry employees notify the registry that they do not want the employee assigned to their facility ever again. And while in most instances the registry is made aware of the reason the facility refuses assignments by certain RCPs, the registry, nor the facility, is obligated to inform the Board, even in those cases of serious violations as outlined in BPC § 3758. As a result of this gap within mandatory reporting, RCPs are able to continue to work without discipline.

This bill addresses reporting concerns by updating the reporting requirements to ensure all violations are reported and shared with appropriate agencies. As amended, the bill would require the Respiratory Care Board of California to share all complaints and information related to investigations involving a person licensed under the Vocational Nursing Practice Act with the Board of Vocational Nursing and Psychiatric Technicians of the State of California. Additionally, this measure updates required reporting requirements for a RCP by including "leave" and "resignation" to the list of mandated reporting requirements for a RCP employer.

Issue 5: Ventilator Care. Since May 1, 1996, LVNs and RCPs have struggled to reach an understanding regarding the appropriate scope of practice for administering respiratory services for managing patients. The Board contends LVNs should not be administering any ventilator services. The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) guidance to licensees permitting LVNs to adjust ventilator settings. The Board has maintained this policy was not a formal regulation and does not have the authority to allow this practice. The Board has made numerous requests throughout the last 25 years to rescind the policy, but BVNPT has failed to revoke any policy regarding respiratory services and continues to take the position that LVNs should be able to adjust ventilators. The Board provided five examples adverse incident reports in the past 25 years resulting in death or serious harm from LVNs performing ventilator services. In 2019, the two boards attempted to resolve this issue and worked collaboratively. From that work, the two board's issued a joint statement clarifying RCP and LVN roles relating to patient care on mechanical ventilators. After reactions and comments from a variety of facilities and organizations, there was momentum to further clarify its respective regulations regarding patient care. The boards hosted a stakeholder meeting to further discuss the joint statement and concerns grew about expanding places LVNs can conduct ventilator services to home based settings as well. According to the Board, BVNPT backed out of the agreement and began exploring CE to train LVNs to perform ventilator services in more setting. The Board has offered legislative options to clarify scopes of practice, but has not come to an agreement with BVNPT on a solution moving forward.

This bill addresses these concerns related to respiratory care tasks and services to be performed by properly trained licensed vocational nurse. Specifically, the bill as amended, includes provisions that respiratory care and services may be provided if a licensed vocational nurse completes, before January 1, 2025, patient-specific training satisfactory to their employer. Additionally, the bill requires that on or after January 1, 2025, the licensed vocational nurse has completed patient-specific training by the employer in accordance with guidelines that shall be promulgated by the board no later than January 1, 2025, in collaboration with the BVNPT.

Issue 9: COVID-19 Impacts & Clarifications. The Governor's response to the COVID-19 pandemic resulted in actions to ensure Californians received access to care during a public health crisis. These actions included Governor Newsom issuing numerous executive orders that directly impacted the state's healthcare workforce. On March 4, 2020, the Governor issued a State of Emergency declaration which immediately authorized the Director of the Emergency Medical Services Authority (EMSA) to authorize licensed healthcare professionals from outside of California to practice in California without a California license. Licensed professionals are authorized to practice in California during a state of emergency declaration as long as they are licensed and have been deployed by the Director of EMSA. On March 30, 2020, the Governor issued Executive Order N-39-20, which authorized the Director of the Department of Consumer Affairs (DCA) to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic – including rules relating to examination, education, experience, and training. The waivers impacted the Board's work and practicing RCPs. In their sunset report, the Board states that they were immediately concerned about an insufficient number of RCPs. The Board identified the need to authorize other health professionals, students, or groups to perform respiratory services during an emergency, including instances of an endemic or public disaster.

The author addresses these concerns by clarifying and expanding respiratory care services permitted during a declared State of Emergency to include temporary performance by other licensed healthcare personnel and students.

Prior Related Legislation.

SB 1474 (Committee on Business, Professions and Economic Development, Chapter 312, Statutes of 2021) Extended by one year the sunset date of the Board from January 1, 2022 to January 1, 2023.

SB 1003 (Roth, Chapter 180, Statutes of 2018) Prohibited any state agency other than the Board from defining or interpreting the practice of respiratory care for those licensed pursuant to the Act, or developing standardized procedures or protocols pursuant to the Act, unless authorized by the Act or specifically required by state or federal statute.

AB 1972 (Jones, Chapter 179, Statues of 2014) Required applicants to pass the advanced level of the national competency exam to qualify for RCP licensure

SB 1955 (Figueroa, Chapter 1150, Statutes of 2002) Mandated a formal ten month respiratory care educational program.

ARGUMENTS IN SUPPORT:

The **California Society for Respiratory Care (CSRC)** writes in support of the bill: "Respiratory Care Practitioners (RCPs), also known as Respiratory Therapists, work with vulnerable patient populations, from infants to the elderly. RCPs have specialized training in cardiology and pulmonology. They work with patients in intensive care units, operating rooms, laboratories, outpatient clinics, sleep clinics, and home-health environments - even in helicopters transporting critically ill patients – managing the patient's airway. Most recently, RCPs work on the front lines battling COVID 19 for patients struggling to breathe."

The Respiratory Care Board (Board) supports the bill and states, "The Respiratory Care Board (Board) has reviewed SB 1436 and has taken a support position. The bill aims to accomplish several items. Specifically, it 1) extends the Board's inoperative date to January 1, 2027, 2) adds additional categories or types of employment that would be subject to mandatory reporting for violations already defined in law, 3) ensures consumers continue to have access to respiratory care in all settings, while minimizing the risks in the quality of respiratory care, and 4) authorizes the Board to provide a temporary, rapid response beneficial to consumers during a State of Emergency. The Board licenses respiratory care practitioners (RCPs) and is mandated to protect and serve consumers by administering and enforcing the Respiratory Care Practice Act in the interest of the safe practice of respiratory care. In support of its mandate, the Board continually strives to increase consumer protection in the most efficient manner through its licensing and enforcement programs. SB 1436 will allow the Board to continue to protect and serve California's respiratory care consumers."

REGISTERED SUPPORT:

California Society for Respiratory Care
Respiratory Care Board of California

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1437 (Roth) – As Amended April 19, 2022

SENATE VOTE: 37-0

SUBJECT: Interior designers

SUMMARY: This bill extends the sunset date for the California Council for Interior Design Certification (CCIDC) by four years, until January 1, 2027, and deletes an obsolete reference in the Interior Design Practice Act (Act).

EXISTING LAW:

1) Defines "Certified interior designer" (CID) to mean a person who prepares and submits nonstructural or nonseismic plans consistent with Sections 5805 and 5538 to local building departments that are of sufficient complexity so as to require the skills of a licensed contractor to implement them, and who engages in programming, planning, designing, and documenting the construction and installation of nonstructural or nonseismic elements, finishes and furnishings within the interior spaces of a building, and has demonstrated by means of education, experience and examination, the competency to protect and enhance the health, safety, and welfare of the public. (Business and Professions Code (BPC) § 5800(a))

2) Defines an "interior design organization" to mean a nonprofit organization of CIDs whose governing board shall include representatives of the public as specified. (BPC § 5800(b))

3) Authorizes a CID to obtain a stamp from an interior design organization that includes a number that uniquely identifies and bears the name of that CID. The stamp certifies that the interior designer has provided the interior design organization with evidence of passage of an interior design examination approved by that interior design organization and met education and/or experience requirements, as specified. (BPC § 5801)

4) Requires all drawings, specifications, or documents prepared for submission to any government regulatory agency by any CID to be affixed by a stamp, as specified, and signed by that CID. (BPC § 5802(a))

5) Provides that it is an unfair business practice for any CID or any other person to advertise or put out any sign or card or other device, including any stamp or seal, or to represent to the public through any print or electronic media, that they are "state certified" to practice interior design, or to use any other words or symbols that represent to the public that they are so certified. (BPC § 5804)

6) States that nothing precludes CIDs or any other person from submitting interior design plans to local building officials, except as specified. In exercising discretion with respect to the acceptance of interior design plans, the local building official shall reference the California Building Standards Code. (BPC § 5805)

7) States that nothings prohibits interior design or interior decorator services by any person or retail activity. (BPC § 5806)

8) Requires a CID to use a written contract when contracting to provide interior design services to a client, except as specified. The written contract shall be executed by the CID and the client, or their representative, prior to the CID commencing work. The written contract shall specified information. (BPC § 5807)

9) Requires an interior design organization issuing stamps, as authorized, to provide to the Joint Committee on Boards, Commissions, and Consumer Protection by September 1, 2008, a report that reviews and assesses the costs and benefits associated with the California Code and Regulations Examination and explores feasible alternatives to that examination. (BPC § 58011)

10) States that it is an unfair business practice for any person to represent or hold himself or herself out as, or to use the title "certified interior designer" or any other term, such as "licensed," "registered," or "CID," that implies or suggests that the person is certified as an interior designer when they do not hold a valid certification. . (BPC § 5812)

11) Sunsets the aforementioned provisions on January 1, 2023. (BPC § 5810(b))

12) States that the Architect Practice Act does not prohibit any person from furnishing either alone, or with contractors, labor and materials, with or without plans, drawings, specifications, instruments of service, or other data covering such labor and materials to be used for any of the following:

    a) Nonstructural or non-seismic storefronts, interior alterations or additions, fixtures, cabinetwork, furniture, or other appliances or equipment.

    b) Nonstructural or non-seismic work necessary to provide for their installation.

    c) Nonstructural or non-seismic alterations or additions to any building necessary to or attendant upon the installation of those storefronts, interior alterations or additions, fixtures, cabinetwork, furniture, appliances, or equipment, provided those alterations do not change or affect the structural system or safety of the building.

    (BPC § 5588)

THIS BILL:

1) Extends the sunset date for the CCIDC to January 1, 2027.

2) Repeals an obsolete requirement for the CCIDC to provide to the Joint Committee on Boards, Commissions, and Consumer Protection by September 1, 2008, a report that reviews and assesses the costs and benefits associated with the California Code and Regulations Examination and explores feasible alternatives to that examination.

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

COMMENTS:

Purpose. This bill is one of five sunset bills sponsored by the author. According to the Author, "this bill is necessary to make changes to the California Council on Interior Design Certification's (CCIDC) operations in order to improve oversight of oversight of certified interior designers."

Background.

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

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

History and Function of the California Council on Interior Design Certification (CCIDC). The CCIDC was created in 1991 as a result of SB 153(Craven), Chapter 396, Statues of 1990, which established both a formal certification program and title protection for CIDs. The legislation specified the education and examination requirements for certification. In addition, the enabling legislation required the formation of a non-profit entity for the role of oversight authority, and CCIDC formed as that regulatory body in 1991. The legislation that initially established the Sunset Review process in California, SB 2036 (McCorquodale), Chapter 908, Statutes of 1994, established an original sunset date for the CID law for July 1, 1996. In 1996, the law was allowed to sunset, and SB 435 (McPherson), Chapter 351, Statutes of 1997, reinstated the sunset date in an urgency measure for one year, and the law has been extended periodically by legislation since that time.

The CCIDC's last sunset extension legislation was SB 547, (Hill) Chapter 429, Statutes of 2017, where the CCIDC received a four-year sunset extension. The current law provides for a voluntary system whereby an interior designer may become certified and obtain a "stamp" from an interior design organization (CCIDC) by demonstrating competency through education, experience, and examination. The current CCIDC mission statement, as stated in its December 2021, Sunset Review Report is as follows: To establish and implement professional standards and educational requirements, educate the public, and facilitate interior design professional's compliance with our standards and code of ethics in order to provide for the protection, health, safety and welfare of the public by administering the Certified Interior Designers Title Act.

There are approximately 2,080 interior design certificate holders. According to information provided in the CCIDC's 2021 Sunset Review Report, the number of certificated interior designers has been steadily decreasing. The CCIDC attributes this decline to economic factors, aging workforce, and employment changes stemming from the pandemic. According to information provided by the Bureau of Labor Statistics, in May of 2020, there are approximately 9,480 interior designers in California, the majority of which are not certified. There are currently 44 programs offering interior design education in California, many of which are part of the California State University and the California Community College systems.

The following are unresolved issues pertaining to the CCIDC:

1) *Stamp acceptance.* The CCIDC and CIDs assert that building departments in large metropolitan cities such as Los Angeles, San Francisco, San Jose, and Sacramento regularly deny CIDs the ability to submit non-structural/non-seismic interior design plans for permit approval and acquisition purposes.

2) *Commercial designation.* In 2017, the CCIDC voted to create a new commercial designation for CIDs who wish to use that particular designation when submitting plans for approval or providing services. The goal of this designation is likely to make it easier on plan reviewers to acknowledge the certification of the CID and approve plans (as authorized) without the requirement to obtain additional sign-offs from an architect or engineer as long as the project specifications meet the current exemptions to any licensure or practice requirements for architects or engineers. The CCIDC notes that this designation is not a guarantee that plans will be approved or accepted, and is only one-step to aid CIDs in obtaining the appropriate plan approval. In order to obtain the commercial designation, the CID must pass the IDEX California® Examination and provide proof of passing five specified International Code Council Courses within six months of their application date. Additionally, CID's who have received the commercial designation must complete 10 hours of continuing education every two years, with five of those hours in California-code specific courses. As of March 2022, the CCIDC reports that nearly 200 candidates have successfully obtained the commercial designation. However, the commercial designation is not codified in statute. Moreover, there is some disagreement among CCIDC and commercial interior designers about what the minimum qualifications should be to obtain the commercial designation, with the industry professionals advocating for more stringent education, training, and examination requirements.

For more information about the CCIDC, please refer to the background paper for the CCIDC's March 10, 2022, Joint Sunset Review Oversight Hearing, which is available on the Assembly Business and Professions Committee's website: https://abp.assembly.ca.gov/.

Current Related Legislation.

AB 2671 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the California Board of Occupational Therapy. *AB 2671 is pending in the Senate Business, Professions, and Economic Development Committee.*

AB 2684 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the Board of Registered Nursing. *AB 2684 is pending in the Senate Business, Professions, and Economic Development Committee.*

AB 2685 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the Naturopathic Medicine Committee. *AB 2685 is pending in the Senate Business, Professions, and Economic Development Committee.*

AB 2686 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board.

AB 2687 (Assembly Business and Professions Committee) of 2022 is the sunset review vehicle for the California Massage Therapy Council. *AB 2687 is pending in the Senate Business, Professions, and Economic Development Committee.*

SB 1433 (Roth) of 2022 is the sunset review vehicle for the Bureau of Private Postsecondary Education. *SB 1433 is pending in this committee.*

SB 1434 (Roth) of 2022 is the sunset review vehicle for the State Board of Chiropractic Examiners. *SB 1434 is pending in this committee.*

SB 1436 (Roth) of 2022 if the sunset review vehicle for the Respiratory Care Board. *SB 1436 is pending in this committee.*

SB 1438 (Roth) of 2022 the sunset review vehicle for the Physical Therapy Board of California. *SB 1438 is pending in this committee.*

Prior Related Legislation.

SB 1474 (Senate Business, Professions and Economic Development Committee), Chapter 312, Statutes of 2020, in part, extended the sunset date for the CCIDC by one year.

SB 547 (Hill), Chapter 429, Statutes of 2017, in part, extended the sunset date for the CCIDC to January 1, 2022.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1438 (Roth) – As Amended April 19, 2022

SENATE VOTE: 39-0

SUBJECT: Physical Therapy Board of California

SUMMARY: Extends the repeal dates for the Physical Therapy Board of California (PTBC) by four years to January 1, 2027.

EXISTING LAW:

1) Regulates the practice of physical therapy under the Physical Therapy Practice Act, which establishes the licensing requirements for physical therapists (PTs) and establishes PTBC under the jurisdiction of the Department of Consumer Affairs (DCA) until January 1, 2023, to administer and enforce the act. (Business and Professions Code (BPC § 2600 et seq.)

2) Authorizes the PTBC to employ an executive officer and investigators, legal counsel, PT consultants, and other assistance as it may deem necessary until January 1, 2023. (BPC § 2607.5)

3) Declares that protection of the public is the highest priority for the PTBC in exercising its licensing, regulatory, and disciplinary functions, as specified. (BPC § 2602.1)

4) Prohibits a physical therapist shall not continue treating the patient beyond 45 calendar days or 12 visits, whichever occurs first, without receiving, from a person holding a physician and surgeon's certificate from the Medical Board of California or the Osteopathic Medical Board of California or from a person holding a certificate to practice podiatric medicine from the California Board of Podiatric Medicine and acting within his or her scope of practice, a dated signature on the physical therapist's plan of care indicating approval of the physical therapist's plan of care. Approval of the physical therapist's plan of care shall include an in-person patient examination and evaluation of the patient's condition and, if indicated, testing by the physician and surgeon or podiatrist. 2620.1(a)(4)

5) Defines "telehealth" as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care. (BPC §2290.5(a)(6))

FISCAL EFFECT: According to the Senate Committee on Appropriations, annual cost of approximately $6.91 million (Physical Therapy Fund) and 27.4 positions to support the continued operation of the Physical Therapy Board of California's licensing and enforcement activities.

COMMENTS:

Purpose. This bill is one of five sunset bills sponsored by the author. According to the author, "this bill is necessary to make changes to the Physical Therapy Act and PTBC operations in order to improve oversight of physical therapy professionals."

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

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

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

PTBC. The PTBC is a licensing entity within the DCA and is responsible for administering and enforcing the Physical Therapy Practice Act. The act establishes the PTBC and outlines the regulatory framework for the practice, licensing, education and discipline of PTs and physical therapy assistants (PTAs). The purpose of the PTBC is to protect consumers from incompetent, unprofessional, and fraudulent practice through regulation of practitioners. To that end, the act makes it unlawful to practice, offer to practice, physical therapy for compensation, or claim to be a physical therapist unless licensed by the PTBC. The PTBC regulates approximately 28,000 PTs and 7,800 PTAs.

SUNSET ISSUES:

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

1) *Issue # 11: Continuation of the PTBC*. The staff background paper noted that "The welfare of consumers is best protected when there is a well-regulated physical therapy profession. Despite some of the issues impacting the PTBC, including but not limited to budget, staffing levels, COVID-19 clean-up, and enforcement timeline issues, the PTBC should be continued."

   Recommendation and Proposed Statutory Change. The Background Paper suggested that physical therapists, physical therapist assistants, and unlicensed physical therapy aides should

continue to be regulated by PTBC and PTBC should be reviewed again on a future date to be determined. As a result, this bill extends various sunset dates by four years.

2) *Issue #9*: *Impacts of The COVID-19 Pandemic*. In response to the COVID-19 pandemic, the Governor issued Executive Order N-39-20 authorizing the Director of DCA to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic, including rules relating to examination, education, experience, and training.

   One of the waivers impacting the PTBC and PT licensees was an exception to the prohibition against a PT from continuing to treat a patient beyond 45 calendar days or 12 visits without receiving approval of the physical therapist's plan of care from a physician and surgeon or podiatrist. Current law requires the approval to include an in-person patient examination and evaluation of the patient's condition. The DCA waiver *DCA-20-09 Examination Requirement for Continued Physical Therapy Treatment* temporarily waived the requirement for physician and surgeon or podiatrist to conduct an in-person patient examination and evaluation as long as the examination and evaluation is performed via appropriate electronic means.

   The waiver had been in place for the duration of the pandemic and terminated on December 31, 2021. The PTBC states in its sunset report that it has not identified any consumer issues or vulnerabilities with respect to the waiver. It also reports that permitting patient examination via electronic means would allow for physical therapy services to continue past 45 days or 12 visits with the appropriate sign-off from an allowable healthcare provider, which it believes would facilitate access to care for physical therapy consumers while maintaining appropriate consumer protection.

   Staff Recommendation: PTBC should update the Committees on the impact to licensees and patients stemming from the pandemic. The Board should discuss the impact of waivers on patient safety and note any statutory changes that are warranted as a result of the pandemic.

Current Related Legislation. AB 2671 (Committee on Business and Professions), which is pending in the Senate, is the sunset bill for the California Board of Occupational Therapy.

AB 2684 (Committee on Business and Professions), which is pending in the Senate, is the sunset bill for the Board of Registered Nursing.

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

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

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

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

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

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

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

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

ARGUMENTS IN SUPPORT:

The *Physical Therapy Board of California* writes in support:

> The PTBC appreciates the Committees consideration of the issues identified in PTBCs Sunset Review Report during the Sunset process. The PTBC respectfully asks the Committees to reconsider raising the statutory fee caps as a proactive measure; this is not a request to increase fees. Based on a recent fund condition provided by the DCA, Budget Office, the PTBC's fund has a reserve level of 10.2 months (FY 2020-21); however, based on its projected decrease in the fund in FY 2025-26, the PTBC fund may face insolvency. In the event that the PTBC is presented with unanticipated costs (e.g., litigation, enforcement costs, contract issues) the PTBC may be limited in its ability to act and may need to seek emergency legislation as a remedy, as the current fees are set at the statutory caps and fees cannot be raised. Therefore, the PTBC believes raising the statutory fee caps as part of its Sunrise Legislation is the most fiscally prudent alternative.
>
> In addition, due to the COVID-19 pandemic, the Governor Issued Executive Order N-40-20 on March 30, 2020, and DCA was granted the authority to provide waivers during the state of emergency. The DCA waiver DCA-20-09 Examination Requirement for Continued Physical Therapy Treatment temporarily waived the requirement for a licensed physician and surgeon or podiatrist, as applicable, to conduct an in-person patient examination and evaluation as required by Business and Professions Code section 2620.1, subdivision (a)(4), subject to the condition that the examination and evaluation must be performed via appropriate electronic means. This waiver has been in place for the duration of the pandemic and terminated on March 31, 2022. The PTBC believes that the proposed legislative authority would facilitate greater access to care for physical therapy consumers while maintaining appropriate consumer protection. The PTBC has not identified any consumer issues or vulnerabilities. The PTBC respectfully asks the Committees to consider amending BPC section 2620.1 of the Physical Therapy Practice Act to eliminate the requirement that the patient examination and evaluation must be conducted in person by a physician or surgeon.

The *California Physical Therapy Association (CPTA)* writes in support:

> As was demonstrated during the review process, the [PTBC] does an excellent and efficient job regulating the profession and providing appropriate consumer protection in the state consistent with the defined statutory scheme and resources collected through licensing fees. CPTA finds the PTBC to be a fair arbiter of the regulatory process.
>
> We do, however, believe the overall statutory scheme needs to be modernized to reflect the current education and training of physical therapists. While today's statutes require a master's degree for licensure, the education and training requirements have moved forward at the national level since 2015 as ALL programs leading to a degree in Physical Therapy must result in a Doctorate in Physical Therapy (DPT) to comply with federal accreditation standards.
>
> The education and training required within the DPT prepare physical therapy students to be able to independently diagnose and treat movement disorders based upon the most updated research. This includes modalities not currently recognized under California, including the use of Dry Needling (authorized specifically in 36 states and allowed by silence in the law in eight others), independent practice without the requirement for physician intervention as is restricted under current law after 45 days or 12 visits, and adapted use of physical therapy in the rehabilitation of animals, among others.
>
> At a minimum, we believe an allowance should be made for physicians to review and sign off on a patient's plan-of-care after 45 days or 12 visits should be allowed to be performed through electronic means, given the use of internet treatment protocols and widespread allowance/use of this during the COVID-19 pandemic under the state's emergency rules. This has proven to be an efficient tool during the pandemic and should be made permanent if such a requirement is maintained under California law.

The *Animal Physical Therapy Coalition (APTC)* would support this bill if it is amended "to establish a framework to legislatively resolve the ongoing issue of animal physical therapy by licensed physical therapists (PTs) with advanced training. This would address Issue #6 in the Joint Sunset Review Oversight Hearing Background Paper on the PTBC: Should PTBC provide a special license for physical therapists to practice physical therapy on animals?"

According to the APTC, "The issue of animal physical therapy (APT) by a PT with advanced training has been discussed and debated for nearly 15 years… APTC asks [this bill] be amended to…authorize a [PT] with advanced certification in Animal Physical Therapy to provide animal physical rehabilitation under the degree of supervision to be determined by the veterinarian who has established a veterinarian-client-patient relationship, on a veterinary premises or an Animal Physical Rehabilitation premises, or a range setting."

ARGUMENTS IN OPPOSITION:

None on file

AMENDMENTS:

Telehealth Examinations. To incorporate the PTBC's request to codify the DCA waiver relating to in-person examinations for continuing physical therapy treatment initiated directly with a PT, but maintaining the discretion of the physician and surgeon or podiatrist, the bill should be amended as follows:

On page 24 of the bill, after line 24, insert:

SEC. 3. *Section 2620.1 of the Business and Professions Code is amended to read:*

2620.1. (a) In addition to receiving those services authorized by Section 2620, a person may initiate physical therapy treatment directly from a licensed physical therapist if the treatment is within the scope of practice of physical therapists, as defined in Section 2620, and all of the following conditions are met:

(1) If, at any time, the physical therapist has reason to believe that the patient has signs or symptoms of a condition that requires treatment beyond the scope of practice of a physical therapist or the patient is not progressing toward documented treatment goals as demonstrated by objective, measurable, or functional improvement, the physical therapist shall refer the patient to a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California or to a person licensed to practice dentistry, podiatric medicine, or chiropractic.

(2) The physical therapist shall comply with Section 2633, and shall disclose to the patient any financial interest he or she has in treating the patient and, if working in a physical therapy corporation, shall comply with Article 6 (commencing with Section 650) of Chapter 1.

(3) With the patient's written authorization, the physical therapist shall notify the patient's physician and surgeon, if any, that the physical therapist is treating the patient.

(4) The physical therapist shall not continue treating the patient beyond 45 calendar days or 12 visits, whichever occurs first, without receiving, from a person holding a physician and surgeon's certificate from the Medical Board of California or the Osteopathic Medical Board of California or from a person holding a certificate to practice podiatric medicine from the California Board of Podiatric Medicine and acting within ~~his or her~~ *their* scope of practice, a dated signature on the physical therapist's plan of care indicating approval of the physical therapist's plan of care. Approval of the physical therapist's plan of care shall include an in-person *or telehealth* patient examination and evaluation of the patient's~~ condition~~ *condition, as determined by the physician and surgeon or podiatrist,* and, if indicated, testing by the physician and surgeon or podiatrist.

(b) The conditions in paragraph (4) of subdivision (a) do not apply to a physical therapist under either of the following circumstances:

(1) When he or she is only providing wellness physical therapy services to a patient as described in subdivision (a) of Section 2620.

(2) Pursuant to Section 56363 of the Education Code or Section 7572 of the Government Code, when he or she is providing physical therapy services as part of an individualized family service plan or an individualized education plan pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the individual receiving those services does not have a medical diagnosis.

(c) (1) This section does not expand or modify the scope of practice for physical therapists set forth in Section 2620, including the prohibition on a physical therapist diagnosing a disease.

(2) This section does not restrict or alter the scope of practice of any other health care professional.

(d) Nothing in this section shall be construed to require a health care service plan, insurer, workers' compensation insurance plan, employer, or state program to provide coverage for direct access to treatment by a physical therapist.

(e) When a person initiates physical therapy treatment services directly, pursuant to this section, the physical therapist shall not perform physical therapy treatment services without first providing the following notice to the patient, orally and in writing, in at least 14-point type and signed by the patient:

"Direct Physical Therapy Treatment Services

You are receiving direct physical therapy treatment services from an individual who is a physical therapist licensed by the Physical Therapy Board of California.

Under California law, you may continue to receive direct physical therapy treatment services for a period of up to 45 calendar days or 12 visits, whichever occurs first, after which time a physical therapist may continue providing you with physical therapy treatment services only after receiving, from a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California, or from a person holding a certificate to practice podiatric medicine from the California Board of Podiatric Medicine and acting within ~~his or her~~ *their* scope of practice, a dated signature on the physical therapist's plan of care indicating approval of the physical therapist's plan of care and that an in-person *or telehealth* patient examination and evaluation was conducted by the physician and surgeon or podiatrist.

Patient's Signature/Date"

REGISTERED SUPPORT:

California Physical Therapy Association
Physical Therapy Board of California

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1440 (Roth) – As Introduced February 18, 2022

SENATE VOTE: 33-0

SUBJECT: Licensed Midwifery Practice Act of 1993: complaints

SUMMARY: Provides that if the Medical Board of California (MBC) does not receive specified information about a quality of care complaint against a licensed midwife (LM) within 10 business days of requesting it, the complaint may be reviewed by medical experts and referred for investigation without that information.

EXISTING LAW:

1) Enacts the Medical Practice Act, which provides for the licensure and regulation of physicians and surgeons, LMs, medical assistants, registered polysomnographic trainees, registered polysomnographic technicians, registered polysomnographic technologists, research psychoanalysts, and student research psychoanalysts. (Business and Professions Code (BPC) §§ 2000 *et seq.*)

2) Establishes the MBC, a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members, including 7 public members and 8 physicians, subject to repeal on January 1, 2024. (BPC § 2001)

3) Provides that protection of the public shall be the highest priority for the MBC in exercising its licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2001.1)

4) Entrusts the MBC with responsibility for all of the following:

    a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

    b) The administration and hearing of disciplinary actions.

    c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

    d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

    e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

    f) Approving undergraduate and graduate medical education programs.

g) Approving clinical clerkship and special programs and hospitals.

h) Issuing licenses and certificates under the board's jurisdiction.

i) Administering the board's continuing medical education program.

5) Authorizes the MBC to appoint panels of at least four of its members for the purpose of fulfilling its disciplinary obligations, and requires that a majority of the panel members be physicians. (BPC § 2008)

6) With approval from the Director of Consumer Affairs, authorizes the MBC to employ an executive director as well as investigators, legal counsel, medical consultants, and other assistance, but provides that the Attorney General is legal counsel for the MBC in any judicial and administrative proceedings. (BPC § 2020)

7) Allows the MBC to select and contract with necessary medical consultants who are licensed physicians to assist it in its programs. (BPC § 2024)

8) Empowers the MBC to take action against persons guilty of violating the Medical Practice Act. (BPC § 2220)

9) Provides that if the MBC does not receive information it is required to request as part of a complaint against a physician and surgeon within 10 working days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without that information. (BPC § 2220.08)

10) Establishes the Licensed Midwifery Practice Act of 1993, which provides for the licensure and regulation of LMs by the MBC. (BPC §§ 2505 *et seq.*)

11) Authorizes an LM to attend cases of normal pregnancy and childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn. (BPC § 2507)

12) Requires the MBC to create and appoint a Midwifery Advisory Council consisting of licensees of the board and members of the public who have an interest in midwifery practice, including, but not limited to, home births, of which half must be LMs. (BPC § 2509)

13) Authorizes the MBC to suspend, revoke, or place on probation the license of a midwife for various offenses. (BPC § 2519)

14) Requires the MBC to request and review the following information regarding a complaint against an LM involving quality of care:

a) Relevant client records.

b) The statement or explanation of the care and treatment provided by the LM.

c) Any additional expert testimony or literature provided by the licensed midwife.

d) Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the midwifery standards of care.

(BPC § 2519.5)

THIS BILL:

1) Provides that if the MBC does not receive the information it is required to request regarding a quality of care complaint against an LM within 10 business days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without the information.

2) Expressly states that nothing in the law amended by the bill shall impede the board's ability to seek and obtain an interim suspension order or other emergency relief.

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

COMMENTS:

Purpose. This bill is sponsored by the author, who is Chair of the Senate Committee on Business, Professions, and Economic Development.

Background.

In addition to licensing physicians and surgeons, the MBC has jurisdiction over a number of other professionals, including LMs. An LM is authorized to attend cases of normal pregnancy and childbirth and to provide prenatal, intrapartum, and postpartum care. The MBC receives guidance on midwifery issues through a Midwifery Advisory Council. The MBC uses its disciplinary guidelines for LMs; however, complaints against LMs must be reviewed by medical experts who have education, training, and expertise in midwifery. The MBC has reported that disciplinary actions filed against LMs are small, proportionate with a small LM population of approximately 484 LMs currently licensed in California.

The Licensed Midwifery Practice Act contains many of the same provisions relating to investigation and enforcement procedure for complaints against LMs as it does for complaints against physicians and surgeons. Both Acts require the MBC to request and review all of the following:

1. Relevant patient records.

2. The statement or explanation of the care and treatment provided by the licensee.

3. Any additional expert testimony or literature provided by the licensee.

4. Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the standard of care.

However, the two Acts are currently unaligned in that the Medical Practice Act allows for a complaint to be reviewed by medical experts and referred for investigation without reviewing the above information if it has not been provided within 10 working days of the MBC's request. This language is not currently mirrored in the Licensed Midwifery Practice Act. The MBC has indicated that it is important to reconcile the two Acts to provide the MBC with the same authority to review and investigate complaints against LMs that it has for physicians and surgeons. Making this technical change will safeguard against unnecessary delays in taking action to protect the public following a complaint against an LM.

Current Related Legislation. AB 1767 (Boerner Horvath) would establish an independent Board of Licensed Midwives within the DCA. *This bill did not receive a hearing in this committee.*

Prior Related Legislation. SB 806 (Roth, Chapter 649, Statutes of 2021) extended the sunset date for the MBC and provided that complaints against LMs must be reviewed by medical experts who have education, training, and expertise in midwifery.

ARGUMENTS IN SUPPORT:

The **Medical Board of California** (MBC) supports this bill. According to the MBC, the bill "makes clear the Board's authority to refer quality-of-care complaints about a LM to the field for an investigation, even if we do not receive the information described in Business and Professions Code (BPC) section 2519.5. This conforms to the same process provided for comparable physician and surgeon complaints, as contained in BPC section 2220.08."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

Medical Board of California

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1441 (Roth) – As Introduced February 18, 2022

SENATE VOTE: 37-0

SUBJECT: Healing arts: nonconventional treatment

SUMMARY: Requires the Medical Board of California (MBC) and the Osteopathic Medical Board of California (OMBC) to annually review, and update as necessary, their disciplinary policies and procedures regarding emerging and innovative medical practices for licensed physicians and surgeons.

EXISTING LAW:

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

2) Establishes the MBC, a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members. (BPC § 2001)

3) Establishes the OMBC, which regulates osteopathic physicians and surgeons who possess effectively the same practice privileges and prescription authority as those regulated by MBC but with a training emphasis on diagnosis and treatment of patients through an integrated, whole-person approach. (BPC § 2450)

4) Provides that protection of the public shall be the highest priority for both the MBC and the OMBC in exercising their respective licensing, regulatory, and disciplinary functions, and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2001.1; § 2450.1)

5) Allows the MBC to select and contract with necessary medical consultants who are licensed physicians to assist it in its programs. (BPC § 2024)

6) Empowers the MBC to take action against persons guilty of violating the Medical Practice Act. (BPC § 2220)

7) Requires the Director of Consumer Affairs to appoint an independent enforcement monitor no later than March 1, 2022 to monitor the MBC's enforcement efforts, with specific concentration on the handling and processing of complaints and timely application of sanctions or discipline imposed on licensees and persons in order to protect the public. (BPC § 2220.01)

8) Clarifies that the MBC is the only licensing board that is authorized to investigate or commence disciplinary actions relating to the physicians it licenses. (BPC § 2220.5)

9) Requires the MBC to take action against any licensee who is charged with unprofessional conduct, which includes, but is not limited to, the following:

   a) Violating or aiding in the violation of the Medical Practice Act.

   b) Gross negligence.

   c) Repeated negligent acts.

   d) Incompetence.

   e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician.

   f) Any action or conduct that would have warranted the denial of a certificate.

   g) The failure by a physician, in the absence of good cause, to attend and participate in an investigatory interview by the MBC.

   (BPC § 2234)

10) Provides that a physician shall not be subject to discipline solely on the basis that the treatment or advice they rendered to a patient is alternative or complementary medicine if that treatment or advice was provided after informed consent and a good-faith prior examination; was provided after the physician provided the patient with information concerning conventional treatment; and the alternative complementary medicine did not cause a delay in, or discourage traditional diagnosis of, a condition of the patient, or cause death or serious bodily injury to the patient. (BPC § 2234.1)

11) Requires the MBC and the OMBC to establish specific policies regarding the integration of preventative approaches and holistic-based alternatives into the practice of medicine, and to review statutes and recommend modifications of law, when appropriate, in order to assure California consumers that the quality of medicine practiced in this state is the most advanced and innovative it can be both in terms of preserving the health of, as well as providing effective diagnosis and treatment of illness for, the residents of this state. (BPC § 2500)

12) Requires the MBC and the OMBC to establish disciplinary policies and procedures to reflect emerging and innovative medical practices for licensed physicians and surgeons, which must include consultation with interested parties and technical advisors, and shall assess the need for specific standards for informed consent and standards for investigations to assure competent review in cases involving the practice of any type of alternative medicine, including, but not limited to, the skills and training of investigators. (BPC § 2501)

THIS BILL:

1) Requires the MBC and the OMBC to annually review, and update as necessary, the disciplinary policies and procedures established to reflect emerging and innovative medical practices for licensed physicians and surgeons.

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

COMMENTS:

Purpose. This bill is sponsored by the author, who is Chair of the Senate Committee on Business, Professions, and Economic Development.

Background.

Physicians and surgeons in California are regulated by one of two entities: the Medical Board of California (MBC) or the Osteopathic Medical Board of California (OMBC). The MBC licenses and regulates about 153,000 physicians while the OMBC licenses and regulates slightly over 12,000. Despite receiving different forms of medical education and being overseen by separate boards, the essential scope of practice for these two categories of licensees are virtually identical.

During the 1999-2000 legislative session, SB 2100 (Vasconellos) was introduced with the goal of allowing health care practitioners to provide "nonconventional" treatments to their patients. Sponsored by organizations whose missions are to "protect freedom of access to alternative health care," the bill initially sought to protect healing arts licensees from discipline if they chose to apply "any health care remedy, procedure, or treatment not generally accepted by the majority of the health care practice community." After a series of amendments repeatedly narrowed and recast the bill's language in service of this purpose, the chaptered version of the bill simply stated that the MBC and the OMBC "acknowledge the significant interest of physicians and patients alike in integrating preventative approaches and holistic-based alternatives into the practice of medicine" and required for the establishment of disciplinary policies and procedures to reflect emerging and innovative medical practices for licensed physicians and surgeons.

SB 2100 required these policies and procedures to be adopted prior to July 1, 2002. The author believes that over the past twenty years since that date, there have continued to be new developments in the use and recommendation of alternative and complementary treatments. The intent of this bill is to require the MBC and the OMBC to revisit their policies and procedures to ensure that they continue to reflect the latest emerging and innovative medical practices available to patients and their health care providers.

Current Related Legislation. AB 2098 (Low) would provide that the dissemination of misinformation or disinformation related to COVID-19 by physicians and surgeons licensed by the MBC and the OMBC constitutes unprofessional conduct. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation. SB 806 (Roth, Chapter 649, Statutes of 2021) extended the sunset date for the MBC until January 1, 2023 and made numerous reforms to the Medical Practice Act.

SB 1691 (Vasconellos, Chapter 742, Statutes of 2004) provided that a physician and surgeon is not subject to discipline solely on the basis that the treatment or advice they rendered to a patient is alternative or complementary medicine.

SB 2100 (Vascanellos, Chapter 660, Statutes of 2000) required the MBC and the OMBC to establish disciplinary policies and procedures to reflect emerging and innovative medical practices for licensed physicians and surgeons.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1443 (Roth) – As Amended June 21, 2022

SENATE VOTE: 38-0

SUBJECT: The Department of Consumer Affairs

SUMMARY: Reschedules the sunset review dates for various boards under the Department of Consumer Affairs (DCA), establishes and adjusts fees charged to licensees under the Cemetery and Funeral Act, and makes other minor and technical changes.

EXISTING LAW:

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

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

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

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

5) Establishes the Dental Board of California (DBC) within the DCA to license and regulate dental professionals, subject to repeal on January 1, 2024. (BPC §§ 1600 *et seq.*)

6) Establishes the California Board of Accountancy (CBA) within the DCA to license and regulate certified public accountants, subject to repeal on January 1, 2024. (BPC §§ 5000 *et seq.*)

7) Establishes the California Architects Board (CAB) within the DCA to license and regulate professional architects, subject to repeal on January 1, 2024. (BPC §§ 5500 *et seq.*)

8) Establishes the Landscape Architects Technical Committee (LTAC) within the CAB to license and regulate landscape architects, subject to repeal on January 1, 2024. (BPC §§ 5615 *et seq.*)

9) Establishes the Board for Professional Engineers, Land Surveyors and Geologists (BPELSG) within the DCA to license and regulate those professions, subject to repeal on January 1, 2024. (BPC §§ 6700 *et seq.*)

10) Establishes the Contractors State License Board (CSLB) within the DCA to license and regulate licensed contractors, subject to repeal on January 1, 2024. (BPC §§ 7000 *et seq.*)

11) Establishes the Cemetery and Funeral Bureau (CFB) within the DCA to license and regulate cemeteries, crematories, funeral establishments, and related employees, subject to repeal on January 1, 2024. (BPC §§ 7600 *et seq.*)

12) Sets statutory maximums for the amount the CFB may charge in fees to its licensees through regulation. (BPC §§ 7725 – 7731.4)

13) Establishes the Court Reporters Board of California (CRB) within the DCA to license and regulate shorthand reporters, subject to repeal on January 1, 2024. (BPC §§ 8000 *et seq.*)

14) Establishes the Bureau of Security and Investigative Services (BSIS) within the DCA to license and regulate private patrol officers, private investigators, repossessors, locksmiths, alarm companies, and other professionals, subject to repeal on January 1, 2024. (BPC §§ 7500 *et seq.*)

15) Establishes the Bureau of Household Goods and Services (BHGS) within the DCA to license and regulate, among other professions, service contractors, subject to repeal on January 1, 2024. (BPC §§ 9800 *et seq.*)

16) Establishes the California State Athletic Commission (CSAC) within the DCA to license and regulate shorthand reporters, subject to repeal on January 1, 2024. (BPC §§ 18600 *et seq.*)

17) Establishes the Osteopathic Medical Board of California (OMBC), which regulates osteopathic physicians and surgeons. (BPC § 2450)

18) Provides that all osteopathic physician's and surgeon's certificates shall expire at 12 midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed on or before that day. (BPC § 2456.1)

THIS BILL:

1) Extends the scheduled sunset review for the DBC, CBA, CAB, LTAC, BPELSG, CSLB, CFB, CRB, BSIS, and CSAC by one year, subjecting those entities to statutory repeal on January 1, 2025.

2) Extends the applicability of provisions administered by BHGS to service contractors until January 1, 2025.

3) Replaces the CFB's authority to set fees through regulation, up to a statutory cap, with higher fee amounts specified in statute, and establishes additional fees.

4) Revises the expiration timing for an osteopathic physician's and surgeon's certificate so that the certificate would be issued for two years and expire at midnight on the last day of the month in which the license was issued.

FISCAL EFFECT: According to the Senate Committee on Appropriations, costs would be incurred to support the continued operation of each extended entity's licensing and enforcement activities, with approximate costs ranging in the millions per entity.

COMMENTS:

Purpose. This bill is sponsored by the author, who is Chair of the Senate Committee on Business, Professions, and Economic Development.

Background.

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

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

This bill would make adjustments to the repeal dates for a handful of boards and bureaus. The changes made by this bill are intended to rebalance the sunset review calendar following previous changes made in response to the COVID-19 pandemic. Corresponding changes to other repeal dates in statute that are intended to align with the sunset review schedule are additionally updated to reflect this rebalancing.

Cemetery and Funeral Bureau. The Cemetery and Funeral Program was formally established under the DCA in 1996 and subsequently became the CFB in 2000. Prior to that the creation of the bureau, cemetery and funeral issues were handled by two separate entities, the California State Board of Funeral Directors and Embalmers and the California State Cemetery Board, which were created in 1939 and 1949, respectively. The CFB licenses and regulates more than 13,000 licensees in 13 different licensing categories, including embalmers, cemetery managers, crematories, and funeral directors.

The CFB is primarily funded through the collection of fees charged to applicants and licensees. In 2015, the CFB's two separate special funds were consolidated into one special fund, the Cemetery and Funeral Fund. At the end of fiscal year 2017-18, the bureau's special fund had a reserve balance of 7.1 months. While there is no mandated reserve level, the general provisions of Section 128.5 provide that a reserve should not exceed 24 months. The DCA Budget Office has historically indicated that smaller programs should at least maintain an adequate reserve level of three to six months to provide for a reasonable contingency fund so that the entity has fiscal resources to absorb any unforeseen costs, such as a costly enforcement action or other unexpected client service costs. If it is anticipated that the reserve level will fall below the three month level, then a fee increase should generally be considered for the entity in the near future.

During the CFB's last sunset review in 2019, Issue #3 in the committee background paper posed the question as to whether the bureau's fee caps should be increased to address its potentially insufficient reserve levels. At that time, the CFB had engaged Capital Accounting Partners to prepare a detailed independent cost analysis of its fees, with a goal of ensuring that the bureau was fully accounting for all of its costs and recovering adequate revenues to be reimbursed for its expenses. The analysis provided a 10 year forward projection of fees based on an annual increase of 3 percent and recommended that the CFB work with the Legislature to set the cap at the 10 year projected maximum, then adjusting fees annually or at least biannually to maintain alignment of revenues and expenditures. However, no increase to the CFB's fee caps were included in its sunset review vehicle.

The CFB subsequently commissioned another fee study in 2021, again through Capital Accounting Partners, to audit the bureau's activities and calculate what revenue increases would be necessary to continue its operations. This fee study took into consideration the immediate impacts of the COVID-19 public health crisis and sought to ensure that costs were assigned in equitable, achievable, and defensible ways. The study noted that it had been over 25 years since the CFB had last increased its fees, and that the prior fee audit's recommendations had never been implemented.

According to the DCA, the CFB's special fund will be insolvent by the end of Fiscal Year 2022-23. While the fund is currently estimated to collect approximately $4 million in revenue annually, costs are anticipated to exceed $6 million. This represents an annual structural deficit of over $2 million. To address this deficit, the DCA worked with the CFB to propose new fee levels, which considered growth in the Consumer Price Index (CPI) over the time since the bureau's prior fee increase. The DCA has also recommended that new fees be established to fund workload associated with activities that the CFB has long been required to perform, thereby reducing the distribution of that workload's costs across other fee categories.

This bill is intended to address the CFB's current structural deficit by statutorily providing for higher fees than the bureau is currently authorized to charge through regulation. Both the need for these fee increases and the calculation used to determine what fee amounts are appropriate have been demonstrated through the completion of multiple fee studies and additional documentation provided by the DCA. While the increases are substantial given the length of time since the prior adjustment, it is arguably necessary to accept the additional revenues achieved through language in this bill in order to ensure that the CFB is able to continue its work on behalf of the public.

Prior Related Legislation. SB 607 (Min, Chapter 367, Statutes of 2021) also extended the sunset dates for various entities under the DCA to rebalance the review calendar following the COVID-19 pandemic.

ARGUMENTS IN SUPPORT:

The **California Dental Association** supports this bill, writing: "Continuing the existence of these boards, bureaus, and commissions to January 1, 2025 takes into account pandemic related challenges and will ensure that the necessary time and attention is given to the licensing and consumer safety issues addressed through the sunset process."

The **Board for Professional Engineers, Land Surveyors, and Geologists** also supports this bill, writing: "As it pertains to the Board, SB 1443 would provide a one-year extension of the Board's sunset review date, from 2024 to 2025. While this extension will allow the Legislature sufficient time to ensure a comprehensive review through the Sunset Review Process, it will also allow the Board to provide a more complete picture of our new online licensing management system, BPELSG Connect, which just recently launched. This new system allows applicants to apply online, licensees to process their renewals online, and enforcement complaints to be received and processed online. The additional year will enable the Board to have sufficient data to provide a detailed analysis of the success of BPELSG Connect, as well as any recommendations to ensure its continued success."

ARGUMENTS IN OPPOSITION:

The **Cemetery and Mortuary Association of California** (CMAC) and the **California Funeral Directors Association** (CFDA) write jointly in opposition to this bill unless amended to address their concerns with recently added language relating to fees charged by the CFB to its licensees. The CMAC and CFDA writes: "As engaged stakeholders who have worked successfully over the years to develop effective approaches that have been adopted to address the funding needs of the Cemetery and Funeral Bureau, we are concerned that our repeated requests with the Bureau for a meaningful dialogue on the current funding situation have been ignored." The letter goes on to argue that "the Legislature can take action to address the funding shortfall that the Bureau states will occur on July 1, 2023 and still provide an opportunity for dialogue that will develop long-term funding approaches."

REGISTERED SUPPORT:

Board for Professional Engineers, Land Surveyors, and Geologists
California Board of Accountancy
California Council of the American Society of Landscape Architects
California Dental Association

REGISTERED OPPOSITION:

California Funeral Directors Association
Cemetery and Mortuary Association of California

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1495 (Committee on Business, Professions and Economic Development) – As Amended June 21, 2022

SENATE VOTE: 39-0

SUBJECT: Professions and vocations

SUMMARY: Makes numerous technical and clarifying provisions related to programs within the Department of Consumer Affairs (DCA) and deletes an obsolete cross reference under the Division of Weights and Measures in the Business and Professions Code (BPC).

EXISTING LAW:

1) Provides for the licensing and regulation of various professions and businesses by the 26 boards, 8 bureaus, 2 committees, 2 programs, and 1 commission within DCA under various licensing acts within the Business and Professions Code (BPC).

2) Establishes the Dental Hygiene Board (DHB) under the jurisdiction of the DCA to license and regulate dental hygienists and registered dental hygienists in extended functions, and requires the DHB to require, as a condition of license renewal, that licensees submit assurances satisfactory to the DHB that they will, during the succeeding two-year period inform themselves of the developments in the practice of dental hygiene occurring since the original issuance of their license by pursing one or more courses of study satisfactory to the DHB, as specified. (BPC §§ 1901, 1936.1(a))

3) Establishes the Veterinary Medical Board (VMB) within the jurisdiction of the DCA to license and regulate veterinarians and registered veterinary technicians (RVTs). (BPC §§ 4800-4920.8)

4) Requires those licensed by the VMB to complete a minimum of 36 hours of continuing education in the preceding two-years. (BPC § 4846.5)

5) Establishes the Board of Behavioral Sciences (BBS) within the DCA to license and regulated marriage and family therapists, professional clinical counselors, educational psychologists, and clinical social workers. (BPC § 4990)

6) Establishes the Board of Professional Engineers, Land Surveyors, and Geologists (BPELGS) within the DCA to license and regulate engineers, geologists, and land surveyors. (BPC § 8710)

7) Requires an applicant for a geologist-in-training certification to pass the Fundamentals of Geology examination and either graduate from a college or university whose curricula meets BPELGS criteria or complete at least 30 semester hours or the equivalent in courses deemed by the BPELGS to be relevant to geology. (BPC § 7841.2)

8) Establishes the Department of Real Estate (DRE). (BPC § 10004)

9) Requires the DRE Commissioner adopt regulations on a definition of basic requirements for continuing education of 45 clock hours of attendance at approved educational courses, seminars, workshops, or conferences, or their equivalent, achieved during a four-year period preceding license renewal, a basis and method for qualifying educational programs. (BPC § 10170.5 (a))

10) Requires an applicant to take the examination for an original real estate broker license to submit evidence to the DRE commission of completion of a three-unit semester course, or the equivalent, in the following:

    a) Real estate practice, including a component on implicit bias, including education regarding the impact of implicit bias, explicit bias, and systemic bias on consumers, the historical and social impacts of those biases, and actionable steps students can take to recognize and address their own implicit biases. (BPC § 10153.2(a)(1)(A))

    b) Legal aspects of real estate, including a component on state and federal fair housing laws as they apply to the practice of real estate. The fair housing component must include an interactive participatory component, during which the applicant shall role-play as both a consumer and real estate professional. (BPC § 10153.2(a)(1)(B))

11) Defines the "Nationwide Multistate Licensing System and Registry as a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators. (BPC § 10166.01)

12) Regulates professional fiduciaries under the Professional Fiduciaries Act and establishes the Professional Fiduciaries Bureau to administer and enforce the act. (BPC §§ 6500-6592)

13) Regulates private investigators under the Private Investigator Act, which is administered and enforced by the Bureau for Security and Investigative Services (BSIS). (BPC §§ 7512-7573.5)

14) Regulates private security services, including private patrol operators under the Private Security Services Act, which is administered and enforced by the BSIS. (BPC §§ 7580-7588.8)

15) Regulates automotive repair dealers under the Automotive Repair Act, which establishes the Bureau for Automotive Repair (BAR) to administer and enforce the act. (BPC §§ 9880-9889.68)

16) Regulates licensed contractors under the Contractors State License Law, which establishes the Contractors State License Board (CSLB) to administer and enforce the act. (BPC §§7000-7191)

17) Regulates repossessors under the Collateral Recovery Act, which is administered and enforced by the BSIS. (BPC §§ 7500-7511.5)

THIS BILL:

1) Replaces an outdated reference to the Office of Statewide Health Planning and Development Department with the Department of Health Care Access and Information.

2) Revises the process for licensees of the DHB to submit assurance to the DHB that licensees informed themselves of the developments in the practice of dental hygiene since the original issuance of their licenses, as specified in the preceding two-years of licensure renewal.

3) Replaces a reference to the Medical Board with the appropriate reference to the Physician Assistant Board.

4) Deletes an outdated continuing education course reference in the Veterinary Practice Act.

5) Adds an additional organization to certify veterinary specialists.

6) Corrects a cross-reference related to supervision requirements for LMFT, LPCCs, LEPs, and LCSWs.

7) Requires an applicant for certification as a geologist-in-training to sign or acknowledge a statement of eligibility at the time of submission of the application attesting to the completion of the education requirements established by the BPELGS.

8) Revises the coursework requirement for an applicant to take the real estate broker license, as specified, and delay those revisions until January 1, 2024.

9) Updates the reference to Nationwide Mortgage Licensing System and Registry with its revised name Multistate Licensing System and Registry.

10) Updates an outdated cross reference related to the state standards of weights and measures.

11) Requires the PFB to maintain specified information relating to the names of trusts and decedent's estates currently administered by a licensee and the case names, court locations, and case numbers of all conservatorship, guardianship, or trust or other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, or personal representative regardless of whether the case is court supervised or court appointed.

12) Requires that the PFB maintain the case names, court locations, and case numbers of conservatorships, guardianships, or trusts or other estate administration cases that are closed for which a licensee served as agent under durable power of attorney for finance or health care.

13) Requires the PFB to maintain information on whether a licensee has settled a matter in which a complaint has been filed with the court in a specific case.

14) Requires licensed professional fiduciaries to make client records available for audit or review by the PFB.

15) Expands the annual statement that a professional fiduciary licensee is required to submit when appointed by the court to include the case names, court locations, and case numbers of all conservatorship, guardianship, trust, and other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, agent under a durable power of attorney for finance or health care, and personal representative of a decedent's estate.

16) Requires that the annual statement also include the names of the licensee's current conservatees, wards, principals under a durable power of attorney for health care, or principals under a durable power of attorney for finances, and the names of trusts and decedent's estates currently administered by the licensee, as provided.

17) Requires private investigator licensee to report annually, on and after March 1, 2023, any claim paid during the prior calendar year and requires the BSIS to create a form for that purpose, and would remove the requirement that the BSIS post a notice of the claim.

18) Repeals the requirement that the expiration date of the license or certification of appropriate use of force course providers be included in the security guard registration application.

19) Repeals the requirement that a security guard applicant pay a $10 certification fee and instead require the applicant to pay a fee as otherwise prescribed for the replacement of a certified firearms qualification card.

20) Repeals the requirement that a licensed private patrol operator suspend a security guard from employment if the DCA director determines they may present an undue hazard to the public safety.

21) Repeals the requirement that DCA's automotive repair forms for certificates of compliance contain the name of the owner of the vehicle.

22) Requires the CSLB to display the Solar Energy System Restitution Program notice (that a licensee was the subject of a payment from the program if the licensee caused a payment of an award to a consumer under the program) for a licensee whose license is revoked or pending revocation and who caused a payment of an award to a consumer under the program.

23) Makes other technical, clarifying and conforming changes.

FISCAL EFFECT: According to the Senate Committee on Appropriations analysis of the introduced version of this bill, the Department of Real Estate (DRE) anticipates the need for an additional staff at an approximate cost of $130,000 in the first year and $122,000 ongoing to implement the changes to the education requirements for initial licensure (Real Estate Fund). Workload would include reviewing and approving course applications for the Real Estate Practice course, developing policy and implementation procedures, communicating with external stakeholders, developing regulations, and updating the Online Exam License Application course validation system. Additional costs to DRE include updating forms, publications, correspondences, and website information. However, the DRE anticipates this workload to be absorbable within existing resources.

The Department of Consumer Affairs (DCA) does not anticipate costs to the impacted boards and bureaus.

COMMENTS:

Purpose. This bill is the annual "committee bill" authored by the Business, Professions, and Economic Development Committee, which is intended to consolidate a number of non-controversial provisions related to various regulatory programs and professions governed by the BPC. Consolidating the provisions in one bill aims to relieve the various licensing boards, bureaus, professions, and other regulatory agencies from the necessity and burden of having separate measures for a number of non-controversial revisions. Many of the provisions of this bill are minor, technical, and updating changes.

Background.

Dental Hygiene Board. The DHB is charged with the licensure and regulation of dental hygienists and registered dental hygienists in extended functions. Current law, (BPC § 1936.1) requires licensees to complete a specific number of continuing education (CE) hours to be eligible for licensure renewal. As noted by the DHB, the CE should be completed prior to the license's expiration date (preceding 24 months) and not afterward as indicated in the current statutory language. Currently, BPC § 1936.1(a) may be confusing in that it states that in order to renew the license, the CE must be completed in the "succeeding two-year period" which is after the license expires. This bill attempts to clarify the requirement that the CE be completed in the preceding two-year period prior to the license's expiration.

Veterinary Medical Board. The VMB is responsible for the licensure and regulation of veterinarians, RVTs, premises registration, and administers the Veterinary Assistant Controlled Substance Permit program. To practice veterinary medicine in California, an applicant must graduate from a degree program offered by an accredited postsecondary institution or institutions approved by the VMB, pass a national veterinarian examination, and pass an examination provided by the VMB to test the knowledge of the laws and regulations related to the practice of veterinary medicine in California. To be eligible for licensure renewal, a licensee must complete the required CE. Current law (BPC § 4846.5) references an outdated timeframe for a licensee to obtain CE from a specified list of providers. This bill deletes that obsolete reference.

Board for Professional Engineers, Land Surveyors, and Geologists. The BPELSG oversees three separate practice acts, engineers, land surveyors and geologists. Currently, the BPELSG has a registration program for land surveyors-in-training, engineers-in-training and geologists-in-training. Individuals seeking licensure as a geologist are not required to obtain a certificate as a geologist-in-training; however, many do as it signals they have passed the Fundamentals of Geology Examination. Current law requires that applicants for the geologist-in-training certificate pass the Fundamental of Geology examination and complete a graduate degree in geology or complete at least 30 semester hours in courses relevant to geology. Under current law, the BPELSG is responsible for reviewing each applicant to verify the applicant has met the current education and examination standards. Under both the land surveyor and engineer practice acts, applicants for certificate in training are permitted to self-certify that, they have met the requirements necessary for obtaining a certification-in-training. As noted by the BPELSG, because In-training certification does not authorize the holder to practice at the professional

level, the Board believes it is sufficient verification to allow applicants to "self-certify" that they meet the education and/or experience requirements for an in-training certificate. This bill would permit applicants for the geologist-in-training certificate to self-certify that the applicant has met the education or training standards.

Board of Behavioral Sciences. The BBS is responsible for the regulatory oversight of over 120,000 licensees and registrants, including LMFTs, LCSWs, LEPs, and LPCCs. Each profession has its own scope of practice, entry-level requirements, and professional settings with some overlap in areas. This bill corrects an erroneous reference related to LEPs who are permitted to supervise associates gaining hours for licensure.

Department of Real Estate and SB 263. The DRE is responsible for the licensure and oversight of real estate salespersons and real estate brokers. Real estate brokers and salespersons must currently complete 45 hours of continuing education by attending educational courses, seminars, workshops, or conferences, or their equivalent, within a four-year period preceding license renewal application. Within those 45 hours, licensees must complete an eight-hour survey course on topics including: ethics, professional conduct, and legal aspects of real estate; agency relationships and duties in a real estate brokerage practice; trust fund accounting and handling; fair housing; risk management; and management of real estate offices and supervision of real estate licensed activities, among other topics. SB 263 (Rubio, Chapter 361, Statutes of 2021) required the DRE to revise components of the educational requirements for initial licensure and continuing education requirements. SB 263 updates training requirements for DRE licensees by including implicit bias within the real estate practice course and revises the legal aspects of the real estate course to include a component on state and federal fair housing laws, and also requires a two-hour implicit bias course within the 45 hours continuing education for license renewal. The bill also included a one-year implementation delay. The DRE noted some implementation issues with the provisions of SB 263; as such, this bill makes a number of technical amendments to update the current requirements of SB 263, to ensure the bill is implementable. This bill will delay the operative provisions of SB 263 until January 1, 2024 to ensure courses can be updated to accommodate the changes to education components related to legal aspects of real estate and ensure that both brokers and salespersons are required to comply with that coursework. In addition, this bill will correct an erroneous cross-reference.

Current Related Legislation. SB 263 (Rubio) Chapter 361, Statutes of 2021, requires the DRE to revise the real estate practice course to include a component on implicit bias and revises the legal aspects of real estate course for that applicant to include a component on state and federal fair housing laws; requires a licensee, as part of the licensee's necessary 45 hours of continuing education, to successfully complete a two-hour course in implicit bias training, beginning January 1, 2023.

ARGUMENTS IN SUPPORT:

The *Board for Professional Engineers, Land Surveyors, and Geologists* writes in support, "As it pertains to the Board, [this bill] would amend Business and Professions Code section 7841.2 relating to applications for certification as a Geologist-in-Training. The amendments would allow applicants to certify that they meet the requirements for certification without the Board having to independently confirm the applicants' qualifications."

The *Veterinary Medical Board* writes in support, "[This bill] would, among other things, delete an obsolete provision in the Practice Act relating to continuing education hours earned by attending courses sponsored or cosponsored by specified entities between January 1, 2000, and January 1, 2001. The Board supports this change to the Practice Act in [this bill], as it was one of four requests made by the Board to improve the Practice Act this legislative session."

ARGUMENTS IN OPPOSITION:

None on file

AUTHOR AMENDMENTS:

The author is amending the bill as follows:

1) Amend Business Professions Code Sections 4170(b), 4175, and 2023.5 and replace outdated reference to "Physician Assistant Committee" with "Physician Assistant Board."

2) Strike Section 13 of the bill, which amends BPC section 2725.4 (code clean-up that conflicts with another bill).

3) Strike Section 15 of the bill, which amends BPC section 2786.3 (code clean-up that conflicts with another bill).

REGISTERED SUPPORT:

Board for Professional Engineers, Land Surveyors, and Geologists
Veterinary Medical Board

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1453 (Ochoa Bogh) – As Amended April 19, 2022

SENATE VOTE: 37-0

SUBJECT: Speech language pathologists

SUMMARY: Allows a licensed speech-language pathologist to perform a flexible fiber optic transnasal endoscopic (also referred to as a flexible fiberoptic endoscopic evaluation for swallowing, or FEES) procedure to be performed at a location based on the patient's medical needs and without the supervision of a physician. Prohibits a licensed speech-language pathologist from performing a FEES procedure on a patient who has certain contraindications.

EXISTING LAW:

1) Establishes the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act (Act) for the purposes of regulating speech-language pathologists, audiologists, and hearing aid dispensers (Business and Professions Code (BPC) §§ 2530 *et seq*.)

2) Establishes, until January 1, 2023, the Speech Language Pathology, Audiology, and Hearing Aide Dispensers Board (Board) within the Department of Consumer Affairs to enforce and administer the Act. (BPC § 2531)

3) Specifies that instrumental procedures within the scope of practice for speech-language pathology are the use of rigid and flexible endoscopes to observe the pharyngeal and laryngeal areas of the throat in order to observe, collect data, and measure the parameters of communication and swallowing as well as to guide communication and swallowing assessment and therapy. (BPC § 2530.2 (e)(1))

4) Requires any observation of an abnormality to be referred to a physician and surgeon. (BPC § 2530.2 (e)(2))

5) Prohibits a licensed speech-language pathologist from performing a FEES procedure unless they have received written verification from a board-certified otolaryngologist that the speech-language pathologist has performed a minimum of 25 FEES procedures and is competent prior to performing a FEES procedure. (BPC § 2530.2 (f))

6) Requires the licensed speech-language pathologist to have this written verification on file and readily available for inspection upon request by the board. (BPC § 2530.2 (f))

7) Authorizes a licensed speech-language pathologist with a verification on file to perform a FEES procedure only under the direct authorization of a board-certified otolaryngologist and the supervision of a physician and surgeon. (BPC § 2530.2 (f))

8) Specifies that a licensed speech-language pathologist may only perform a FEES procedure in a setting that requires the facility to have protocols for emergency medical backup procedures, including a physician and surgeon or other appropriate medical professionals being readily available. (BPC § 2530.2 (g))

THIS BILL:

1) Maintains that a speech-language pathologist must refer any observation of an abnormality to a physician and surgeon, including when performing a FEES procedure without the presence of a physician and surgeon.

2) Clarifies that a speech-language pathologist must perform a minimum of 25 *supervised* FEES procedures in order to receive written verification from a board-certified otolaryngologist attesting to the speech-language pathologist's competence.

3) Authorizes a speech-language pathologist with a written verification on file to perform a FEES procedure upon the orders of a licensed physician and surgeon at a location based on the patient's needs, as specified.

4) Specifies that a licensed speech-language pathologist cannot perform a FEES procedure on patients who have contraindications to the procedure that would prevent the licensed speech-language pathologist from safely performing the procedure.

5) Specifies that contraindications for these procedures include, but are not limited to, cases of bilateral obstruction of nasal passages, refractory epistaxis, facial trauma, severe agitation, and inability to cooperate with the examination.

6) Makes technical and clarifying changes.

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 *California Speech-Language Hearing Association.* According to the author, "As we all know, COVID-19 has had unprecedented impacts on service delivery, impacting healthcare workers and the patients they serve. Speech-language pathologists (SLPs) continue to provide critical services, meeting the emerging needs of patients and their communities, as part of interprofessional teams. SLPs have a vital role in performing FEES evaluations to inform dysphagia management. Dysphagia or swallowing dysfunction can lead to possible lung infections, limiting a person's food and liquid choices for safety, which can lead to a reduced overall quality of life and even depression. FEES assessments of swallowing are necessary to assess pharyngeal dysphagia and develop an appropriate and efficient treatment plan. Questions have arisen in the field regarding the extent of the "authorization" needed by an Ear, Nose and Throat doctor and whether it is a one-time authorization based on the SLP competency or if the authorization is required every time an SLP has to perform one of these procedures. This has resulted in some instances with an SLP not being able to perform the needed evaluation or not being able to perform it in the location based on the patient's medical

needs. SB 1453 will help bring that needed clarity, which means that more patients will receive the services they need in the setting best suited to their needs."

Background.

Speech-language pathologists. According to the Board, "speech-language pathologists provide services in the areas of speech, language, voice, cognition, fluency, and swallowing disorders to individuals across the lifespan. They see individuals who may have language difficulties with verbal expression, auditory comprehension, reading comprehension, and/or written expression. These difficulties could be the result of a stroke, brain injury, or other neurogenic causes. Speech-language pathologists perform instrumental procedures within their scope of practice (e.g., Motion fluoroscopic evaluation of swallowing by cine or video recording, FEES procedures by cine or videorecording, laryngoscopy with stroboscopy). Speech-language pathologists coordinate care with otolaryngologists and physicians for such procedures. Speech-language pathologists also provide aural rehabilitation for individuals who are deaf or hard of hearing and provide therapy in the augmentative and alternative communication domain for individuals with diagnoses such as autism spectrum disorder and progressive neurological disorders. Speech-language pathologists work independently and collaboratively on interdisciplinary teams with other school or health care professionals in a range of settings including schools, medical, community-based facilities, and in private practice." Speech-language pathologists are licensed and regulated by the Board.

Flexible Fiberoptic Endoscopic Evaluation of Swallowing (FEES) Procedure. A FEES procedure is used to assess a patient's swallowing function. During the FEES procedure, a licensed speech-language pathologist or physician passes a thin, flexible tube called an endoscope through the patient's nose and down into the throat. An anesthetic may be sprayed into the nose to numb the area. The endoscope is equipped with a light and camera which allows the speech-language pathologist or physician to evaluate the patient's ability to swallow saliva, food, and liquids. Afterwards, the scoped is pulled out of the throat and nose. The FEES procedure takes about 20 minutes to complete and is performed in medical-based settings such as a hospital, clinic, or doctor's office.

A FEES procedure may be needed for individuals who lack the muscular coordinate to swallow normally. This condition is called dysphagia, which can be caused by head and neck cancer, head injuries, conditions that lead to decreased saliva (e.g. Sjogren's syndrome), Parkinson's disease or other neurologic conditions, muscular dystrophy disorders, and an obstruction in the esophagus. Dysphagia can result in aspiration (food or liquid entering the airway or lungs), which can lead to pneumonia and other problems.

Risks of FEES procedures include nosebleed, discomfort, gagging or vomiting, brief closure of the patient's airway (laryngospasm), and aspiration, although risks vary by age, health, and underlying conditions. Some patients may be instructed to stop taking blood-thinning and other medications prior to the FEES procedure. Most patients are able to drive themselves home and resume normal activities after a FEES procedure.

Current Related Legislation.

AB 2686 (Assembly Committee on Business and Professions) is the sunset review vehicle for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board. AB 2686 is pending in the Senate Business, Professions, and Economic Development Committee.

Prior Related Legislation.

SB 1379 (O'Connell) Chapter 485, Statutes of 2002, authorized licensed speech-language pathologists who meet specified criteria to perform flexible fiberoptic nasendoscopic procedures direct authorization of a board-certified otolaryngologist and the supervision of a physician in an acute care setting, as defined, that has protocols for emergency medical backup procedures, as specified.

SB 1285 (Aanestad) Chapter 153, Statutes of 2006, authorized licensed speech-language pathologists that meet specified criteria to perform flexible fiberoptic nasendoscopic procedures under the direct authorization of a board-certified otolaryngologist and the supervision of a physician in any setting that requires the facility to have protocols for emergency medical backup procedures, as specified.

ARGUMENTS IN SUPPORT:

As the sponsor of this bill, the California Speech Language Hearing Association writes in support:

> "[This bill] is needed because questions have arisen in the field regarding the process for the required verification, resulting in some instances in an SLP not being able to perform the needed evaluation or not being able to perform it in the location based on the patient's medical needs. The call for the FEES procedure to be performed in multiple settings has grown during the pandemic due to the number of COVID patients who have had to be intubated. Dysphagia or swallowing dysfunction can lead to possible lung infections, limiting a person's food and liquid choices for safety, which can lead to a reduced overall quality of life and even depression. The clarifications provided by [this bill] mean that more patients will receive the services they need in the setting best suited to their needs.

The Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board, which has taken a support if amended position on this bill writes:

> This bill would allow the FEES procedure to be performed in locations based on the patient's medical needs, without the presence of a physician, as long as the facility has protocols for emergency medical backup procedures, including a physician or other appropriate medical professional being readily available. However, emergency medical backup procedures, other medical professional, and readily available are not defined leading to a potential lack of clarity regarding this provision. The Board requests a delayed implementation date so that this provision can be clarified through regulations.

Additionally, in order to ensure consumer protection, the Board requests a reporting requirement for adverse events that occur during a FEES procedure and inclusion of additional contraindications that may make the FEES procedure unsafe for certain patients.

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

Procedure settings. This bill would allow a speech-language pathologist to perform a FEES procedure at a location based on the patient's needs, although the facility must have protocols for emergency medical backup procedures in place, including having a physician or other appropriate medical professionals readily available. However, neither existing law nor regulations define what "emergency medical backup procedures" must consist of or delineate who constitutes an "appropriate medical professional." Consequently, the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board has requested to amend the bill to delay implementation by 18 months, allowing time for the Board to define those phases by regulation.

Contraindications. This bill would allow a speech-language pathologist to perform a FEES procedure without the supervision of a doctor. To protect patient safety, the author has identified a number of contraindications (underlying conditions or medical history) that would prohibit a speech-language pathologist from performing a FEES procedure. However, the medical community has identified additional contraindications to the FEES procedure that are not included in the bill.

Training and Competency of Speech-Language Pathologists. Existing law prohibits a licensed speech-language pathologist from performing a FEES procedure unless they have received written verification from a board-certified otolaryngologist that the speech-language pathologist has performed a minimum of 25 FEES procedures and is competent prior to performing a FEES procedure. In practice, this provision of existing law has been interpreted to mean that a board-certified otolaryngologist must supervise all 25 FEES procedures. The sponsor of this bill, the California Speech Language Hearing Association, has indicated that finding an otolaryngologist to supervise all 25 FEES procedures is a challenge.

AMENDMENTS:

1) In the interest of patient safety and to prevent the need for regulations to implement this bill, amend the bill to specify the types of facilities where FEES procedures may be performed, thereby ensuring that every facility where a FEES procedure is authorized to be performed by a licensed speech-language pathologist has emergency medical backup procedures in place as required by each facility's licensing entity (e.g. California Department of Health).

2) Consistent with medical guidance, amend the bill to add recent trauma to the nasal cavity, severe bleeding disorders, and severe movement disorders to the list of contraindications.

3) To ensure that speech-language pathologists receive the necessary training and supervision to perform a FEES procedure competently, while also recognizing the limited availability of otolaryngologists, amend the bill to specify that in order to receive written verification of competence to perform a FEES procedure, a speech-language pathologist must perform the first 10 FEES procedures supervised by a licensed physician and surgeon who performs nasal endoscopy as part of their practice (e.g. otolaryngologist, pulmonologist, and gastroenterologists), but the subsequent 15 FEES procedures may be supervised by either a licensed physician and surgeon who performs nasal endoscopy as part of their practice or by another licensed speech-language pathologist that is verified as competent to perform the procedure.

REGISTERED SUPPORT:

California Speech Language Hearing Association *(Sponsor)*
Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board *(if amended)*

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
SB 1475 (Glazer) – As Amended June 20, 2022

NOTE: This bill is double referred and previously passed the Assembly Committee on Health as amended on a 9-0-6 vote.

SENATE VOTE: 27-1

SUBJECT: Blood banks: collection

SUMMARY: Authorizes a registered nurse to supervise a phlebotomist or other authorized personnel who collects blood in a licensed blood bank via telehealth.

EXISTING LAW:

1) Establishes the Laboratory Field Services program (LFS) under the California Department of Public Health (CDPH), which is responsible for the licensure, inspection, proficiency testing, and oversight of clinical and public health laboratories, tissue banks, biologics facilities, and blood banks, and oversight of education, training, examination, and licensure of laboratory personnel. (Health and Safety Code (HSC) § 131051(a)(8)(D))

2) Provides for the licensure and regulation of clinical laboratories and various licensed and unlicensed laboratory personnel under the CDPH. (Business and Professions Code (BPC) §§ 1200-1327)

3) Establishes a category of laboratory personnel called certified phlebotomy technicians and specifies the education and scope of practice of certified phlebotomy technicians. (BPC § 1246)

4) Requires an application for certification as a phlebotomy technician by the Department of Public Health to include proof of the following:

    a) The applicant holds a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department. (BPC § 1246(b)(2)(A))

    b) The applicant completed education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

    c) At least 40 hours of didactic instruction. (BPC § 1246(b)(2)(B)(i))

    d) At least 40 hours of practical instruction. (BPC § 1246(b)(2)(B)(ii))

    e) At least 50 successful venipunctures. (BPC § 1246(b)(2)(B)(iii))

5) Authorizes a certified phlebotomy technician to draw blood using venipuncture or skin puncture under the general supervision of a physician and surgeon or the physician's delegate. (BPC § 1246(c)(1)(A))

6) Defines "general supervision" as the requirement that the supervisor of the phlebotomist determine that the phlebotomist is competent to perform venipuncture or skin puncture prior to the phlebotomist's first blood withdrawal and on an annual basis. The supervisor is also required to determine, on a monthly basis, that the phlebotomist complies with appropriate venipuncture or skin puncture policies and procedures approved by the medical director and required by state regulations. The supervisor, or another designated licensed physician and surgeon, registered nurse, or licensed clinical laboratory personnel, must be available for consultation with the technician, either in person or through telephonic or electronic means, at the time of blood withdrawal. (BPC § 1246(c)(1)(B))

7) Regulates the collection, preparation, testing, processing, and storage of human whole blood, human whole blood derives, and other biologics, and prohibits a person from engaging in the production of human whole blood or human whole blood derivatives unless that person is licensed by the CDPH and the human whole blood or human whole blood derivatives are collected, prepared, labeled or stored according to specified requirements. (HSC §§ 1600-1630)

8) Defines "blood bank" as a place where human whole blood, and human whole blood derivatives, are collected, prepared, tested, processed, or stored, or from which human whole blood or human whole blood derivatives are distributed. (HSC § 1600.2)

9) Defines "blood collection center" as a stationary auxiliary to a blood bank which is designed, equipped, and staffed to procure human whole blood or blood components which are to be transported to the blood bank for processing, storing, and distribution. (HSC § 1600.21)

10) Defines "mobile unit" as a transportable auxiliary to a blood bank designed, equipped, and staffed to procure human whole blood and to transport this blood to the bank for processing, storing, and distribution. (HSC § 1600.25)

11) Authorizes licensed clinical laboratory bioanalysts, licensed clinical laboratory technologists, registered clinical laboratory technologist trainees, licensed vocational nurses, registered nurses, and blood donor phlebotomists, as defined by the American Association of Blood Banks, to perform skin puncture and venipuncture for the purposes of collecting human blood if the following are satisfied:

    a) The acts are performed in a licensed blood bank and personnel training and standards meet accreditation requirements of the American Association of Blood Banks. (HSC § 1607(a)(1))

    b) The acts are performed under the direct and responsible supervision of a licensed physician and surgeon. (HSC § 1607(a)(2))

12) Specifies that, in accordance with the American Association of Blood Banks standards, the medical director of a blood bank is responsible for all medical and technical policies and

procedures that relate to the safety of staff members, donors, and patients, including, but not limited to, ensuring that the blood bank has a qualified and competent staff to perform all tasks involved in the collection, storage, processing, and distribution of blood and blood components. The employer blood bank is also responsible for determining the appropriate mix of qualified, competent employees that meets the accreditation requirements of the American Association of Blood Banks and is consistent with the services rendered. (HSC § 1607(b))

13) Requires a blood bank and its auxiliaries to be under the direction of a licensed physician and surgeon duly and who must have a minimum of six months experience in blood bank methods, transfusion principles, and transfusion practices, satisfactory to the CDPH. (California Code of Regulations (CCR), tit. 17, § 998)

14) Specifies that the final responsibility for the acceptance of donors rests with the attending physician. Any time blood is collected under license, adequate medical care for the donor must be provided. Blood must be drawn from the donor under the supervision of a physician and surgeon or RN trained in the procedure. (CCR, tit. 17, § 1002(a))

15) Authorizes blood to be collected when a physician and surgeon is not present on the blood bank premises under the following conditions:

    a) The medical director and the director's medical advisory committee, if there is one, must approve. (CCR, tit. 17, § 1002(a)(1))

    b) The employee placed in charge, in the absence of the physician and surgeon must be an RN. (CCR, tit. 17, § 1002(a)(2))

    c) The nursing staff and medical director must have a mutually clear understanding of the criteria for donor selection. Consultation with the medical director by telephone from mobile unit operations about certain donors may be necessary. (CCR, tit. 17, § 1002(a)(3))

    d) A qualified physician and surgeon or emergency medical facility must be available nearby to attending to donors who have a severe reaction or accident related to the blood donation. "Available" means no longer than 15 minutes away. (CCR, tit. 17, § 1002(a)(4))

    e) Written emergency standing orders for donor care must be prepared by the medical director and be made available to the nursing staff. Appropriate training and refresher courses in emergency resuscitative methods must be planned. The nursing staff must be given special training on the symptomatology and emergency treatment of such conditions as cardiac and vascular disease, syncope, fractures, and other related conditions. (CCR, tit. 17, § 1002(a)(5))

16) Authorizes, if a state of emergency is declared, deviation from the blood bank regulations. The extent of deviation must be determined by the blood bank director with concurrence by the department and shall be commensurate with the degree of emergency. (CCR, tit. 17, § 1003)

17) Defines "telehealth" as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care. (BPC § 2290.5(a)(6))

18) Requires the health care provider initiating the use of telehealth to inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health and requires the consent to be documented. (BPC § 2290.5)

THIS BILL:

1) Authorizes the collection of blood at a blood bank when a physician or surgeon is not physically present on the premises if both of the following conditions are met:

   a) The medical director and their medical advisory committee, if one exists, approves of blood collection without a physician or surgeon present on the premises.

   b) The employee placed in charge, in the absence of a physician or surgeon, is a registered nurse.

2) Authorizes the registered nurse placed in charge under the provisions of this bill to either be physically present on the premises or available via telehealth, as defined in the Business and Professions Code, so long as the method of telehealth used is synchronous.

3) Sunsets the provision of this bill on January 1, 2028.

4) Makes other non-substantive changes.

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

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, this bill "would simply allow a blood bank to hold collections with a nurse available via telemedicine. California is in the midst of a blood shortage, the worst we have seen in over 10 years. Due to this, a hospital in southern California had to close their trauma center for two hours because it ran out of blood for patients. Blood donations are essential in ensuring that patients are able to get the care they need. Therefore, we need more people to donate blood. Yet, the current requirement of a registered nurse being physically present creates a hindrance in being able to hold blood drives. This is largely due to the nursing shortage the state and country is experiencing. Blood donations are a straight forward and routine occurrence that can be supervised through video conferencing to ensure that nurse shortages does not put our patients at risk by limiting blood supplies in our state."

Background. Existing law generally requires blood to be collected in a blood bank licensed by the CDPH and under the overall direction of a physician medical director. It also authorizes licensed clinical laboratory bioanalysts, licensed clinical laboratory technologists, registered clinical laboratory technologist trainees, licensed vocational nurses, RNs, and "blood donor

phlebotomists," as defined by the American Association of Blood Banks, which is now known as the Association for the Advancement of Blood & Biotherapies (AABB), to perform the blood collection.

Blood banks must also meet the AABB and federal Current Good Manufacturing Practice for Blood and Blood Components.

The AABB standards for personnel require:

- 2.1.1 Qualification: personnel performing critical tasks shall be qualified to perform assigned activities on the basis of appropriate education, training, and/or experience.

- 2.1.2 Training: the BB/TS (Blood Bank or Transfusion Service) shall have a process for identifying training needs and shall provide training for personnel performing critical tasks.

- 2.1.3 Competence: evaluations of competence shall be performed before independent performance of assigned activities and at specified intervals.

Section 606.20 of Title 21 of the Code of Federal Regulations outlines the federal requirements: "The personnel responsible for the collection, processing, compatibility testing, storage or distribution of blood or blood components shall be adequate in number, educational background, training and experience, including professional training as necessary, or combination thereof, to assure competent performance of their assigned functions, and to ensure that the final product has the safety, purity, potency, identity and effectiveness it purports or is represented to possess. All personnel shall have capabilities commensurate with their assigned functions, a thorough understanding of the procedures or control operations they perform, the necessary training or experience, and adequate information concerning the application of pertinent provisions of this part to their respective functions."

Supervisor On-Premises. Normally, a physician and surgeon must be on-premises. However, the CDPH regulations allow for blood to be collected when a physician and surgeon is not present on the blood bank premises under the following conditions:

1) The medical director and the director's medical advisory committee, if there is one, must approve.

2) The employee placed in charge, in the absence of the physician and surgeon must be an RN

3) The nursing staff and medical director must have a mutually clear understanding of the criteria for donor selection. Consultation with the medical director by telephone from mobile unit operations about certain donors may be necessary.

4) A qualified physician and surgeon or emergency medical facility must be available nearby to attend to donors who have a severe reaction or accident related to the blood donation. "Available" means no longer than 15 minutes away.

5) Written emergency standing orders for donor care must be prepared by the medical director and be made available to the nursing staff. Appropriate training and refresher courses in

emergency resuscitative methods must be planned. The nursing staff must be given special training on the symptomatology and emergency treatment of such conditions as cardiac and vascular disease, syncope, fractures, and other related conditions.

This bill would authorize the RN to be off-premises so long as they are available by any means of telehealth that allows for real-time communication.

Blood Donor Phlebotomists. Existing law authorizes one type of unlicensed personnel to perform blood collection in a licensed blood bank, a "blood donor phlebotomist." There is no definition for a blood donor phlebotomist under state law, and the AABB does not have a specific definition.

Regardless, all phlebotomists are required to obtain a certification from the CDPH to practice under state law to practice. Specific to blood banks, all phlebotomists are trained on risk factors and appropriate responses to complications that may arise from phlebotomy.

More generally, there are different requirements for applicants with no phlebotomy experience, applicants with less than 1040 hours of on-the-job phlebotomy experience, and applicants with 1040 or more hours of on-the-job phlebotomy experience in the last 5 years.

There are three paths for training and experience, depending on the applicant's on-the-job phlebotomy experience.

1) For an applicant with no on-the-job phlebotomy experience or less than 40 hours of on-the-job phlebotomy experience:

    a) Complete 40 hours of basic and advanced didactic (classroom) phlebotomy training from a phlebotomy program accredited by the CDPH.

    b) Complete 40 hours of phlebotomy practice in a clinical setting that includes the performance of at least 50 venipunctures and 10 skin punctures and observation of arterial punctures in a phlebotomy training program approved by the CDPH.

2) For an applicant with at least 40 hours but less than 1040 hours of on-the-job phlebotomy experience in the past 5 years:

    a) Complete 40 hours of basic and advanced didactic phlebotomy training from a phlebotomy program accredited by the CDPH.

    b) Complete at least 40 hours of experience in a clinical setting in the last 5 years. This experience must include at least 50 venipunctures and 10 skin punctures and observation of arterial punctures.

3) For an applicant with 1040 or more hours of on-the-job phlebotomy experience in the past 5 years:

    a) Complete 20 hours of advanced didactic phlebotomy training from a phlebotomy program accredited by the CDPH.

b) Document completion of at least 50 venipunctures and 10 skin punctures and observation of arterial punctures.

All phlebotomists must also pass a national certification examination from one of the certifying organizations approved by the CDPH.

Association for the Advancement of Blood & Biotherapies (AABB). Existing law requires licensed blood banks to meet AABB operating and safety standards. The AABB is supportive of the use of telehealth to supervise phlebotomists in California, as they do in other states. In a letter dated October 20, 2017, AABB requested a change to the CDPH's regulations that would have allowed an RN to be available by telephone, video, chat, or other electronic means:

> AABB is an international, not-for-profit association representing individuals and institutions involved in the field of transfusion medicine and cellular therapies. The association is committed to improving health through the development and delivery of standards, accreditation, and educational programs that focus on optimizing patient and donor care and safety. AABB individual membership includes physicians, nurses, scientists, researchers, administrators, medical technologists, and other health care providers.
>
> AABB supports the Blood Centers of California's request for reconsideration of the request to amend Title 17, Section 1002 (a)(2) of the California Code of Regulations. The amendment would change the current language to the following:
>
> *(2) The employee placed in charge, in the absence of a qualified physician must be a registered nurse. The registered nurse shall be available for consultation via telephone, audio/video – real time chat (synchronous) or other electronic means*.
>
> Blood centers in California supply lifesaving blood and blood components, and are highly regulated by the Food and Drug Administration, AABB and the state. California is the only state that mandates that a registered nurse (RN) be physically present at all sites whenever blood is donated. AABB Standards for Blood Banks and Transfusion Services (AABB Standards), which are recognized by California state law and are used throughout the world, include standards related to personnel qualifications, training and competencies. Importantly, neither AABB Standards nor FDA require the physical presence of an RN at all sites when blood is donated.
>
> Similar to other health care providers, blood centers are affected by the shortage of licensed health care personnel in California – Registered Nurses and Clinical Laboratory Scientists. In addition, blood centers are facing significant economic pressures. Salaries of licensed personnel are key drivers of the cost of blood. Regulatory agencies require stringent safety requirements which promote the safety of blood and blood products but typically funding is not provided to implement new measures. These factors, in addition to the high cost of other benefits in California, strongly influence the cost of providing blood and blood products in California.

> AABB is committed to the health and safety of donors and patients. AABB supports the use of telehealth in the blood center environment. While donors are generally healthy young people and adults, some donors may have reactions as a result of the donation process, such as bruising or pain at the site of needle insertion or mild systemic reactions (i.e., dizziness or fainting). Blood centers work to prevent these reactions through education prior to, during and after donation, and their efforts help reduce the numbers of reactions that occur. AABB believes that the use of telehealth is a viable option for responding to adverse events that may occur during the donation process.
>
> Telehealth is being used more frequently in a variety of settings, and has been shown to be effective and efficient. To that end, we are fully supportive of the move to permit an RN to be available via telehealth to provide necessary nursing skills and expertise during the donation process.

CDPH Emergency Variance. Existing law authorizes the deviation or variance from the blood bank regulations when a state of emergency is declared. The extent of the variance must be determined by the blood bank director with concurrence by the LFS within CDPH and must be commensurate with the degree of emergency.

During the COVID-19 emergency, the LFS process for blood bank directors to request a variance was as follows:

- Directors request initial approval from LFS to use a variance to deviate from the requirements outlined in the CDPH regulations relating to blood banks for the duration of the California COVID-19 emergency.
- Once LFS receives the information, it approves the request for the duration of the COVID-19 emergency and notifies the blood bank of approval.
- Directors must notify LFS of each collection event for which they use the variance and include:
    - The blood bank's California biologics license number.
    - The location, date, and time of each collection event.
    - The nature of the deviation.
- Directors must notify LFS after the event of adverse events associated with the collection event if any occur.

Under that process, blood banks have been authorized to utilize phlebotomists to perform blood collections without a registered nurse on site, allowing them to instead supervise via video and telephone. Under the variance, the LFS has been receiving regular reports listing all the incidents that have occurred when a blood center makes use of the authorization. Last year, the CDPH reported nothing more serious than the uncomplicated loss of consciousness for less than 60

seconds, mild reaction, or moderate reaction and had not received any reports of 911 calls, deaths, or hospital admissions.

Normally, the CDPH is not notified of every donor adverse event at a blood collection center, but blood centers will notify the CDPH of donor adverse events in which a death occurred, which the CDPH notes are unusual.

Prior Related Legislation. AB 1494 (Fong) of 2021 was substantially similar to this bill and would have allowed an RN to be available via telehealth at a mobile blood bank under certain conditions. AB 1494 was held in Assembly Appropriations Committee.

ARGUMENTS IN SUPPORT:

The *Association for the Advancement of Blood and Biotherapies (AABB)* writes in support:

> Blood centers in California supply lifesaving blood and blood components, and are highly regulated by the Food and Drug Administration (FDA), AABB and the state. AABB Standards for Blood Banks and Transfusion Services (AABB Standards), which are recognized by California state law and are used throughout the world, include standards related to personnel qualifications, training, and competencies. Neither FDA nor the AABB Standards require the physical presence of a registered nurse at all sites when blood is donated.
>
> In contrast, California is the only state that mandates that a registered nurse be physically present at all sites whenever blood is donated. Despite this requirement, California's hemovigilance data is no different from other states that do not require registered nurses to be present when blood is donated. Blood collectors manage donor reactions according to procedures that have been approved by medical directors, which are handled the same regardless of whether a registered nurse or a non-licensed donor care staff member is assisting with a reaction. AABB is committed to the health and safety of donors and patients, supports the use of telehealth by blood collectors and believes that telehealth is a viable option for responding to adverse events that may occur during the donation process.
>
> Telehealth is being used more frequently in a variety of settings and has been shown to be effective and efficient. Similar to other health care providers, blood collectors continue to experience significant workforce shortages, including but not limited to registered nurses. In addition, blood collectors are facing considerable economic pressures and it is extremely difficult to compete for registered nurses, who are offered significantly higher salaries to work in acute care settings. State policy should encourage the limited number of registered nurses to work in direct patient care; blood donors are healthy and are not patients.
>
> During the COVID-19 pandemic emergency, California blood collectors have been able to utilize a remote telehealth option for meeting the State's staffing requirements. Over the past two years, blood collectors in California have

> demonstrated that blood can safely be collected with staff having access to a registered nurse via telehealth should consultation be needed. Without this option, due to the severe shortage of registered nurses and their need to be utilized in acute patient care, thousands of units of blood would not have been collected in California. If the State does not act, the telehealth option will not be available when the emergency is declared over.

The *Blood Centers of California (BCC)* writes in support:

> [BCC] is an alliance of 11 non-profit blood centers, located throughout the state. BCC members supply more than 1.4 million units of blood and blood products, representing over 90% of products needed to California's hospitals, physicians and patients…. California is the only state that requires an RN be present at all sites when blood is being donated. Over the last two years, with a waiver… our centers have demonstrated that our donors are safely donating blood without the physical presence of an RN on site. The telehealth capability is a suitable option for a wide variety of services—both health and social service related—and this has been proven during the current pandemic.
>
> The current nursing shortage has not abated and telehealth has proven to be a safe and appropriate response to our nursing workforce issues. With the move toward post pandemic activities, blood drives are increasing but the nursing shortage continues. RNs in short supply should be in patient care settings caring for those acutely ill. Our donors are healthy, our staff are trained to respond to any untoward event and our blood supply would be more critical without the use of remote RNs. We must have this option.

The *California Hospital Association* writes in support:

> Every two seconds someone in the U.S. needs blood and/or platelets. Approximately 29,000 units of red blood cells, 5,000 units of platelets, and 6,500 units of plasma are needed daily in the U.S.
>
> That's why the California Hospital Association (CHA) and the more than 400 hospitals and health systems we represent support Senate Bill 1475 (Glazer, D-Orinda), which would permanently authorize a registered nurse to be either physically present or available via telehealth during blood collection at a blood bank.
>
> Local blood banks have proven during the COVID-19 pandemic that blood can be safely collected with qualified, trained staff who have access to a registered nurse via telehealth when consultations are needed. California's hemovigilance data are consistent with nationwide figures showing that trained blood center staff can manage any donor reaction without the presence of a registered nurse on site.
>
> COVID-19 has severely impacted traditional means of collecting blood at school and business-based mobile events and caused significant workforce and supply shortages. During a time of such significant strain on our blood supply, this

telehealth option has aided in the collection of thousands of units of additional blood in California.

Without this legislation, California would once again be the only state in the nation requiring a registered nurse to be physically present while blood is being collected from healthy donors. This is a requirement that neither the Food and Drug Administration nor the Association for the Advancement of Blood and Biotherapies demand. Requiring a registered nurse to be on site unnecessarily compounds the severe shortage of registered nurses facing the state, our hospitals, and the entire country.

ARGUMENTS IN OPPOSITION:

The *American Federation of State, County and Municipal Employees (AFSME), AFL-CIO, California Labor Federation, AFL-CIO, California Nurses Association, Service Employees International Union (SEIU) California State Council,* and *United Nurses Associations of California/Union of Health Care Professionals (UNAC/UHCP)* write in opposition:

Proponents for this measure believe that by removing the restriction to have nurses present at a blood draw would allow for greater increases in blood donations. Yet the shortage of blood donors is a nationwide problem believed to be caused by multiple factors. According to a recent Tufts University article, the blood supply has been under pressure for the past five or six years with blood centers having trouble with shrinking profit margins and a reluctance amongst individuals to donate blood – especially while during COVID-19 restrictions.

We are concerned that patients' health could be risked by changes outlined in [this bill]. Having a nurse physically present and directly monitoring those giving blood will be far more able to make immediate and accurate judgments regarding an individual's need for emergency care. Health care workers simply cannot interpret someone's physical reaction to this procedure over the phone— or even by video teleconferencing—as well as can be done in person. The RN, and for the most part, the unlicensed staff are not responsible for causing complications. However, the RN is there to address complications and oversee the quality of care that is given.

Further, as has become painfully clear after the last two years, teleconference services are frequently unreliable. Audio and video teleconferencing services often drop calls or cause delays that could prove extremely harmful in a health care setting. This risk would further be exacerbated in rural areas with less reliable internet or phone service, and these rural areas also likely involve longer travel time to emergency care, creating additional risks to those donating. It is also important to note that this bill would eliminate the need for patient consent to the use of telehealth, a provision that is of critical importance for privacy and consumer protection.

While the risks of drawing blood are not as severe as other forms of health care, they are very real. This bill would rely on a phlebotomist, who does not have the

training and knowledge that a nurse has to identify an individual's need for care and would increase the odds that such risks could cause significant adverse health events.

POLICY ISSUES:

Data Reporting. Under normal conditions, the CDPH does not receive adverse donor event information outside of deaths. Under the COVID-19 emergency variance, CDPH collected additional data on adverse events, and this bill does not currently include a reporting requirement.

IMPLEMENTATION ISSUES:

Outdated Reference to American Association of Blood Banks. This bill authorizes a new supervision model, relying on the existing requirement that blood banks meet the standards of the "American Association of Blood Banks." However, that organization is now known as the "Association for the Advancement of Blood and Biotherapies."

AMENDMENTS:

1) *Reporting to CDPH*. To ensure that data is available for review at the time this bill is set to sunset and align with the previous variance requirements, the bill should be amended to include reporting of serious adverse events:

   On page 3 of the bill, lines 1-2:

   (3) *A blood bank shall annually report to the department any adverse donor events requiring emergency medical intervention that occur pursuant to this subdivision, including the date, location, type of adverse event, onsite response, and whether a registered nurse was physically present on the premises.*

   (4) This subdivision shall become inoperative on January 1, 2028.

2) *Outdated References.* To reflect that the American Association of Blood Banks has updated its name and may continue to do so, the bill should be amended to include any successor organizations:

   On page 4, after line 2, insert:

   (i) For purposes of this section, "American Association of Blood Banks" means the American Association of Blood Banks or its successor organization.

REGISTERED SUPPORT:

America's Blood Centers
American Nurses Association/California
American Red Cross California Chapter
America's Blood Centers
Association for The Advancement of Blood and Biotherapies

Blood Centers of America
Blood Centers of California
California Hospital Association
Central California Blood Center (UNREG)
Fresno Madera Medical Society
Govern for California
Houchin Community Blood Bank
Kaweah Delta Hospital Foundation
La Quinta
Lifestream Blood Bank
Northern California Community Blood Bank
San Diego Blood Bank
San Diego County Supervisor Joel Anderson's Office
San Diego Regional Chamber of Commerce
Stanford Blood Center
Tenet Healthcare Corporation
Vitalant
1 group of individual medical directors

REGISTERED OPPOSITION:

American Federation of State, County and Municipal Employees, AFL-CIO
Board of Registered Nursing
California Labor Federation, AFL-CIO
California Nurses Association
California School Employees Association
Service Employees International Union California State Council
Union of American Physicians and Dentists
United Nurses Associations of California/Union of Health Care Professionals

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