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California State Assembly

BUSINESS AND PROFESSIONS



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AGENDA

Wednesday, July 14, 2021
1:30 p.m. -- State Capitol, Assembly Chamber

BILLS HEARD IN FILE ORDER

- | | | | |
|----|--------|--|---|
| 1. | SB 607 | Min | Professions and vocations. |
| 2. | SB 800 | Archuleta | Real estate: licenses. |
| 3. | SB 801 | Archuleta | Healing arts: Board of Behavioral Sciences: Board of Psychology: licensees. |
| 4. | SB 802 | Roth | Private postsecondary education. |
| 5. | SB 803 | Roth | Barbering and cosmetology. |
| 6. | SB 806 | Roth | Healing arts. |
| 7. | SB 826 | Business, Professions and Economic Development | Business and professions. |

COVID FOOTER

SUBJECT:

We encourage the public to provide written testimony before the hearing by visiting the committee website at <http://assembly.ca.gov/>. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted. All are encouraged to watch the hearing from its live stream on the Assembly's website at <https://www.assembly.ca.gov/todaysevents>.

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

Date of Hearing: July 14, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 607 (Min) – As Amended July 13, 2021

SENATE VOTE: 35-0

SUBJECT: Professions and vocations

SUMMARY: Makes statutory updates, technical corrections, and noncontroversial changes to various provisions of law relating to boards and bureaus under the Department of Consumer Affairs (DCA).

EXISTING LAW:

- 1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA's jurisdiction. (BPC § 101)
- 3) Defines "board" as also inclusive of "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (BPC § 22)
- 4) 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) Requires boards within the DCA to expedite the licensure process for applicants who are married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States and who holds a current license in another state in the profession for which they are seeking licensure, and requires boards to. (BPC § 115.5)
- 6) Establishes the Dental Board of California (DBC) within the DCA to license and regulate dental professionals. (BPC §§ 1600 *et seq.*)
- 7) Beginning January 1, 2024, requires a school seeking approval as a foreign dental school to have successfully completed the international consultative and accreditation process with the Commission on Dental Accreditation or a comparable accrediting body approved by the DBC. (BPC § 1636.4)
- 8) Provides that the Dental Board of California (DBC) may charge an application fee of up to \$1,000 and a renewal fee of up to \$600 for either a moderate sedation permit or oral conscious sedation permit. (BPC § 1724)
- 9) Requires applicants for licensure as a registered dental assistant in extended functions (RDAEF) to pass an examination in which they demonstrate the performance of specified procedures. (BPC § 1753.4)

- 10) Establishes the California Architects Board (CAB) within the DCA to regulate architects. (BPC § 5510)
- 11) Establishes the Landscape Architects Technical Committee (LATC) within the CAB to regulate the practice of landscape architects. (BPC §§ 5621 – 5622)
- 12) Authorizes the LATC to require an applicant for licensure to furnish a full set of fingerprints for purposes of conducting criminal history background checks. (BPC § 144)
- 13) Establishes the Bureau of Security and Investigative Services (BSIS) within the DCA to license and regulate security guards, proprietary private security employers, proprietary private security officers, alarm companies, locksmiths, private patrol operators, and repossession companies and their employees. (BPC §§ 6980; 7500; 7574; 7580; 7590)
- 14) Establishes the Contractors State License Board (CSLB) within the DCA to license and regulate contractors and home improvement salespersons; establishes a licensure requirement that each applicant or licensee obtain a \$15,000 contractor's bond. (BPC § 7071.6)
- 15) Requires exterior elevated elements (EEE) that include load-bearing components in all buildings containing three or more multifamily dwelling units to be inspected. (Health and Safety Code (HSC) § 17973)

THIS BILL:

- 1) Beginning July 1, 2022, requires that boards waive the licensure application fee and the initial or original license fee for applicants who meet the requirements for expedited licensure as military family members.
- 2) Provides that a foreign dental school whose program was approved prior to January 1, 2020, through any date between January 1, 2024, and December 31, 2026, shall maintain approval through that date, at which time they would be required to obtain CODA accreditation.
- 3) Provides that graduates of a foreign dental school whose program was approved by the Board prior to January 1, 2020, through any date before January 1, 2024, and who enrolled in the program prior to January 1, 2020, shall be eligible for licensure.
- 4) Expressly authorizes the DBC to charge an application fee of up to \$1,000 and a renewal fee of up to \$600 for a pediatric minimal sedation permit.
- 5) Deletes the practical examination requirement for RDAEF license applicants.
- 6) Clarifies the LATC's authority to require fingerprints for conducting a criminal history background checks for applicants and receive criminal offender record information through the Department of Justice.
- 7) Implements fee increases for applicants and licensees under the CSLB and increases, beginning January 1, 2023, the amount required for a contractor's bond for licensure from \$15,000 to \$25,000.

- 8) Clarifies firearms permit requirements for individuals applying for licensure as security guards to complete a specified assessment.
- 9) Authorizes a contractor to perform the inspection and bid on the repair work of an EEE.

FISCAL EFFECT: According to the Senate Committee on Appropriations, unknown fiscal impacts to the affected boards and bureaus to implement the various administrative and enforcement changes proposed in the bill.

COMMENTS:

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

Background.

Fee Waivers for Expedited Licensure Applicants. Currently, statute provides for several accommodations of both military family and veteran license applicants. Boards are required to inquire about the military status of each of their applicants so that military experience may potentially be applied toward licensure training requirements. Boards are also required to expedite licensure for military veterans as well as the spouses and partners of active duty military. This bill would further require boards to waive the licensure application fee and the initial or original license fee for applicants who meet the requirements for expedited licensure.

Foreign Dental Schools. In 2019, the DBC's sunset bill included language implementing recommendations from the board's sunset background paper to transition the responsibility for approving foreign dental schools from the DBC to CODA. These provisions were strongly supported by the DBC itself, which stated openly that it did not feel it had the resources or expertise to effectively review and approve foreign schools. Between 1996 and 2019, only two foreign dental schools were ever approved by the DBC. The first, La Universidad De La Salle Bajío ("De La Salle") was first approved in 2004 and is located in Leon, Guanajuato, Mexico. The second, the State of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova, received a two-year provisional approval in December 2016 and full approval in May 2018.

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

This bill would provide that a foreign dental school whose program was approved prior to January 1, 2020, through any date between January 1, 2024, and December 31, 2026, can remain approved through that date, so that those schools may maintain their approval without it being

prematurely terminated before they can obtain CODA approval. Further, the bill would allow for students who enrolled in a foreign dental school under those circumstances prior to January 1, 2020 to be eligible for licensure.

Sedation Permits. SB 501 (Glazer) of 2018 created a new Pediatric Minimal Sedation Permit and provided that the application and renewal fee shall not exceed the maximum fees for dentistry licensing and renewals. However, statute was not correspondingly updated to provide DBC the necessary authority to require an applicant to pay fees associated with the permit and permit renewal. This bill would codify that maximum fee for both initial issuance and renewal of a Pediatric Minimal Sedation Permit.

RDAEF Practical Examinations. The DBC's practical examination requirement for Registered Dental Assistants (RDA) was previously suspended and then subsequently eliminated in the DBC's sunset bill in 2019. However, the board is still required to administer clinical and practical examinations for candidates for licensure as a RDAEF. At its August 2020 meeting, the DBC acknowledged that there were a number of challenges with the administration of the RDAEF clinical and practical examinations and that the examination may not be of any value to protecting consumers. Subsequently, the DBC voted to support eliminating the RDAEF practical examination as well. This bill implements that recommendation.

CSLB Licensing Fees. Over the past several years, CSLB states that its expenditures have steadily outgrown revenue and a deficit is now projected with insufficient reserve funds. In March 2020, the CSLB commissioned an outside consultant to conduct a fee study to determine if CSLB fee levels were appropriate for the recovery of costs to meet mandated functions for the next five years. The consultant recommended CSLB maintain some fees, increase some fees, and proposed adding two new fees. The consultant recommended raising the statutory cap for all fees by approximately 25 percent. This bill increase the statutory minimum and maximum ranges for a number of fees as recommended by the fee study consultant.

Contractor's Bonds. In 2016, SB 467 (Hill) of 2016 increased the contractor bond amount from \$12,500 to \$15,000. Contractors are required to demonstrate financial solvency to CSLB by obtaining and maintaining a \$15,000 surety bond through an admitted surety insurer. In the instance of a contractor using an alternative to bonds, the contractor is required to place the entire \$15,000 on deposit with the CSLB and maintain it through the life of the license period. An outcome of issues raised during the CSLB's 2018 sunset review required the CSLB to conduct a study of the contractor's bond sufficiency. The CSLB's 2019 sunset bill required the CSLB to conduct a study to obtain information to evaluate whether the current \$15,000 amount of the contractor bond is sufficient, or whether an increase may be necessary, and report its findings and recommendations to the appropriate policy committees of the Legislature by January 1, 2021. Ultimately, the study concluded that an increase might be necessary. This bill increases the current bond amount by \$10,000.

Exterior Elevated Element Inspections. SB 721 sought increase safety and oversight of multi-family dwellings by requiring existing EEEs to be inspected at least every six years by certain licensed persons in order to determine that the EEEs and their associated waterproofing elements are in generally safe conditions, adequate working order, and free from any hazardous conditions. SB 721 required any identified repairs to be made within a designated timeframe and set penalties for building owners who do not complete the required repairs. That bill was

specific as to who could provide the inspections, and specifically prohibited a licensed contractor hired as the inspector from completing any repair work. Given that CSLB can take enforcement in the event of a problematic inspection or subsequent shoddy repairs resulting from an inspection, in order to ensure that these important inspections are occurring immediately, this bill will remove the requirement that two separate contractors are hired for these purposes.

Bureau of Security and Investigative Services. SB 1196 (Hill) of 2016 and SB 547 (Hill) of 2017 established the requirement for an applicant of a BSIS firearms permit who is a BSIS security guard registrant to complete an examination designed to demonstrate that they are capable of exercising appropriate judgment, restraint, and self-control for the purposes of carrying and using a firearms while on duty, effective as a condition for the issuance of a permit. This bill streamlines the assessment process and creates a pathway for applicants to complete the assessment and be issued a permit.

Architects. The 2019 sunset bill for the CAB and LATC granted the programs authorization to require fingerprints of new applicants for licensure, beginning January 1, 2021. While SB 608 included necessary implementation language for the CAB to have this authority for architects, due to a technical oversight, similar language was not added to the to LATC's statute in order for the same authority to be extended to landscape architect applicants. This bill adds the appropriate statutory authority for the CAB to begin obtaining the fingerprints required for LATC applicants.

ARGUMENTS IN SUPPORT:

The **Construction Employers' Association (CEA)**, which is comprised of a number of union-affiliated building contractors in California, supports this bill. Specifically, CEA supports the bill's provisions relating to the CSLB, writing that "SB 607 is intended to address a funding imbalance at CSLB because statutorily mandated expenditures now exceed revenue, despite substantive efforts by the CSLB to reduce costs. To accomplish this, SB 607 would increase license application and renewal fees for the first time in four years and make those fees consistent with fees in surrounding states. CEA believes that it is in the best interest of the industry and consumers to fully fund CSLB's activities. CEA also supports the increase in the surety bond given that the existing bond amount has not been changed in years, nor has it kept up with construction costs."

The **Foundation for Allied Dental Education (FADE)** supports the provisions of this bill that eliminate the RDAEF practical examination. FADE writes that "we are seeing a significant decrease in the relevancy of both the clinical and practical examinations in relation to patient safety and contemporary Dentistry. Today, the challenges an examination candidate experiences are numerous, reaching a point where the process itself can only be seen as a significant barrier to obtaining allied healthcare licensure.

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

American Subcontractors Association – California

Associated General Contractors of California
Associated General Contractors – San Diego Chapter
California Legislative Conference of Plumbing, Heating & Piping Industry
California Surety Federation
Construction Employers' Association
Dental Board of California
National Electrical Contractors Association (NECA)
Northern California Allied Trades
Plumbing-heating-cooling Contractors Association of California
Southern California Glass Management Association (SCGMA)
Suretech Insurance
The Foundation for Allied Dental Education
Tokio Marine Hcc
United Contractors (UCON)
Vermeulen Governmental Relations
Wall and Ceiling Alliance
Western Wall and Ceiling Contractors Association (WWCCA)

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: July 14, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 800 (Archuleta) – As Amended June 17, 2021

SENATE VOTE: 39-0

SUBJECT: Real estate: licenses

SUMMARY: Makes various changes to the Real Estate Law intended to improve oversight of real estate and real estate appraiser professionals stemming from the joint sunset review oversight of the Department of Real Estate (DRE) and Bureau of Real Estate Appraisers (BREA).

EXISTING LAW:

- 1) Existing law establishes the Real Estate Law, which provides for the licensing and regulation of real estate professionals by the DRE and BREA. Generally speaking, DRE and BREA are responsible for licensing, enforcement, continuing education, and managing fee structures and systems for their real estate and real estate appraiser professionals

THIS BILL:

- 2) Allows DRE to suspend, revoke, deny, or delay the license of a real estate licensee if that person had received an order of debarment from another jurisdiction (another agency within the state, a license in another state, or a license issued by the federal government).
- 3) Expands the definition of “good standing” used for a continuing education exemption for licensees over the age of 70 with 30 years of experience, specifically adding “who has not surrendered a license while under investigation of while subjection to a disciplinary action, or received an order of debarment” to the existing definition.
- 4) Removes specific gender references and replace references to the “bureau” of real estate with “department” of real estate.
- 5) Requires the commissioner to inquire in every application for licensure under the Real Estate Law if the individual applying for licensure is, or previously was, a member of the Armed Forces of the United States, as defined.
- 6) Requires the commissioner to expedite, and authorize the commissioner to assist, the initial licensure process for an applicant who supplies satisfactory evidence to the department that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged.
- 7) Requires the commissioner to expedite the licensure process for an applicant who (1) supplies evidence satisfactory to the commissioner that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state and (2) holds a current

license in another state, district, or territory of the United States in the profession or vocation for which the applicant seeks a license from the commissioner.

FISCAL EFFECT: According to Senate Appropriations Committee the ongoing annual costs of approximately \$56.7 million (Real Estate Fund) and 314.0 positions to support the continued operation of the Department of Real Estate’s licensing and enforcement activities.

Ongoing annual costs of approximately \$6.3 million (Real Estate Appraisers Regulation Fund) and 26.0 positions to support the continued operation of the Bureau of Real Estate Appraisers’ licensing and enforcement activities.

The Department of Real Estate anticipates the fiscal impacts to comply with the expedited licensure requirements for veterans and their spouses and for additional enforcement workload to be minor and absorbable.

COMMENTS:

Purpose. This bill is sponsored by the Author, and is one of a number of sunset bills the Author is advancing this year. According to the Author, “This bill is necessary to make changes to the DRE Act, DRE operations, BRE Act, and BRE operations in order to improve oversight of oversight of real estate professionals and appraisers.”

Background. *Department of Real Estate.* Real estate licensing in California commenced in 1917. The Department of Real Estate (DRE, or Department) is the State entity currently charged with responsibility to enforce the Real Estate Law, the Subdivided Lands Act, and the Vacation Ownership and Time-share Act of 2004. DRE’s programs are in place to satisfy the Department’s statutorily mandated obligations of licensing and regulating mortgage loan originators, real estate and prepaid listing service licensees, reviewing and approving subdivision and time share offerings, and approving continuing education (CE) and pre-license courses. Each of DRE’s programs contribute toward satisfying its mission of protecting and serving the interests of the public in real estate transactions and providing related services to the real estate industry. Specifically, BPC § 10050 requires the Real Estate Commissioner to enforce all laws in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees.

With respect to its core functions, DRE currently licenses 421,624 persons in California. Licensed real estate salespersons (291,759) outnumber real estate licensed brokers (129,865) nearly two to one. Of these real estate licensees, over 26,000 have a Mortgage Loan Originator (MLO) endorsement that allows the licensee to originate residential mortgage loans. In FY 2019/2020, DRE issued over 17,396 new salesperson licenses and 3,911 new broker licenses. DRE’s enforcement efforts resulted in 184 license application denials, 414 licensing disciplinary actions (revocations, surrenders, suspensions, and public reprovations), and 20 desist and refrain orders. Additionally, DRE issued over 2,852 final public reports, which translated to 33,679 new housing units being offered for sale in California in FY 2019/20.

Bureau of Real Estate Appraisers. In 1989, Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) was adopted by the United States Congress mandating all states to license and certify real estate appraisers who appraise property for

federally related transactions. In response to the federal mandate, the California Legislature enacted the Real Estate Appraisers Licensing and Certification Law in 1990 (AB 527, Chapter 491, Statutes of 1990), which established the Bureau of Real Estate Appraisers (Bureau). The Bureau licenses and regulates real estate appraisers in California. The Bureau is entirely funded by regulatory fees.

The Licensing Division of the Bureau is responsible for applicant compliance with the minimum requirements for licensure in accordance with criteria established by the federally mandated Appraisal Foundation and California law. The Licensing Division also registers Appraisal Management Companies (AMC) in compliance with California law.

The Enforcement Division of the Bureau investigates the background of applicants, licensees, and AMC registrants to ensure they meet the standards for licensure. The Enforcement Division also investigates complaints filed against licensed appraisers, registered AMCs, and takes enforcement and/or administrative actions against licensees when it is determined that a violation has occurred.

The Bureau is also responsible for the accreditation of educational courses and course providers for real estate appraiser licensing and certification.

Current Related Legislation. SB 801 (Roth, 2021) makes various technical and conforming changes to the various practice acts administered by the Board of Behavioral Sciences recommended during the joint sunset review of the Board.

SB 802 (Roth, 2021) modifies definitions; specifies advisory committee membership terms; expands the conditions that require prior authorization; and makes technical and other conforming changes to the California Private Postsecondary Education Act recommended during the joint sunset review of the Bureau for Private Postsecondary Education.

SB 803 (Roth, 2021) makes changes to the Barbering and Cosmetology Act recommended during the joint sunset review of the Board of Barbering and Cosmetology.

SB 806 (Roth, 2021) is the Medical Board of California sunset bill.

POLICY ISSUES:

In November of 2019, the BREa advised licensees that it was necessary to raise fees beginning January 1, 2020 in order for the BREa to meet its mandates. The fees made substantial increases in the fees charged by BREa, including an “Application Review” fee from \$150 to \$400, and an “Issuance Fee” from \$375 to the statutory level of \$525 found in BPC § 11405.

The Appraiser Licensing Law does not contain any statutory authority for a renewal application fee. The law refers to “[i]nitial application fees” (§ 11400), and to a renewal fee (§ 11405), but it does not authorize an application review.

The Bureau's fee regulation CCR Section 3582 (attached both the 2019 regulation and the 2020 regulation) appears to be the only place renewal application fee is mentioned. In the Authority

Cited and Reference for the Section 3582 of the regulations, none of the B&P Code sections cited refer to a renewal application fee or give authority for a renewal application fee.

The Bureau of Real Estate Appraisers - Licensing Handbook posted on the BRE website, gives the Renewal Process but does not refer to separate renewal application fees and renewal fees -- but says that to renew the licensee must pay "All appropriate fees."

Section 3681 (attached), the regulation which details the renewal process incorporates the Renewal Application (REA 3012) by reference. That is the form they are charging \$150 (now \$400) to review. The form is straightforward and should not be complicated to review. The only complications would be if there is: (1) A change of name, (2) Criminal convictions, or (3) Continuing Education issues. None of these are extraordinary for a licensing bureau to review for renewal.

Department of Consumer Affairs may need to take action to reduce the fees.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: July 14, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 801 (Archuleta) – As Amended July 7, 2021

SENATE VOTE: 39-0

SUBJECT: Healing arts: Board of Behavioral Sciences: Board of Psychology: licensees

SUMMARY: Makes various changes to the regulation of licensed and registered professionals under the jurisdiction of the Board of Psychology (BOP) and the Board of Behavioral Sciences (BBS), including psychologists, registered psychologists, psychological assistants, licensed clinical social workers (LCSWs), licensed marriage and family therapists (LMFTs), licensed educational psychologists (LEPs), licensed professional clinical counselors (LPCCs), associate clinical social workers registrants (ASWs), associate marriage and family therapists registrants (AMFTs), and associate professional clinical counselors registrants (APCCs), stemming from the joint sunset review oversight of the BOP and the BBS.

EXISTING LAW:

- 1) Establishes the Psychology Licensing Law, which defines and regulates the practice of psychology in California. (Business and Professions Code (BPC) Section 2900 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 Section 2903)
- 3) Creates the Board of Psychology under the jurisdiction of the Department of Consumer Affairs, responsible for the licensing and enforcement of the psychology profession in California. (BPC Section 2920 set seq.)
- 4) Prohibits a person, with certain exceptions, to engage in the practice of psychology or representing themselves as a psychologist without a license granted by the BOP. (BPC Section 2903)
- 5) Enumerates the requirements to qualify for licensure as a psychologist, including:
 - 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, as specified.

- 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 Section 2914, Section 2915.5 and Section 2915.4)
- 6) Establishes the “psychological assistant” registration category under the BOP, and allows such registrant to perform psychological functions in preparation for full licensure as a psychologist if the registrant:
 - a. Meets specified 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 at all times 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 BOP relating to the requirements in continuing education.
 - d. Does not provide psychological services to the public except as a supervisee. (BPC Section 2913)
- 7) Prohibits a licensed psychologist or a board certified psychiatrist from supervising more than three psychological assistants at any given time. (BPC Section 2913(c)(2))
- 8) Establishes the “registered psychologist” registration category under the BOP, and allows such registrant to perform activities of a psychological nature at a nonprofit community agency for a maximum period of 30 months, if the following conditions are met:
 - a. The registrant has a doctorate degree in psychology, educational psychology, or in education, as specified.
 - b. The registrant has one year or more of supervised professional experience.
 - c. The nonprofit community agency receives a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations. (BPC Section 2909.5)

- 9) Authorizes the following unlicensed individuals to perform activities of a psychological nature, as long as those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed, and do not render or offer to render psychological services:
 - a. Individuals who hold a valid and current credential as a school psychologist issued by the Commission on Teacher Credentialing.
 - b. Individuals who are employed in positions as psychologists or psychological assistants by accredited or approved colleges, junior colleges, or universities, or by federal, state, county, or municipal governmental organizations that are not primarily involved in the provision of direct health or mental health services, may conduct research and disseminate their research findings and scientific information. (BPC Section 2909)
- 10) Authorizes individuals who are salaried employees of accredited or approved academic institutions, public schools, or governmental agencies to practice psychology, if those employees are complying with the following:
 - a. Performing those psychological activities as part of the duties for which they were hired.
 - b. Performing those activities solely within the jurisdiction or confines of those organizations.
 - c. Do not hold themselves out to the public by any title or description of activities incorporating the words “psychology,” “psychological,” or “psychologist.”
 - d. Are primarily gaining the supervised professional experience required for licensure that is being accrued consistent with the BOP’s regulations and the employees have as the primary supervisor a psychologist licensed in the state. (BPC Section 2910)
- 11) Provides that an applicant for licensure trained in an educational institution outside the United States or Canada must demonstrate that they possess an equivalent doctorate degree in psychology earned from a regionally accredited university in the United States or Canada to be eligible for licensure in California. Requires such applicants to provide a comprehensive evaluation of the degree, performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES). (BPC Section 2914(c)(4))
- 12) Specifies and an individual who passes the BOP’s supplemental licensing examination and has been licensed for at least five years by a psychology licensing authority in another state or Canadian province may obtain a license in California. (BPC Section 2946)

- 13) Establishes the Licensed Marriage and Family Therapist Act, the Clinical Social Worker Practice Act, the Licensed Professional Clinical Counselor Act, and the Educational Psychologist Practice Act, which outlines the licensure requirements, scope of practice, and professional responsibilities of those respective professions. (BPC Section 4980.04 et seq., BPC Section 4991 et seq., BPC Section 4999.10 et seq., and BPC 4989.10 et seq)
- 14) Establishes the Board of Behavioral Sciences under the jurisdiction of the Department of Consumer Affairs responsible for enforcing the provisions of the Practice Acts described above. (BPC Section 4990 seq.)
- 15) Unless specifically exempted, requires a person to obtain a valid license or registration with the BBS before engaging in the practice of marriage and family therapy, clinical social work, or professional clinical counseling (BPC Section 4980(b), BPC Section 4996(b), and BPC Section 4999.30)
- 16) Exempts from licensure requirements above any unlicensed or unregistered employee or volunteer working in a governmental entity, a school, a college, a university, or an institution that is both nonprofit and charitable, as long as the employee or volunteer performs work solely under the supervision of the entity and provides a specified consumer protection form to clients. (BPC Section 4980.01(c), BPC Section 4996.14(b), and BPC section 4999.22(d))
- 17) Requires unlicensed or unregistered employees or volunteers to provide clients, prior to initiating psychotherapy, a notice on information about where to file a complaint. (BPC Section 4980.01, Section 4996.14, and Section 4999.22)
- 18) Requires licensees or registrants under the BBS to provide clients, prior to initiating psychotherapy, a notice on the how to file a complaint with the BBS. (BPC Section 4980.32. Section 4989.17, 4996.75, and Section 4999.71)
- 19) Permits health care providers, including associate marriage and family therapists and qualified autism providers, to provide telehealth services, as specified. (BPC Section 2290.5)
- 20) Outlines the educational, coursework and training requirements for a marriage and family therapist license. (BPC Section 4980.36 and Section 4980.37)
- 21) Defines the practice of marriage and family therapy as a service performed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate satisfying, and productive marriage and family adjustments. (BPC Section 4980.02)
- 22) States that the application of marriage and family therapy principles and methods includes, but is not limited to, the use of applied psychotherapeutic techniques to enable individuals to mature and grow within marriage and the family, the provision of explanations and interpretations of the psychosexual and psychosocial aspects of

relationships, and the use, application, and integration of marriage and family therapy coursework. (Section 4980.02)

- 23) Permits the BBS to establish continuing education provider fees, as specified. (BPC Section 4980.54, Section 4989.34, Section 4996.22, and Section 4999.76)
- 24) Authorizes the BBS to charge application, examination, and renewal fees, as specified. (BPC Section 4984.7, Section 4989.32, Section 4989.68, Section 4996.3, and Section 4999.120)
- 25) Authorizes the BBS to charge all unpaid prior renewal fees and delinquency fees for LPCC and LEP licensees wishing to renew a license that has expired, as specified. (BPC Section 4989.36, Section 4989.40, and Section 4999.104)
- 26) Prohibits any LMFT, LCSW, LPCC who conducts a private practice under a fictitious business name from using any name that is false, misleading, or deceptive and must inform the patient prior to commencing treatment of the name and license designation of the owner or owners of the practice, as specified. (BPC Section 4980.46, Section 4998.2, and Section 4999.125)
- 27) States that a licensee or registrant under the BBS whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. Specifies the timeframes by which a licensee or registrant may file a petition. (BPC Section 4990.30)
- 28) Specifies that a LCSW can obtain continuing education from an accredited school of social work or a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education. (BPC Section 4996.22)

THIS BILL:

- 1) Repeals the registered psychologist registration category under the BOP.
- 2) Eliminates the term “psychological assistant” and instead creates the “registered psychological associate” (RPA) registration category under the BOP. Authorizes an RPA to perform psychological functions in preparation for licensure as a psychologist.
- 3) Requires an RPA to complete or be in any of the following:
 - a. Completed a master’s degree in psychology.
 - b. Completed a master’s degree in education with the field of specialization in educational psychology, counseling psychology or school psychology.

- c. Is an admitted candidate for a doctoral degree in psychology with the field of specialization in clinical, counseling, school, consulting, forensic, industrial, or organizational psychology.
 - d. Is an admitted candidate for a doctoral degree in educational psychology, counseling psychology, or school psychology.
 - e. Is an admitted candidate for a doctoral degree in a field of specialization designed to prepare graduates for the professional practice of psychology after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations.
 - f. Completed any of the doctoral degrees above.
- 4) Eliminates psychiatrists as potential immediate supervisors for the purpose of gaining supervised professional experience, and requires RPAs to be supervised by a licensed psychologist.
 - 5) Maintains that an RPA's primary supervisor shall not supervise more than three RPAs at any given time, and that the primary supervisor is responsible for ensuring that the extent, kind, and quality of the psychological services performed are consistent with the RPA's training and experience.
 - 6) Prohibits an RPA to provide psychological services to the public except as a trainee, and prohibits an RPA from receiving payments, monetary or otherwise, directly from clients.
 - 7) Expands the degrees and specializations that are eligible for licensure as a psychologist to include:
 - a. Psychology with the field of specialization in clinical, counseling, school, consulting, forensic, industrial, or organizational psychology.
 - b. Education with the field of specialization in counseling psychology, educational psychology, or school psychology.
 - c. A field of specialization designed to prepare graduates for the professional practice of psychology.
 - 8) Adds the National Register of Health Services Psychologists (NRHSP) as a foreign credential evaluation service that an applicant for licensure trained outside the United States or Canada may use to perform a degree equivalency evaluation. Specifies that the member of NACES or the NRHSP must submit to the BOP:
 - a. A transcript in English, or translated into English by the credential evaluation service, of the degree used to qualify for licensure.
 - b. An indication that the degree used to qualify for licensure is verified using primary sources.

- c. A determination that the degree is equivalent to a degree earned in a regionally accredited institution in the United States or Canada that qualifies for licensure.
- 9) Reduces the number of contact hours of coursework in aging and long-term care required for licensure as a psychologist from 10 hours to 6 hours. Specifies that applied experience may count towards this requirement.
- 10) Provides that if an applicant for licensure as a psychologist does not have coursework related to aging and long-term care, the applicant may:
 - a. Obtain evidence of compliance as part of their applied experience in a practicum, internship, or formal postdoctoral placement or other qualifying supervised professional experience. The applicant must provide written certification from the director of training for the program or primary supervisor where the qualifying experience occurred stating that the training required by this section is included within the applied experience.
 - b. Take continuing education courses, as specified.
- 11) Reduces the requirement that a person be licensed in another state or Canadian province from 5 years to 2 years in order to be eligible for licensure as a psychologist in California.
- 12) Permits the BOP's licensure committee, upon delegation by the Board, to consider and decide requests from an applicant or licensee pertaining to their qualifications for licensure. Authorizes such licensure committee to convene in closed session, to the extent necessary to protect the privacy of individuals, to consider and decide request for the following:
 - a. An extension of time to gain supervised professional experience to meet the experience requirements for licensure.
 - b. An extension of time to hold a psychological associate registration beyond the maximum period otherwise allowed pursuant to regulations.
- 13) Authorizes the Board to assess a file transfer fee of \$10.
- 14) States that the BOP may accept in writing the offer of a surrender of a license, and that a license surrender shall be public information.
- 15) Provides that the holder of a license that was surrendered to the BOP may petition the Board for reinstatement after a period of not less than one year after the effective date of the acceptance.
- 16) Clarifies that associate clinical social workers and an associate professional clinical counselors may provide telehealth services.
- 17) Requires additional information on the BBS to be included on notices issued by unlicensed or unregistered employees or volunteers providing exempted psychotherapy services to clients.

- 18) Specifies that notices issued by unlicensed, unregistered, or licensed and registered individuals may be provided prior to initiating psychotherapy services or as soon as practicably possible thereafter, and that the delivery of the notice to the client must be documented.
- 19) Updates the definition of the practice of marriage and family therapy as the application of psychotherapeutic and family systems theories, principles, and methods in the delivery of services to individuals, couples, or groups in order to assess, evaluate, and treat relational issues, emotional disorders, behavioral problems, mental illness, alcohol and substance use, and to modify intrapersonal and interpersonal behaviors.
- 20) Clarifies that the application of marriage and family therapy principles and methods includes, but is not limited to, the following activities:
 - a. Assessment, evaluation, and prognosis.
 - b. Treatment, planning, and evaluation.
 - c. Individual, relationship, family, or group therapeutic interventions.
 - d. Relational therapy.
 - e. Psychotherapy.
 - f. Client education.
 - g. Clinical case management.
 - h. Consultation.
 - i. Supervision.
 - j. Use, application, and integration of marriage and family therapy coursework as required under existing law.
- 21) Specifies that LMFT and LPCC required education and practicum include training in prognosis.
- 22) Clarifies that a denial issued pursuant to the conviction of a specified crime, must comply with the conditions of denial as specified in BPC Section 480.
- 23) Eliminates the BBS' authority to charge continuing education provider fees.
- 24) Clarifies that associate registration fees under the BBS are to be renewed annually, and that licenses are to be renewed every two years.
- 25) States that the BBS does not charge accrued renewal or delinquency fees.

- 26) Aligns the requirements to renew and reinstate a LCSW suspended license with the existing requirements for LMFT, LEP, and LPCC licenses.
- 27) Adds conforming language for LEPs, which prohibits a LEP who conducts a private practice under a fictitious business name from using any name that is false, misleading, or deceptive, and must inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.
- 28) Requires an applicant, registrant, or licensee who has an electronic mail address to provide the BBS with that electronic mail address no later than July 1, 2022, and further requires an applicant, registrant, or licensee to provide to the BBS any and all changes to their electronic email address no later than 30-calendar days after the changes have occurred.
- 29) States that the electronic mail address is considered confidential and not subject to public disclosure.
- 30) Clarifies that any periods during which a probation was tolled is excluded from the statutory timeframes determining when a petition can be filed by a licensee or registrant whose license has been revoked, suspended, or placed on probation by the BBS.
- 31) Clarifies that if a petition is to be heard by the BBS, the petitioner may request that the BBS schedule the hearing on the petition for a board meeting at a specific city where the BBS regularly meets.
- 32) Increases the maximum LCSW application fee that the BBS may charge from \$400 to \$500.
- 33) Permits an LCSW to obtain continuing education from a school accredited by the U.S. Department of Education or approved by the Bureau for Private Postsecondary Education.
- 34) Extends the BOP and the BBS until January 1, 2026.
- 35) Makes various technical and conforming changes related to the BOP and BBS' operations.

FISCAL EFFECT: According to the Senate Committee on Appropriations, which analyzed the April 13, 2021 version of this bill:

“The [Board of Behavioral Sciences] anticipates costs of approximately \$1,314 (Behavioral Sciences Fund) to revise forms for applicants, registrants, and licensees; update website documents; and perform outreach to its licensing population. These costs are anticipated to be absorbable within existing resources.

The Office of Information Services anticipates costs of approximately \$1,600 to change the email address field on initial and renewal application forms, which is anticipated to be absorbable through the redirection of existing maintenance resources.”

COMMENTS:

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

The joint Committees held sunset review oversight hearings for the Board of Behavioral Sciences on November 18, 2020 and for the Board of Psychology on March 3, 2021. Several of the issues examined during the hearings are also reviewed in a committee background papers “Identified Issues, Background, and Recommendations Regarding the Board of Behavioral Sciences” and “Identified Issues, Background, and Recommendations Regarding the Board of Psychology” – both of which are published and available on the Assembly Committee on Business and Professions’ website.

SB 801 is the sunset review bill that will implement changes to the BOP and the BBS’ operations, as identified on the committee background paper, the sunset review oversight hearing, and stakeholder input.

Background.

The Board of Psychology. The California Board of Psychology traces its origins back to the Certification Act of 1958, which provided an early regulatory framework by granting title protection for the practice of psychology. In 1967, the California legislature further defined the scope of practice of psychology, requiring licensure to practice and further protect the public from potential consumer harm. At the time, the practice of psychology was placed under the jurisdiction of the Psychology Examining Committee, which was part of the larger Division of Allied Health Professions of The Board of Medical Quality Assurance (BMQA). Throughout the 1970s, the Psychology Examining Committee gradually became more independent, and became responsible for its own operations – including the authority to adopt regulations and administrative disciplinary actions without the endorsement of BMQA. In 1990, the Psychology Examining Committee was officially renamed the Board of Psychology.

Today, the BOP regulates licensed psychologists, psychological assistants, and registered psychologists through the enforcement of the Psychology Licensing Law. The practice of psychology is defined as 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; and the methods and

procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

Broadly, only licensed psychologists can practice psychology independently in California. Registered psychologists are registrants who work and train under supervision in non-profit agencies that receive government funding. Finally, Psychological assistants provide psychological services under the supervision of a qualified licensed psychologist or board-certified psychiatrist, generally to accrue the necessary supervised hours to obtain full licensure as a psychologist.

Provisions Related to the Board of Psychology. As currently amended, SB 801 contains several proposed statutory changes identified by the BOP, the Committees, and stakeholders involved with or impacted by the practice of psychology. In addition to technical and conforming changes, this bill proposes to enact several statutory changes to the BOP: (1) restructuring pathways to licensure as a psychologist; (2) providing an additional method to conduct foreign degree evaluation; (3) granting the BOP's licensure committee authority to consider matters related to supervised professional experience; (4) establishing a new file transfer fee; and (5) creating a process to reinstate a license after a non-disciplinary surrender.

BOP: Pathways to Licensure. The BOP has experienced a notable increase in the average time to process complete applications for licensure and a significant increase in the average time to process incomplete applications for licensure in the past three fiscal years. Additionally, the number of pending applications has outpaced completed applications. In response to this trend, BOP staff began in 2015 to review all statutory and regulatory sections related to pathways to licensure and compiled a list of proposed improvements. The BOP subsequently engaged with stakeholders, hosting review meetings that included professional associations, schools, training directors, and applicants, to get feedback on the BOP's proposed changes.

Of note, the BOP proposal would rename the "psychological assistant" registration category as "registered psychological associate" and would modify the list of degrees and specializations that can be used towards eligibility for a registration as a psychological associate. For example, in addition to psychology, eligible degrees would include education, with the field of specialization in educational psychology, counseling psychology, or school psychology. According to the BOP, such changes reduce confusion, and enhances consumer protection by ensuring qualifying degrees incorporate the application of psychological principles in coursework and training.

Existing law requires a psychological assistant to be under immediate supervision of either a licensed psychologist or a licensed physician and surgeon who is certified in psychiatry. SB 801 would eliminate psychiatrists as qualifying primary supervisor for the rebranded registered psychological associates. According to the BOP, this change is needed as the role of the primary supervisor is to socialize trainees into the profession of psychology – and as such requires knowledge and understanding of the practice of psychology and appropriate obligations for an independent practitioner of psychology.

The BOP also proposes to eliminate the "registered psychologist" registration category. This registration designation is intended to be a method by which an unlicensed person can perform limited psychological functions at a non-profit community agency that receives specified

governmental funding, in order for the registered psychologist to accrue hours of supervised professional experience towards full licensure. According to the BOP, eliminating this category would reduce confusion regarding the type of registration needed to accrue the experience, and would also eliminate confusion in the public's mind as the term "registered psychologist" could be perceived as an independent practitioner. Additionally, there is a very small number of registered psychologists: in FY 2018/2019, the BOP reported 129 active registered psychologists; compared to 18,719 active psychologists and 1,378 active psychological assistants.

SB 801 also proposes reducing the number of hours of coursework in aging and long-term care from 10 hours to 6 hours, and adding applied experience and continuing education as alternative pathways to meet this requirement for licensure. According to the BOP, this change is to be consistent with other pre-licensure coursework requirements.

BOP: Foreign Degree Evaluation. BPC Section 2914 requires an applicant for licensure trained in an educational institution outside the United States or Canada to demonstrate to the satisfaction of the board that the applicant possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. To do so, applicants must provide the BOP with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the BOP deems necessary.

The Association of State and Provincial Psychology Boards conducted a discussion on foreign-trained applicants and received information about the National Register of Health Services Psychologists (NRHSP). Established in 1974, the NRHSP describes itself as an independent nonprofit organization and the largest credentialing organization for psychologists and psychology doctoral students.

After reviewing the NRHSP credentials review process, the BOP is requesting legislative changes to add the NRHSP as an additional credential evaluation service. To that end, SB 801 would allow the NRHSP to perform foreign credential evaluation services for the purpose of determining the qualifications of applicants trained in an educational institution outside the United States or Canada. According to the BOP, this proposed change will offer foreign-trained applicants an additional avenue to obtain the credentials evaluation required for licensure.

BOP: Authority of the Licensure Committee. All state boards and commissions are subject to the Open Meeting Act which specifies, among other items, that meetings must be noticed in advance and open to the public. As an exception, the Open Meeting Act does permit a licensing board to conduct, under specified circumstances, a closed session meeting to discuss matters that may constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting. The BOP's Licensure Committee uses this statutory discretion when discussing licensing-related requests from applicants. For example, the BOP's Licensure Committee reviews requests for additional time to accrue supervised professional experience due to health-related reasons. According to the BOP, the Licensure Committee is often presented with personal medical information that accompanies these requests. The Licensure Committee then brings its recommendations to the full BOP for final decision in an open session at a board meeting, where the requests must be substantially redacted to protect sensitive personal

information. The BOP suggests that this process creates unnecessary delays for those seeking licensure, as these individuals may be unable to practice while awaiting a final decision from the BOP.

SB 801 permits the BOP's Licensure Committee to meet in closed session and independently consider and decide whether an applicant or licensee should be granted an extension of time to gain supervised professional experience to meet the experience requirements for licensure, or an extension of time to hold a psychological associate registration beyond the maximum period otherwise allowed. This bill would only allow the Licensure Committee to convene in closed session to the extent necessary to protect the privacy of the applicant or licensee.

BOP: File Transfer Fee. The BOP is a special-funded entity, and as such does not receive funding from California's General Fund. The BOP generates revenue primarily from license, application, and examination fees levied on psychologists, psychological assistants, and registered psychologists. The BOP is currently facing a budget structural deficit, with expenditures outpacing revenue streams.

Existing law establishes statutory limits on the various fees levied on licensees. The BOP may adjust such fees via regulations, as long as the dollar amount remain within the statutory limits. The BOP has not yet reached the cap on several fee types: for example, both the initial licensing fee and the biennial renewal fee for psychologists are currently set by the Board at \$400, but are statutorily limited to \$500.

Based on current projections, the Board expects that it will need to increase its fees in some manner by FY 2023-24. In order to alleviate budget pressures, the BOP has conducted an analysis of its existing operations to determine if small administrative fees can be levied to recoup actual costs for completing certain service. To that end, SB 801 permits the BOP to charge a file transfer fee of \$10 to recoup the cost of retrieving and returning the appropriate documents from the State Records Center for the BOP's licensees and applicants.

BOP: License Reinstatement. Based on the Board's analysis of its aging licensee demographic and input from its stakeholders about discipline related to a licensee's cognitive impairment, the Board has reevaluated its approach to investigation and discipline of complaints where there is no consumer harm involved. The Board reports instances where licensees have diminished cognitive capacity due to diseases such as Alzheimer's and the licensee's family or a fellow licensee reported that the licensee is starting to experience cognitive issues due to their impairment but have no consumer complaints filed against them.

Currently, the Board has implicit statutory authority to accept a non-disciplinary surrender of a license. However, the Board reports that it does not have a mechanism for reinstatement of such a surrendered license in circumstances where medication or surgery could restore cognitive function. As such, the Board is requesting clarification of the process for voluntary surrender and to establish a mechanism for such individuals to petition the Board for reinstatement of their license.

SB 801 proposes that the BOP may, at its discretion, accept the offer of a surrender of a license. Such surrender shall be public information. Additionally, SB 801 outlines that the individual who surrendered a license may petition the BOP for reinstatement after a period of not less than

one year after the effective date of the surrender's acceptance.

The Board of Behavioral Sciences. The history of the Board of Behavioral Sciences began in 1945, originally formed as the Board of Social Work Examiners whose purpose was to register social workers. In 1963, tasked with administering the Marriage, Family, and Child Counselor Act, the regulatory board was duly renamed the Social Worker and Marriage Counselor Qualification Board. The board then took under its jurisdiction licensed clinical social worker and educational psychologists in 1967 and 1970, respectively – changing its name once again to the Board of Behavioral Science Examiners. In 1997, the board adopted its current name, the Board of Behavioral Sciences. Today, the BBS licenses and regulates licensed clinical social workers, licensed marriage and family therapists, licensed educational psychologists, and licensed professional clinical counselors. The board also registers trainee level associate clinical social workers, associate marriage and family therapists, and associate professional clinical counselors. Each profession has its own scope of practice, entry-level requirements, and professional settings with some overlap in areas:

- LMFTs are employed in mental health agencies, counseling centers, and private practice. LMFT's utilize counseling or therapeutic techniques to assist individuals, couples, families, and groups with a focus on marriage, family, and relationship issues.
- LCSWs are employed in health facilities, private practice, and state and county mental health agencies. LCSWs utilize counseling and psychotherapeutic techniques to assist individuals, couples, families, and groups.
- LEPs work in schools or in private practice and provide educational counseling services such as aptitude and achievement testing or psychological testing. LEPs may not provide psychological testing or counseling services that are unrelated to academic learning processes in the education system.
- LPCCs apply counseling interventions and psychotherapeutic techniques to identify and remediate cognitive, mental, and emotional issues, including personal growth, adjustment to disability, crisis intervention, and psychosocial and environmental problems. LPCCs work in a variety of settings including hospitals, private practice, and community-based mental health organizations.

Provisions related to the Board of Behavioral Sciences. In addition to technical and conforming changes, this bill enacts several changes related to the BBS' operations and its licensees and registrants, outlined below.

BBS: Telehealth services. BPC Section 2290.5 specifies that health care providers licensed under Division 2 of the code – which includes registrants under the BBS – are able to perform telehealth services. This section also specifically states that associate marriage and family therapists or marriage and family therapist trainees are permitted to perform services via telehealth.

However, according to the Board, the omission of associate professional clinical counselors and associate clinical social workers from the code section has led to questions from the public about

whether the omitted license types can perform services via telehealth. These associates are able to do per existing statutes, but the BBS proposes to affirmatively include them on the list of health care providers who may provide services via telehealth. This change would provide clarity and minimize confusion. SB 801 codifies this proposal in BPC Section 2290.5 by including associate clinical workers and associate professional clinical counselors on the list of health care providers who may provide services via telehealth.

BBS: Notice to Clients. Licensees and registrants under the BBS provide mental health services in a variety of different settings. These locations can include hospitals, community clinics, schools, non-profits, private companies, government agencies, and many others. Generally, individuals providing psychotherapeutic services in California within the scope of practice of a LMFT, LCSW, or LPCC are required to have a license or registration with the Board. However, state law provides certain exemptions to these licensure requirements. These “exempt settings” are statutory defined to include governmental entities, schools, colleges, universities, or nonprofit and charitable institutions, and allow unlicensed or unregistered employees or volunteers in such settings to provide psychotherapy services under specified conditions. Exempt settings have been excluded from the Board’s practice acts since the 1980s, and have been described as an important tool for non-profit entities to provide mental health services.

AB 630 (Arambula, Chapter 229, Statutes of 2019) required licensee, registrant, as well as unlicensed or unregistered therapists in an exempt settings to provide their clients with information about where to file a complaint about the therapist. In its review of the bill, the Senate Committee on Business, Professions, and Economic Development suggested that additional language also be included in the notice provided to clients of unlicensed or unregistered therapists. SB 801 includes specific language to be include in the notice provided to clients by an unlicensed or unregistered therapist, describing the role of the BBS and how an individual may check if a counselor is licensed or registered and how to file a complaint.

AB 630 also required all therapist practitioners to provide their notice to clients about where to file a complaint about their therapist prior to initiating psychotherapy services. According to the BBS, stakeholders raised the concern that in crisis situations, it may not be feasible or appropriate to stop the delivery of immediate services to provide and/or discuss the required notice. To address this concern, SB 801 states that the notice must be provided prior to initiating psychotherapy services, or as soon as practicably possible thereafter. This requirement applies for both licensed and registered individuals under the BBS, as well as unlicensed and unregistered individuals in an exempt setting. In addition, the bill requires the delivery of the notice to the client to be documented.

BBS: Re-inclusion of the Term Prognosis. Previously, California law listed the required education and practicum for LMFT and LPCC licensure, and included required training in assessment, diagnosis, and prognosis. In 2019, the BBS sponsored a legislative amendment via SB 796 (Committee on Business, Professions and Economic Development, Chapter 456, Statutes of 2019) replacing the term “prognosis” with the term “treatment planning,” because it believed that treatment planning was a more accurate representation of the course of psychotherapy. According to the BBS, stakeholders have expressed concerns that other mental health professions may be interpreting the BBS’ law change as meaning LMFTs and LPCCs are not permitted to perform prognosis. To address these concerns, SB 801 proposes to add back the

term “prognosis” where it was previously deleted, to be included along with the term “treatment planning.”

BBS: Continuing Education Provider Fees. Existing law authorizes the BBS to establish a procedure for identifying acceptable providers of continuing education courses. In addition, the BPC authorizes the BBS to charge continuing education provider fees in order to administer the BBS’ responsibilities related to continuing education. According to the BBS, its authority to approve continuing education providers was removed on January 1, 2015 when its new continuing education regulations became effective, and instead established the BBS’ authority to accept continuing education credits from providers who have been approved or registered by a BBS recognized “approval agency” or by an organization, institution, association or entity that has been recognized by the BBS as a continuing education provider. The BBS states that this change in regulation entrusted the review and approval of continuing providers, coursework and instructors to professional associations and other entities recognized by the BBS, because these entities have extensive experience and expertise administering and approving continuing education programs that the BBS does not have. As the BBS no longer has the authority to approve CE providers, SB 801 proposes to eliminate statutes authorizing the Board to charge continuing education provider fees.

BBS: Fee Schedule. Existing law authorizes the BBS to charge application and renewal fees to licensees and registrants. However, the BBS notes that how often a renewal is paid is not directly specified in the BBS’ statutory fee schedules. SB 801 clarifies that that associate registrations are renewed annually, and licenses are renewed every two years, as needed.

BBS: Delinquency Fee. Existing law authorizes the BBS to charge accrued renewal and delinquency fees to LPCC and LEP licensees wishing to renew a license that has expired. The BBS notes some inconsistencies in this practice, as statutes do not authorize charging accrued fees for LMFTs and LCSWs. To establish consistency, SB 801 amends LEP and LPCC statutes to clarify that the BBS does not charge accrued renewal or delinquency fees. The bill also clarifies that such renewal does not entitle the licensee, while its license remains suspended and until it is reinstated, to engage in activity otherwise allowed by the license.

BBS: Fee Maximum for LCSW. In 2020, the Legislature authorized the BBS to increase its licensing fees through AB 3330 (Calderon, Chapter 359, Statutes of 2020). Across all license types, the base application fee for licensure was set at \$250. Statutes also intended to authorize the BBS to increase those fees at a maximum amount of \$500 via the adoption of regulations. This maximum was set for LMFT, LEP, and LPCC license types – however, the LCSW license type was erroneously set at \$400.

SB 801 corrects this error and sets the LCSW maximum application fee at \$500. According to the BBS, this change does not increase the current LCSW application for licensure fee, which is set at \$250. This change is intended to align the correct maximum fees to \$500 across all license types.

BBS: E-mail Address Requirements. SB 801 requires an applicant, registrant, or licensee who has an electronic mail address to provide the BBS with that electronic mail address no later than July 1, 2022. Additionally, the bill requires such individuals to provide to the board any and all changes to their electronic mail address no later than 30 calendar days after the changes have

occurred. The electronic mail address shall be considered confidential and not subject to public disclosure. According to the BBS, this change would allow the Board to communicate information about law changes or examination processes to most of its licensee and registrant population more quickly and effectively.

BBS: Petition for License Reinstatement. Existing law provides that a person under the jurisdiction of the BBS whose license or registration has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation. The BPC provides timeframes by which the licensee or registrant may file the petition: for example, a person may petition on or after three years for reinstatement of a license or registration that was revoked for unprofessional conduct.

The BBS recommends clarifying certain provisions regarding the procedure for petitioning to terminate probation early or modify a penalty. To that end, SB 801 clarifies that periods of probation tolling are excluded from the statutory timeframes before a petition can be filed. In addition, the bill clarifies that if the petition is to be heard by the BBS, the petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

BBS: Denial of Licensure. AB 2138 (Chiu, Chapter 995, Statutes of 2018) was enacted into law and amended BPC 480 in order to lower barriers to licensure for individuals with prior criminal convictions. Broadly, AB 2138 limits a regulatory board's discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

The BBS conducted a review of its licensing statutes and is proposing statute changes to provide consistency with AB 2138's provisions – such as updating statutory language clarifying that individuals applying for licensure must not be subject to denial of licensure pursuant to BPC 480.

MFT Scope of Practice Update. The BPC currently defines the practice of marriage and family therapy as service performed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments. The BPC further states that the application of marriage and family therapy principles and methods includes, but is not limited to, the use of applied psychotherapeutic techniques, to enable individuals to mature and grow within marriage and the family, the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships, and the use, application, and integration of the coursework and training, as specified in California law and described above.

SB 801, at the request of the California Association of Marriage and Family Therapists, updates this scope of practice language and integrates MFT educational and training references outlined in existing statutes into the definition of the practice of marriage and family therapy. With these changes, marriage and family therapy would be defined as the application of psychotherapeutic and family systems theories, principles, and methods in the delivery of services to individuals, couples, or groups in order to assess, evaluate, and treat relational issues, emotional disorders, behavioral problems, mental illness, alcohol and substance use, and to modify intrapersonal and interpersonal behaviors. In addition, this bill updates examples of the of marriage and family

therapy applications to include assessment, evaluation, and prognosis; treatment, planning, and evaluation; individual, relationship, family, or group therapeutic interventions; relational therapy; psychotherapy; client education; clinical case management; consultation; supervision; and the use, application, and integration of the coursework and training, as specified in California law.

ARGUMENTS IN SUPPORT:

The California Psychological Association writes in support: “The bill contains the sunset review for the Board of Psychology (BOP), as well as other mental and behavioral health boards, and makes minor changes pursuant to these reviews. [...] We believe the BOP should continue its operations and regulation of our membership.”

The California Association of Marriage and Family Therapists writes in support: “[SB 801] extends the sunset date for the Board of Behavioral Sciences, makes various technical changes to the Business and Professions Code, and provides necessary clarity to the scope of practice for Marriage and Family Therapists (MFT) by more accurately capturing the types of care and services that MFTs currently provide. California has made significant strides to recognize the impact of behavioral conditions and substance use disorders on society. SB 801 helps to further this achievement by updating the MFT scope of practice to reflect the clinical skill set possessed by MFTs, as referenced in their education and training requirements.”

ARGUMENTS IN OPPOSITION:

None on file.

AMENDMENTS:

At the request of the author, the committee proposes a technical amendment to align the language on the notices provided to clients receiving psychotherapy:

Page 82, line 18, strike the word “counselor” and insert the word “practitioner” to read:

“NOTICE TO CLIENTS

The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered ~~counselor~~ *practitioner* providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).”

REGISTERED SUPPORT:

California Psychological Association
California Association of Marriage and Family Therapists

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: July 14, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 802 (Roth) – As Amended July 13, 2021

SENATE VOTE: 38-0

SUBJECT: Private postsecondary education

SUMMARY: Extends the sunset date for the Bureau for Private Postsecondary Education (BPPE) until January 1, 2023 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 to provide for the regulation and oversight of private postsecondary schools, subject to repeal on January 1, 2022. (Education Code (EDC) §§ 94800 *et seq.*)
- 2) Establishes the BPPE within the Department of Consumer Affairs to regulate private postsecondary educational institutions under the California Private Postsecondary Education Act. (EDC § 94820)
- 3) Exempts the following institutions from the California Private Postsecondary Education Act:
 - a) An institution offering programs solely for the purpose of personal entertainment, pleasure, or enjoyment.
 - b) An institution offering educational programs sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.
 - c) A postsecondary educational institution established, operated, and governed by the federal government or by the government in California.
 - d) An institution offering either test preparation for postsecondary education admissions examinations, or continuing education or license examination preparation.
 - e) An institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation, limited to education relevant to the beliefs and practices of the church, religious denomination, or religious organization.
 - f) An 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.

- g) A law school that is accredited by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association or that is subject to the approval, regulation, and oversight of the Committee of Bar Examiners.
- h) A nonprofit school organized specifically to provide workforce development or rehabilitation services that is accredited by the Department of Rehabilitation.
- i) An institution that is accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.
- j) Flight instruction providers or programs that provide flight instruction pursuant to Federal Aviation Administration regulations.
- k) An institution owned by a nonprofit community-based organization that does not award degrees and does not offer educational programs designed to lead to licensure, and that would not have been subject to oversight if it did not receive funding under the federal Workforce Innovation and Opportunity Act.

(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 California Private Postsecondary Education Act. (EDC § 94874.2)
- 5) Requires institutions exempt from the California Private Postsecondary Education 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 curriculum 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 that ensures all of the following:
 - a) The content of each educational program can achieve its stated objective.
 - b) The institution maintains specific written standards for student admissions for each educational program and those standards are related to the particular program.
 - c) The facilities, instructional equipment, and materials are sufficient to enable students to achieve the educational program’s goals.
 - d) The institution maintains a withdrawal policy and provides refunds.
 - e) The directors, administrators, and faculty are properly qualified.
 - f) The institution is financially sound and capable of fulfilling its commitments to students.
 - g) That, upon satisfactory completion of an educational program, the institution gives students a document signifying the degree or diploma awarded.
 - h) Adequate records and standard transcripts are maintained and are available to students.
 - i) The institution is maintained and operated in compliance with all applicable laws.(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) Promise or guarantee employment, or overstate the availability of jobs upon graduation.
 - c) Advertise 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) Advertise, or indicate in promotional material, without including the fact that the educational programs are delivered by means of distance education.
 - e) Advertise, or indicate in promotional material, that the institution is accredited if it is not.
 - f) Solicit 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) Offer 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) Pay any consideration to a person to induce that person to sign an enrollment agreement.
 - i) Use 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 make 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) Use the terms such as “approval” without stating clearly and conspicuously that approval to operate means compliance with state standards.
 - m) Direct 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) Compensate 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) Require 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) Offer 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 California Private Postsecondary Education Act. (EDC § 94948)
- 26) Establishes the Office of Student Assistance and Relief 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 California Private Postsecondary Education 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) Clarifies that "continuing education" involves instruction that does not lead to a degree.
- 2) Excludes from the definition of "educational program" any single course, workshop, seminar, continuing education course, or other instruction that consists of 32 hours of instruction or less that is not designed to lead to employment.
- 3) Refines an exemption from BPPE oversight for educational programs offered exclusively to members of a bona fide trade, business, professional, or fraternal organization and provides that the exemption does not apply to an institution that sponsors an educational program directly or through an affiliated division or corporate entity of the institution and that requires student membership for purposes of those educational programs.
- 4) Establishes four-year term limits for members of the BPPE advisory committee, requires the advisory committee to annually elect a chair and vice chair subject to two-year terms, and requires the advisory committee to adopt reasonable rules for the conduct of its affairs.
- 5) Authorizes the BPPE to grant a time extension for an unaccredited institution to become accredited if warranted by the accrediting agency's conditions for applying for accreditation related to student enrollment or graduation.
- 6) Requires that approval to operate shall be automatically suspended for any degree program for which accreditation is removed or revoked by the accrediting agency unless accreditation is reinstated.
- 7) Clarifies that an institution may voluntarily cease to pursue accreditation, and that an institution that does so shall immediately notify the BPPE in writing of the institution's intent to stop offering its degree programs and comply with all other applicable laws and

regulations, at which time the institution's approval to operate with respect to the degree programs is deemed voluntarily surrendered.

- 8) 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 offering its nondegree programs.
- 9) 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.
- 10) Extends the amount of time that an institution's request for an extension of time from two years to a combined total of five years.
- 11) Adds the following to the changes to an approval to operate that are considered substantive enough to require prior authorization:
 - a) An increase or decrease of 25 percent or more in the number of clock hours or credit hours required for successful completion of the program.
 - b) Participation in federal student financial aid programs authorized by Title IV of the federal Higher Education Act of 1965.
 - c) A change in the academic measurement of an educational program from clock hours to credit hours.
 - d) A change in the distance education learning management system.
- 12) Empowers the BPPE to take action against an institution for a material violation or repeated violations of the law that may result in harm to students.
- 13) Extends the California Private Postsecondary Education Act until January 1, 2023.

FISCAL EFFECT: According to the Senate Committee on Appropriations, unknown fiscal impact for the various administrative and enforcement changes made to the BPPE's operations.

COMMENTS:

Purpose. This bill is the sunset review vehicle for the Bureau for Private Postsecondary Education, authored by the Chair of the Senate Committee on Business, Professions, and Economic Development. The bill extends the sunset date for the BPPE and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the bureau's sunset review oversight process.

Background.

Sunset review. In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" 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 of Regulation of Private Postsecondary Educational Institutions. The modern iteration of the BPPE was established on January 1, 2010 through AB 48 (Portantino, Chapter 310, Statutes of 2009). Prior to the current BPPE, the state made multiple other attempts to regulate for-profit colleges and other private postsecondary schools; many of these efforts are regarded as having been largely unsuccessful. In the BPPE's 2014 sunset review, statute was enacted stating that "the Legislature advises future policymakers to continually and carefully evaluate" the BPPE and its regulatory authority.

Private postsecondary schools were previously regulated by a division within the California Department of Education; however, by the end of the 1980s, the state had purportedly become regarded as the "diploma mill capital of the world." This led to the enactment of the Private Postsecondary and Vocational Education Reform Act of 1989 (Reform Act), which was intended to "promote the effective integration of private postsecondary education into all aspects of California's educational system and to foster and improve the educational programs and services of these institutions while protecting the citizens of the state from fraudulent or substandard operations." That year, the Legislature also enacted Maxine Waters School Reform and Student Protection Act, which first set a threshold for minimum job placement and graduation rates.

These two reforms, which were ultimately merged, created a new regulatory entity established as the Council on Private Postsecondary and Vocational Education (CPPVE). The CPPVE was given authority to approve and disapprove private postsecondary schools, and it used this power aggressively and at times controversially. In 1996, Columbia Pacific University engaged in litigation against the CPPVE for denying its application for approval. The CPPVE ultimately prevailed in this litigation, but the CPPVE was left with a public perception that it was overly belligerent in its regulation of educational institutions.

A review by the California Postsecondary Education Commission recommended that both the CPPVE and the Reform Act be permanently extended beyond their June 30, 1997 sunset date. However, the bill to extend that sunset date by five years (AB 2960, Firestone and Campbell) was vetoed by Governor Pete Wilson. The Governor's veto message stated that he believed "many of the bad operators have left the state or gone out of business" and that the remaining schools "have described a pattern of reprisals and vindictiveness in dealing with the Council staff." Governor Wilson wrote that he "would like to have more assurances that we are not making it impossible or unreasonably difficult for many small businesses to operate before I extend the life of the Council."

Urgency legislation was introduced in 1997 (AB 71, Wright) to extend the Reform Act and respond to the Governor's veto message by making numerous changes to how its provisions were carried out. In support of the bill, the California Postsecondary Education Commission stated that the Reform Act had "become a model for federal standards and other states, its regulation of private postsecondary education is a major improvement over the conditions that existed prior to its creation." The bill was opposed by numerous schools that had been regulated by the CPPVE and who believed the Reform Act simply resulted in "costly overregulation over private institutions" that "discourages new schools from investing in California."

AB 71 was signed into law extending the provisions of the Reform Act; however, the bill allowed the CPPVE to be repealed on its sunset date. In its place, the bill established a new Bureau for Private Postsecondary and Vocational Education (BPPVE) created within the Department of Consumer Affairs. The extension of the Reform Act transferred all of the CPPVE's responsibilities for its implementation to the new BPPVE.

The creation of a new bureau, however, did not rectify concerns that the state was not appropriately overseeing private postsecondary schools. A 2000 audit of the Department of Consumer Affairs found that the BPPVE's licensing process was "not prompt or consistent" and that its complaint resolution procedures were inadequate. Following a review by the recently established Joint Legislative Sunset Review Committee in 2002, the BPPVE was tasked with streamlining the Reform Act, making its regulatory processes more efficient, and improving its data collection and reporting systems.

In 2004, SB 1544 (Figueroa) was enacted to provide the BPPVE with an Enforcement Monitor to examine the bureau's operations. The Enforcement Monitor's resulting report stated that there had been a "twenty-year record of repeatedly identified, fundamental problems in every one of the Bureau's key operations." That year, Governor Arnold Schwarzenegger vetoed AB 711 (Correa), which would have added additional exempted schools to the Reform Act; in his veto message, the Governor stated that it "fell short of its objective to streamline functions of the Bureau." In 2006, SB 1473 (Figueroa) was introduced to replace the Reform Act with new provisions within the Business and Professions Code and to recast the BPPVE; however, this bill was subsequently held on suspense.

That same year, legislation to extend the sunset on the Reform Act and the BPPVE was once again vetoed by the Governor. In his veto message, Governor Arnold Schwarzenegger commented that he "supported meaningful protections for students of California's private postsecondary and vocational institutions" but that because SB 1473 failed to pass the Legislature, extending the sunset date on the BPPVE "does nothing to enhance protections for students, allows problems that have been well documented to continue to exist, and merely allows mediocrity for California's students." A second bill to extend the state's regulation of private postsecondary schools through a modernization of the Reform Act, SB 823 (Perata), was also vetoed, and the Governor directed the Department of Consumer Affairs to take on the bureau's oversight responsibilities while a better replacement for the Reform Act was negotiated.

Following the Governor's vetoes, the Reform Act became inoperative on July 1, 2007 and the bureau was subjected to be repealed. AB 1525 (Cook) was chaptered in 2007 to provide for a transition plan for business still pending before the BPPVE, and to give the Director of

Consumer Affairs clear authority to take on the bureau's responsibilities. That bill also created the Student Tuition Recovery Fund. Later bills extended some of AB 1525's provisions.

In the years following the sunset of the BPPVE and the Reform Act, private postsecondary schools were subject to little or no oversight by the state. Finally, AB 48 (Portantino) was chaptered in 2009 to revive the state's regulation of private postsecondary institutions. That bill reinstated the authority of the BPPVE, rebranded and recast as the BPPE, and established the California Private Postsecondary Education Act of 2009. The bill sought to institute a more efficient and effective oversight entity to carry out implementation of a stronger consumer protection act. The BPPE was ultimately restored full funding in late 2010.

The BPPE continued to be subject to significant scrutiny by the Legislature and advocates. SB 1247 (Lieu) was chaptered in 2014 to provide the BPPE with only a two year sunset extension before further review while making a number of reforms to the California Private Postsecondary Education Act. In the BPPE's 2016 sunset review, staff outlined a number of ongoing issues relating to the operation of the bureau, ultimately providing no immediate recommendation as to whether the BPPE's sunset should be extended and stating that "the Bureau has faced significant difficulties in implementing the law. It is important that California's approval and oversight of an institution assures minimum quality and student protections."

In 2016, the BPPE's sunset date was again extended until January 1, 2021, with numerous reforms made in response to recent high-profile litigation and school closures. SB 1192 (Hill) established an Office of Student Assistance and Relief "for the purpose of advancing and promoting the rights of prospective students, current students, or past students of private postsecondary educational institutions." The bill also expanded the BPPE's authority to oversee out-of-state private postsecondary schools serving students in California, requiring registration and basic approval standards. Finally, the bill required approved institutions under investigation by entities other than the BPPE to report that investigation and its nature within 30 days.

The BPPE's scheduled sunset review was again postponed with its repeal date extended to January, 2022 following the onset of the COVID-19 pandemic.

Current Sunset Review Recommendations and Proposals. The background paper published collaboratively by the Senate Committee on Business, Professions, and Economic Development, the Senate Committee on Education, the Assembly Committee on Business and Professions, and the Assembly Committee on Higher Education outlined a number of issues and made recommendations relating to the BPPE. Specifically, the background paper posed the following questions and outlined the following issues:

1. BPPE's Advisory Committee may be underutilized in terms of the ability for this body to provide important guidance and direction to the program. Are changes necessary to improve the effectiveness of the Advisory Committee?
2. The Bureau is supported by fees assessed on the institutions it oversees which are deposited into the Private Postsecondary Education Administration Fund (fund). Currently, the Bureau'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 and it is estimated to become

insolvent in this fiscal year absent external assistance such as a loan from another special fund within the DCA or from the General Fund.

3. BPPE has historically relied on woefully outdated systems to track data, timelines, licensees, and important information. What is the status of an updated IT system?
4. Long the source of questions, challenges, concerns, and attempts to respond to carve outs, exemptions in the Act remain a significant source of interest as the Legislature evaluate BPPE's work and the landscape of private postsecondary that serve students in the state. Do the current exemptions make sense? Are changes necessary? Are students well served by schools that are not regulated?
5. Accredited institutions are almost automatically approved and not subject to the same review and approval process required for other institutions that operate in this state. Accreditation provides a baseline measure of institutional quality, but with federal accreditation rules and standards weakened, and in light of significant scrutiny of accrediting agencies, questions remain as to whether accreditation alone is enough.
6. What is the status of requirements that institutions offering degrees be accredited?
7. How can BPPE ensure that California students are protected when attending institutions that may not meet the requirements for a physical presence that would trigger Bureau oversight.
8. Are the criteria established in the Act that allow an institution to become licensed strong enough to protect students and promote student success?
9. BPPE struggles to respond to complaints and questions have been raised about swift decreases in complaint backlogs and whether complaints were closed as non-jurisdictional but could have provided valuable information and pointed to trends to inform BPPE's enforcement work. What is the status of complaints? What are some examples of complaints that were closed or deemed out of BPPE's jurisdiction? What does BPPE do to connect dots between potentially non-jurisdictional complaints and enforcement cases those complaints could potentially, even if indirectly, inform?
10. BPPE has been limited in its ability to take formal disciplinary action against schools and believes an update to the law is necessary.
11. Are STRF funds being utilized to the fullest extent possible in order to benefit students?
12. Surety bonds.
13. Office of Student Assistance and Relief.
14. There are amendments that are technical in nature but may improve BPPE operations.

15. Should the licensing and regulation of private postsecondary educational institutions be continued and be regulated by the current BPPE?

Many of these issues were subsequently discussed in a sunset oversight hearing held by the four committees on March 16, 2021.

This bill is intended to address or resolve many of the issues raised during the sunset process. Some of the provisions were requested directly by the BPPE, and others have received support from stakeholders including the regulated institutions and higher education advocates. However, the bill does not currently include provisions aimed at resolving issues that were raised during the sunset process but require more engagement and deliberation with stakeholders and the Administration. In light of these outstanding concerns, the bill was recently amended to extend the BPPE's authorizing statutes by only one year to enable more time for discussion. It is the expectation that the additional year will result in further reforms and amendments to create an effective and efficient regulatory environment for for-profit colleges and their students.

Prior Related Legislation. SB 1192 (Hill, Chapter 593, Statutes of 2016) extended the operation of the BPPE and established the Office of Student Assistance and Relief.

ARGUMENTS IN SUPPORT:

A coalition of student, veteran, consumer, civil rights, and higher education advocates including but not limited to the **Institute for College Access and Success (TICAS)**, the **Center for Public Interest Law**, and the **Century Foundation** write in support of this bill. The coalition states that “at a time when enrollment is likely to increase, and when abusive practices may newly emerge, it is especially important that the Bureau has the authority and capacity necessary to carry out its responsibility to protect students, and it is imperative that the Bureau has sufficient funding to be able to carry out its responsibilities.” The coalition goes on to say that “although we strongly support the reauthorization of the Bureau, we do believe that additional amendments are necessary to further strengthen the bill.” These requested amendments include language relating to stronger minimum operating standards, more discretion regarding approval by accreditation, and a surety bond requirement.

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUES:

As discussed in the BPPE's background paper, BPPE's expenditures have significantly increased since 2011; its authorized positions have increased by 71% and authorized expenditures have increased by 155%. These increases have been attributed to employee compensation and retirement rate increases, the implementation of chaptered legislation, IT expenses, pro Rata charged by the Department of Consumer Affairs, and major school closures. In December 2019 the BPPE contracted with Capitol Accounting Partners, LLC to complete a cost analysis of BPPE fees to determine how much revenue is needed to support ongoing regulatory costs.

The resulting fee study identified that BPPE will need to collect \$25.902 million annually in order to support its annual expenditures based on BPPE's 2020/21 enacted budget, to pay back its special fund loan, and to rebuild its fund reserves over the next five years. While fee increases were recommended in that study, they are not included in this bill and discussions are underway regarding the potential for a more equitable fee structure to sustain the BPPE going forward. Ultimately, some increase in revenues will be necessary to continue the BPPE's operations. While it is uncertain how and when these revenue increases will be achieved, the issue remains outstanding and in need of resolution to ensure a strong and effective oversight program by the bureau.

REGISTERED SUPPORT:

Arizona State University
Californians for Economic Justice
Center for Public Interest Law
Children's Advocacy Institute
Consumer Federation of California
Housing and Economic Rights Advocates
Legal Aid Foundation of Los Angeles
Nextgen California
Public Counsel
Public Law Center
The Century Foundation
The Education Trust – West
The Institute for College Access and Success
Veterans Education Success
Veterans Legal Clinic

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: July 14, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 803 (Roth) – As Amended May 11, 2021

SENATE VOTE: 36-0

SUBJECT: Barbering and cosmetology

SUMMARY: Makes technical changes, statutory improvements, and policy reforms to the Barbering and Cosmetology Act in response to issues raised during the Legislature's sunset review of the State Board of Barbering and Cosmetology (BBC), including changes to scope of practice and prelicensure education and examination requirements for barbers and cosmetologists.

EXISTING LAW:

- 1) Establishes the BBC within the Department of Consumer Affairs (DCA) to license and regulate barbers, cosmetologists, electrologists, estheticians, and manicurists pursuant to the Barbering and Cosmetology Act. (Business and Professions Code (BPC) §§ 7301 *et seq.*)
- 2) Provides that protection of the public shall be the highest priority for the BBC in exercising its licensing, regulatory, and disciplinary functions. (BPC § 7303.1)
- 3) Defines the practice of cosmetology as all or any combination of the following:
 - a) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.
 - b) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
 - c) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
 - d) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.
 - e) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.
 - f) Massaging, cleansing, treating, or beautifying the hands or feet of any person.

(BPC § 7316(b))

- 4) Defines the practice of barbering as all or any combination of the following:
 - a) Shaving or trimming the beard or cutting the hair.
 - b) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.
 - c) Singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.
 - d) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.
 - e) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.

(BPC § 7316(a))
- 5) Provides that within the practice of cosmetology there exist the specialty branches of skin care and nail care, each with their own designated scopes of practice. (BPC § 7316(c))
- 6) Exempts from the definitions of barbering and cosmetology the practices of wig-fitting, natural hair braiding, and threading. (BPC § 7316(d))
- 7) Defines “electrolysis” as the practice of removing hair from, or destroying hair on, the human body by the use of an electric needle only. (BPC § 7316(f))
- 8) Makes it unlawful to engage in barbering and cosmetology for compensation without a valid, unexpired license issued by the Board, punishable by an administrative fine or a misdemeanor. (BPC § 7317)
- 9) Exempts from the licensure requirement for barbering and cosmetology all of the following:
 - a) Individuals licensed to practice medicine, surgery, dentistry, pharmacy, osteopathic medicine, chiropractic, naturopathy, podiatry, or nursing and acting within the scope of practice for which they are licensed.
 - b) Commissioned officers of the United States Army, Navy, Air Force, Marine Corps, members of the United States Public Health Service, and attendants attached to those services when engaged in the actual performance of their official duties.
 - c) Persons employed in the course of and incidental to the business of employers engaged in the theatrical, radio, television, or motion picture production industry.
 - d) Persons engaged in any practice without receiving compensation.
 - e) Persons engaged in the administration of hair, skin, or nail products for the exclusive purpose of recommending, demonstrating, or selling those products.

- f) Persons who render barbering or cosmetology services in an institutional program during the course of and incidental to the incarceration or confinement of inmates, prisoners, or persons charged with a crime.

(BPC § 7319)

- 10) Requires the BBC to allow any person to take the barbering license examination who has submitted an application, paid the fee, is at least 17 years old, has completed the 10th grade, is not otherwise disqualified, and has completed either an approved barbering course, an approved apprenticeship program, or has specified equivalent experience. (BPC § 7321.5.)
- 11) Requires applicants for licensure by the BBC to complete both a practical demonstration and a written test. (BPC § 7338)
- 12) Requires the BBC to determine the required subjects of instruction to be completed in all approved courses, including the minimum hours of technical instruction and minimum numbers of practical operations for each subject, and determine how much training is required before a student begins performing services on paying patrons. (BPC § 7362)
- 13) Provides that a course in barbering established by a school shall consist of not less than 1,500 hours of practical training and technical instruction, and a course in cosmetology established by a school shall consist of not less than 1,600 hours. (BPC § 7362.5)
- 14) Requires the BBC to promulgate regulations regarding the creation of a personal service permit (PSP) and issue a PSP to any individual who meets the criteria set forth in the regulations. (BPC § 7402.5)
- 15) Prohibits persons who are not licensed as barbers or cosmologists in the state from representing themselves as barbers or cosmologists. (BPC § 7320.3, § 7320.4)
- 16) Allows a student who is enrolled in cosmetology school, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, to work as an unpaid extern in an establishment participating in the educational program of the school, and allows externs to receive clock hour credit toward graduation limited to no more than eight hours per week and no more than 10 percent of the total clock hours required for completion of the course. (BPC § 7395.1)
- 17) Requires barbering and cosmetology licensees to display their license in a conspicuous place in their place of business or employment. (BPC § 7397)

THIS BILL:

- 1) Adds further specificity to the composition of the BBC by providing that it shall consist of seven public members in addition to six members representing the profession consisting of a cosmetologist, a barber, an esthetician, an electrologist, a manicurist, and an establishment owner.
- 2) Removes the prohibition against the BBC reducing the number of employees assigned to perform random inspections, targeted inspections, and investigations.

- 3) Eliminates the practices of cutting, cleansing, shampooing, arranging, dressing, curling, waving, blow-drying, and nonchemically straightening hair from the statutory scopes of practice for both barbering and cosmetology.
- 4) Recasts the scope of practice for skincare to allow for licensed estheticians to engage in any of the following practices:
 - a) Giving facials, massaging, stimulating, exfoliating, cleansing, or beautifying the face, scalp, neck, or body by the use of hands, esthetic devices, cosmetic products, antiseptics, lotions, tonics, or creams that do not result in the ablation or destruction of the live tissue.
 - b) Tinting and perming of the eyelashes and brows.
 - c) Removing superfluous hair from the body of any person by use of depilatories, tweezers, sugaring, nonprescription chemical, or waxing, or by the use of devices and appliances of any kind or description, except by the use of lasers or light waves, which are commonly known as rays.
- 5) Expressly provides that the practice of medicine shall not be performed by, or offered by, a licensee of the BBC without being authorized and licensed to perform that act pursuant to a license obtained in accordance with some other provision of law.
- 6) Removes the requirement for purposes of interstate reciprocity that the applicant has been active for three of the last five years, during which time the applicant has not been subject to disciplinary action or a criminal conviction.
- 7) Repeals the BBC's preapplication program for schools and apprenticeships.
- 8) Eliminates the requirement that an applicant for licensure pass a practical examination.
- 9) Removes the requirement that the BBC must inspect an establishment within 90 days after it has been issued a license.
- 10) Deletes restrictions and requirements relating to the operation of mobile units.
- 11) Reduces the number of hours required for courses in barbering and cosmetology to 1,000 hours and codifies the minimum amount of instruction that must be included for various subjects in a course for barbering, cosmetology, skin care, and nail care.
- 12) Updates provisions relating to individuals working as independent contractors.
- 13) Repeals a provision of law making any violations for which there is no specific penalty provided guilty of a misdemeanor and subject to a fine not to exceed \$2,500 or imprisonment in county jail.
- 14) Limits the BBC's authority to establish a schedule of administrative fines to violations of law that directly impact consumer safety.

FISCAL EFFECT: According to the Senate Committee on Appropriations, unknown fiscal impact for the various administrative and enforcement changes made to the operations of the BBC.

COMMENTS:

Purpose. This bill is the sunset review vehicle for the State Board of Barbering and Cosmetology, authored by the Chair of the Senate Committee on Business, Professions, and Economic Development. The bill will ultimately extend the sunset date for the BBC and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the BBC's sunset review oversight process.

Background.

Sunset review. In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" 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.

Criticisms of Occupational Licensing. A number of reports in recent years have called for reforms to California's licensure scheme, criticizing the state's regulation of occupations and professions as needlessly burdensome and complex. These reports tend to 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, conviction 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 Department of Consumer Affairs 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." A study by the Mercatus Center at George Mason University, *Changes in Occupational Licensing Burdens across States*, made a claim that "California has decreased the burden of occupational licensing by 0% since 2012." Other reports published by both public and private research institutions have been 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.

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. The report frequently references barbering and cosmetology—two of only 10 total occupations found to be licensed by all 50 states and the District of Columbia—as among the more overburdened occupations. In a ranking of occupations ranked by average burden nationally, cosmetologist is ranked #30 and barber is ranked #34 out of 102 occupations. The report regards "shampooer" as a separate and distinct occupation regulated by 37 states and listed #45 on the ranking of average burdens.

In the Institute for Justice's summary of California—which it regards as "the most broadly and onerously licensed state in the nation"—the report asserts that obtaining a license as a barber or cosmetologist requires \$125 in fees, 350 "estimated calendar days lost," 1,500 clock hours in education, and 2 examinations. As a point of reference, the report claims that obtaining a license as a tree trimmer requires \$529 in fees, 1,460 calendar days lost, no education but 4 years of experience, and 2 examinations. Meanwhile, licensure as a dental assistant requires no fees, only 2 calendar days lost, 10 clock hours of education, and no examinations.

Board of Barbering and Cosmetology. The BBC is responsible for licensing and regulating barbers, cosmetologists, estheticians, electrologists, manicurists, apprentices, and establishments. The BBC is one of the largest boards in the country, with over 615,000 licensees. Annually, the BBC issues approximately 261,000 licenses (initial and renewal licenses) and administers approximately 24,000 practical examinations and 28,000 written examinations (initial and retake examinees). Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in areas.

In addition to licensing individuals, the BBC approves schools. A barbering and cosmetology school must first be approved by the BBC and subsequently approved by the Bureau for Private Postsecondary Education. Under existing law, a barbering course is required to be 1,500 hours of practical training and technical instruction; a cosmetologist course is required to be 1,600 hours. Licensees are not required to complete continuing education.

BPC § 7362 specifies that the BBC is required to determine, by regulation, the subjects which must be completed in an educational program, the approved courses (what material must be taught), including the minimum hours of technical instruction and practical operations a student must complete for each subject, and how much training is required prior to a student performing work on a paid patron. For example, the curriculum for a barbering and cosmetology course requires 200 hours of technical instruction in health and safety (16 CCR § 950.1 and § 950.2). In 2017, AB 326 (Salas) was signed into law to require the health and safety course to additionally cover physical and sexual abuse awareness.

To obtain a license as a barber or cosmetologist, an applicant is required to complete both a written and a practical examination. The BBC currently uses licensing examinations developed by the National Interstate Council of State Boards. Other states that use these exams often have a form of reciprocity with California for barbers and cosmetologists seeking licensure in another state. The cosmetology examination currently includes blowdrying, fingerwaving, shampooing, and other practices.

In addition to qualifying applicants for licensure, the BBC is requirements to routinely inspect barbering and cosmetology establishments to ensure compliance with the Barbering and Cosmetology Act, health and safety requirements, and applicable labor laws. In 2017, the BBC issued 1,187 citations to barbers and 3,048 citations to cosmetologists for violations identified through an inspection. Many of these citations are issued following a consumer complaint submitted to the BBC. According to the Board, 164 consumer harm allegations were received by the BBC in 2017, of which 50 were for overprocessed hair, 32 were for scalp burns, 16 were for facial burns, 15 were for facial cuts, and 7 were for skin burns, among other complaints.

Current Sunset Review Recommendations and Proposals. The background paper published collaboratively by the Senate Committee on Business, Professions, and Economic Development, and the Assembly Committee on Business and Professions outlined a number of issues and made recommendations relating to the BBC. Specifically, the background paper posed the following questions and outlined the following issues:

- 1) Does BBC's composition need to be updated?
- 2) As an entity within the DCA organization, BBC is required to follow certain DCA-established processes to promulgate regulations. What is the current timeframe for BBC regulatory packages to be approved and finalized?
- 3) BBC is limited in its ability to make staffing changes in a budget year. Are updates necessary in order to ensure BBC can reorganize staff and respond to changes in its staffing structure?
- 4) Are clarifications necessary to ensure that current law clarifying that BBC-regulated beautification services do not constitute the practice of medicine?
- 5) BBC approves curriculum, facilities, equipment, and textbooks at schools offering training programs for eventual licensees. The issue of what appropriate role BBC should play in school and program approval has been raised in every recent prior sunset review and has been the subject of proposed legislation, legislative amendments, and legislative oversight hearings for over 10 years. What steps should be taken to ensure appropriate oversight of schools and student success?
- 6) What are the remaining implications for BBC licensees in light of the passage of AB 5 and clarity the bill provided as to how individuals providing beautification services should be classified for employment purposes?
- 7) The Act provides narrow exemptions for certain services and captures a wide variety of beautification practices and services that may not require the education and training necessary for licensure. While BBC has explored narrowing licensure categories to allow an individual to only practice one aspect of what is today considered the practice of barbering or the practice of cosmetology, questions remain about whether those steps are necessary to prevent consumer harm and whether an evaluation of risk to public health is a more appropriate means by which to determine the practices that require licensure. Are changes necessary?

- 8) What is the continued justification for individuals to complete so many hours of training in order to safely provide beautification services? Does the requirement, and costs associated with training, benefit students and the public? Is an evaluation of risk ever part of the rationale for requiring so many hours?
- 9) Currently, the BBC requires individuals seeking licensure as a barber, cosmetologist, esthetician, electrologists, or a manicurist to take and pass both a written examination and a practical examination. BBC relies on NIC tests, the same tests utilized in 39 states. Is the national written exam the best means by which to evaluate licensee competency? Is the practical exam still necessary?
- 10) BBC offers licensure reciprocity to individuals licensed and in good standing in other states. It may no longer be necessary for current limitations on this type of recognition and amendments to the Act may allow individuals to become licensed more quickly.
- 11) BBC allows individuals to obtain training toward licensure through an apprenticeship and externship. Examination passage rates for apprentices are not high and apprenticeship candidates may not have all of the information necessary in order to make an informed decision about this pathway. Externs are required to comply with a number of standards when working in an establishment as a student. Are changes necessary to ensure future licensees are provided fair opportunities through these pathways?
- 12) BBC has worked for the past number of years to implement a personal services permit in order to authorize licensees to have flexibility in where they offer beautification services. Amendments to the Act may be necessary to recognize this option for licensees.
- 13) Services can be provided in a licensed “mobile unit” but the standards for these may be outdated and updates may be necessary.
- 14) A BBC inspection is more likely than not to result in at least some type of citation. The majority of citations are appealed and individuals flood BBC’s Disciplinary Review Committee (DRC) hearings. BBC has explored offering remedial education in lieu of fines, as licensees and licensee advocates have long argued that individuals receive citations for violations they were never even aware of. Does the DRC still make sense? Should BBC update its cite and fine efforts to ensure that individuals are cited for violations impacting consumer safety that the licensee is actually aware of?
- 15) BBC proposes establishing a “licensee in charge” designation. Is the intent to further consumer protection laws or absolve establishment owners from accountability for the actions in a particular establishment?
- 16) Is it feasible for BBC to be required to inspect every newly licensed establishment within 90 days of licensure?
- 17) Since March 2020, there have been a number of waivers issued through Executive Order which impact licensees and future licensees alike. Are any of these waivers applicable to the BBC? Do any waivers warrant an extension or statutory changes? What is BBC doing to address the pandemic?

- 18) There are amendments to the Act that are technical in nature but may improve BBC operations and the enforcement of the Barbering and Cosmetology Act.
- 19) Should the licensing and regulation of individuals providing beautification services and beautification services establishments be continued and be regulated by the current BBC membership?

In addition to the analysis of each of these issues in the committees' background paper, many of these issues were discussed over multiple sunset review oversight hearings held over the course of the past several years. This bill would implement many reforms in response to the recommendations made by the paper and that arose from those hearings.

Narrowing the Practices of Barbering and Cosmetology. This bill would remove the practices of cutting, cleansing, shampooing, arranging, dressing, curling, waving, blow-drying, and nonchemically straightening hair from the statutory scopes of practice for both barbering and cosmetology. In addition to not being a required component of any prelicensure training or education, these services could subsequently be offered in exchange for compensation by any individual regardless of licensure status with the BBC. The committees' background paper for the BBC identified these services as those "that do not appear to pose a significant risk to the consumer."

In recent years there has been a rise in popularity for salon services specializing in the kinds of practices that would be removed from the Board's licensing programs by this bill. The "blowout" trend involves the shampooing, blowdrying, and brushing of hair to beautify a client without cutting or dying the hair. For example, the company Drybar, founded in California in 2010, expressly advertises: *No Cuts. No Color. Just Blowouts!* The mobile application Glamsquad also focuses its hair services on blowouts and other practices that do not involve cuts or color.

Within the limitations of other laws generally governing businesses, this bill would allow any person to advertise and sell these services in any location without training or oversight by a licensing board. The elimination of practices like shampooing from state licensing requirements aligns with a national trend in which Tennessee, Florida and Texas have repealed their shampooing license. While these services could theoretically be obtained from an unlicensed individual at a potentially lower price, they would still presumably be services offered by licensees who engage in other practices that would remain licensed. In these settings, where a license is prominently displayed, the average consumer would likely have a certain expectation of competence for all services offered. However, because the bill eliminates the specified services from the enumerated practices of barbering and cosmetology, and because under statute the only services included in the license education and examination requirements are those listed as barbering and cosmetology practices, licensees could arguably not be trained in these services even if they obtain a license from the BBC.

Reduction of Prelicensure Education Requirements. As discussed in the committees' background paper, the 1,600-hour education requirement for cosmetology licensure, in particular, has been a discussion point for the Legislature for a number of years. During the 2012-13 sunset review oversight, Committee staff raised the issue of appropriate licensing categories, noting the need for BBC to evaluate adding specialized certificates or licensure in

certain practices. The review asked whether many of the beautification services offered by BBC licensees require the mandatory schooling and training hours necessary for a cosmetologist or esthetician and noted that while there may be significant health concerns related to some practices, there may also not be a need for an individual performing specialized services to invest in a whole training program. The review found that training for many of the beautification services provided by BBC licensees is provided directly from manufacturers and likely not even reflected in BBC-approved curriculum and at BBC-approved schools.

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

Prior sunset review oversight of the BBC further examined the issue of the required curriculum and connection to practice. AB 181 (Bonilla, Chapter 430, Statutes of 2015), the BBC's previous sunset vehicle, required BBC to conduct a study and review of the 1,600-hour training requirement for cosmetologists, conduct an occupational analysis of the profession in California, and conduct a review of the national written examination for cosmetologists and of the California practical examination, in order to evaluate whether both examinations assess critical competencies for California cosmetologists and meet professional testing standards. BBC's study advised that the 1600-hour requirement is justified and should remain.

In recent years, a number of states have decreased the number of hours required for licensure. Vermont and Texas now require 1,000 hours. Rhode Island went even further and reduced the requirement for a cosmetology license from 1,500 to 600; the requirement for a manicurist license from 300 to 200; the requirement for an esthetics license from 600 to 300; and the requirement for a barbering license from 1500 to 600. Other states like New York have long had lower requirements than 1,600-hours.

The BBC does not require any proof of actual practical operations performed but rather only requires an individual to provide proof that they completed a certain number of hours. Significantly, in California, a review of the total number of hours an individual must complete in a particular topic for cosmetology training, compared with the minimum number of required hours, highlights a major difference that continues to raise the question as to why 1,600-hours remains the standard in this state. The BBC regulations require a total of 1,100 hours in hair design, but only 185 minimum required hours, a difference of 915 hours. Notably, particularly in light of recent discussions about health and safety, infection control, and the preparedness of licensees to provide services safely during the COVID-19 pandemic, only 200 hours are required in health and safety topics, 85 of which are the minimum number required.

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

Elimination of the Practical Examination. In the BBC’s sunset background paper, the committees also discussed whether requiring a practical exam for licensure by the BBC was still necessary. The paper pointed out that a number of states have taken steps to ease the licensing process by eliminating a hands-on practical examination. Iowa does not require a practical examination for licensees other than barbers. Kansas is transitioning to a written practical exam. Pennsylvania eliminated a practical exam in 2014 and requires skills demonstrated by answering questions in a written exam. Arkansas eliminated both the practical and written examination in 2017 and requires schools to test competency. Minnesota also requires an exam at the school level. Tennessee is moving to requiring a virtual practical exam. Maine, Delaware, and Wyoming are considering a written practical exam. South Dakota eliminated the requirement for an individual to complete a practical exam as a result of the pandemic and may consider implementing a written practical exam.

Although the occupational analysis noted that the NIC covers what a California cosmetologist is expected to have mastered, the question remains as to whether the test is actually necessary after a student has graduated from a BBC-approved institution. Other than potentially for ease of California licensees becoming licensed in other states that require the individual to have passed a test, it is not clear if both the written and practical examinations are necessary to assess minimal competency and determine whether an individual can safely provide beautification services.

In its concluding recommendations regarding this issue in the BBC’s sunset background paper, the committees stated that “strong consideration should be given to eliminating the practical examination.” This bill would accordingly eliminate the practical examination. Applicants would still be required to complete coursework and pass a written examination; however, the elimination of the practical exam would remove a major barrier to entry into the profession and likely reduce costs to those seeking licensure.

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

ARGUMENTS IN SUPPORT:

The **Board of Barbering and Cosmetology** (BBC) has taken a “support if amended” position on this bill. The BBC has requested that the bill be amended to removing the strikeouts from the practice of barbering and cosmetology; ensuring that the practice of skin care includes eyelash extension services; establishing a hair cutting license at a reduced number of hours; and extend the Board’s sunset date.

The **Future of the Beauty Industry Coalition** (FBIC) writes in support to this bill. Coalition organizations specifically state that “this support is in relation to the reduction of license hours, elimination of the practical exam and ensuring haircutting is back in the license scope.” FBIC argues that “states that already have 1000-hour requirements include Massachusetts, New York, Texas, and Vermont without any increased consumer harm. Many other states have also dropped to 1200 hours over the past 2 years – this includes Arkansas, Florida, New Jersey, and Rhode Island.” FBIC further argues in favor of eliminating the practical exam, stating that “the winner here is the students who are spared the time and cost of a subjective test that does not ensure safety.” FBIC does argue that it believes haircutting should continue to be licensed in California.

ARGUMENTS IN OPPOSITION:

The **Professional Beauty Federation of California** (PBFC) opposes this bill unless amended. According to the PBFC, “we are disappointed SB 803 doesn’t take a single recommendation from our numerous written submissions and public testimony over the past three years, many of which enjoy the support of the BBC. We believe there are more effective means of addressing concerns about barriers to entry.” The PBFC requests that licensure scope not be reduced, that a lower-hours hairstylist license be established, and that the practical exam be preserved, among other changes.

Bellus Academy, describing itself as an “an award-winning cosmetology school,” opposes this bill unless amended. Bellus Academy specifically opposes the reduction in hours for barbering and cosmetology courses and argues that the BBC should remain in charge of defining curricula. Bellus Academy also requests that the committee consider an amendment to transfer the state authorizing responsibility for cosmetology schools from the Bureau for Private Postsecondary Education to the BBC.

AMENDMENTS:

- 1) To restore the current scopes of practice for barbering and cosmetology and ensure that certain practices are performed by trained professionals, revert language in the bill striking references to the practices of cutting, cleansing, shampooing, arranging, dressing, curling, waving, blow-drying, and nonchemically straightening hair back to current law; remove provisions exempting these services from licensure; and add these practices to required prelicensure education hours.
- 2) To ensure that eyelash extensions continue to fall within the scope of practice of estheticians and cosmetologists, restore the language “applying eyelashes to any person” to statutes outlining the scopes of practices for these license categories.
- 3) To allow for individuals seeking to perform hair-only services that pose a low risk to the consumer without having to obtain a full license as a barber or a cosmetologist, establish a new hairstylist license, requiring 600 hours of prelicensure education and passage of an examination, that would allow licensees to engage in any of the following practices:
 - a. Styling of all textures of hair by standard methods that are current at the time of the hairstyling.
 - b. Arranging, blow drying, cleansing, curling, cutting, dressing, shampooing, waving, or nonchemically straightening the hair of any person using both electrical and non-electrical devices.
 - c. Massaging, cleaning or stimulating the scalp, face and neck by means of the hands, devices, apparatus or appliances with or without the use of cosmetic preparations, antiseptics, lotions or creams.

- 4) Clarify that changes made to the scope of practice for estheticians do not grant any privileges reserved for individuals certified under the Massage Therapy Act.
- 5) Restore the phrase “not less than” to provisions relating to the hour requirements for courses in barbering or cosmetology to allow courses to consist of more than 1,000, with the understanding that no more than 1,000 hours would be required for licensure.
- 6) At the request of the author, add language allowing cosmetology externships to be paid, allowing cosmetology students to begin working as externs after completing 25 percent of their required clock hours, increasing the number of hours per week an extern may receive clock hour credit toward graduation, and increasing the percentage of total clock hours that may be obtained through externships.
- 7) Extend the sunset date for the BBC to a new repeal date of January 1, 2027.

REGISTERED SUPPORT:

Barbicide
Blueco Brands
Empire Beauty Schools
Future of Beauty Industry Coalition
Great Clips
Hair Cuttery
ISBN
JcPenney Salon
SportClips
The Barber Truck
Ultra Beauty
Associated Bodywork and Massage Professionals (*if amended*)
State Board of Barbering and Cosmetology (*if amended*)

REGISTERED OPPOSITION:

California IATSE Council
Floyd’s 99 Barbershop
IATSE Local 706
Paul Mitchell The School (*multiple individual locations*)
The Spot Apprentice Academy
Barbershop Community Association (*unless amended*)
Bellus Academy (*unless amended*)
Professional Beauty Federation of California (*unless amended*)
Numerous individual salons, schools, students, and industry professionals

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

Date of Hearing: July 14, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 806 (Roth) – As Amended July 13, 2021

SENATE VOTE: 32-4

SUBJECT: Healing arts

SUMMARY: Extends the sunset dates for the Medical Board of California (MBC), the Osteopathic Medical Board of California (OMBC), the Podiatric Medical Board of California (PMBC), and the Physician Assistant Board (PAB), and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the sunset review oversight process.

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, including 7 public members, subject to repeal on January 1, 2022. (BPC § 2001)
- 3) Enacts the Osteopathic Act, which provides for the licensure and regulation of osteopathic physicians and surgeons. (BPC §§ 2450 *et seq.*)
- 4) Establishes the OMBC, which regulates osteopathic physicians and surgeons that 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, subject to review by the appropriate policy committees of the Legislature to be performed as if the Act were scheduled to be repealed as of January 1, 2022. (BPC § 2450)
- 5) Establishes the PMBC, which regulates doctors of podiatric medicine, subject to repeal on January 1, 2022. (BPC § 2460)
- 6) Enacts the Physician Assistant Practice Act, which provides for the licensure and regulation of physician assistants. (BPC §§ 3500 *et seq.*)
- 7) Establishes the PAB within the jurisdiction of the MBC, consisting of nine members including four physician assistants, one physician and surgeon, and four public members, subject to repeal on January 1, 2022. (BPC § 3504)
- 8) Prohibits the MBC from requesting or obtaining from a physician and surgeon any investigation and prosecution costs for a disciplinary proceeding against them. (BPC § 125.3)

- 9) Requires medical school graduates to obtain a postgraduate training license (PTL) from the MBC within 180 days of enrolling in a board-approved postgraduate training program. (BPC § 2064.5)
- 10) Requires all applicants for full licensure as physicians and surgeons to complete 36 months of postgraduate training, including successful progression through 24 months in the same program. (BPC § 2065; 2096)
- 11) Authorizes the MBC to charge various fees for applications for and renewals of certain licenses, permits, and certificates. (BPC §§ 2168.4; 2435; 2443; 2520; 2529.5; 3577)
- 12) Requires the PAB to make recommendations to the MBC concerning the scope of practice for physician assistants. (BPC § 3509)
- 13) Requires the MBC to adopt, amend, and repeal regulations promulgated by the PAB as may be necessary to enable the board to implement the provisions of this chapter under its jurisdiction. (BPC § 3510)
- 14) Requires the PAB to establish a passing score for examinations for licensure and fix the time and place where examinations are held. (BPC § 3517)
- 15) Requires licensees of the MBC, the OMBC, the PMBC, and the PAB to submit reports to their respective boards regarding various settlements and judgments. (BPC § 801.01)
- 16) Requires the MBC to annually send an electronic notice to each applicant and licensee that requests confirmation from the applicant or licensee that their electronic mail address is current. (BPC § 2021)
- 17) Requires applications submitted to the MBC be made upon a form provided by the board. (BPC § 2081)
- 18) Establishes a special faculty permit through the MBC, which authorizes the holder to practice medicine only within a medical school, any affiliated institution of the medical school, or an academic medical center and any affiliated institution in which the permitholder is providing instruction as part of the medical school's or academic medical center's educational program and for which the medical school or academic medical center has assumed direct responsibility. (BPC § 2168)
- 19) Requires that a licensee shall have their license revoked for 10 years upon a second conviction for violating certain provisions of law. (BPC § 2273)
- 20) Enacts the Patient's Right to Know Act of 2018 to require healing arts licensees on probation for certain offenses to provide their patients with information about their probation status prior to the patient's first visit following the probationary order beginning July 1, 2019. (BPC § 2228.1)
- 21) Requires osteopathic physicians and surgeons to complete a minimum of 100 hours of continuing education as a condition of license renewal, of which 40 hours shall be completed in American Osteopathic Association Category 1 continuing education hours and the

remaining 60 hours shall be either American Osteopathic Association or American Medical Association accredited as a condition for renewal of an active license. (BPC § 2454.5)

- 22) Enacts the Licensed Midwifery Practice Act of 1993, which provides for the regulation and licensure of midwives by the MBC. (BPC § 2505)
- 23) 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 licensed midwives. (BPC § 2509)
- 24) Authorizes the MBC to suspend, revoke, or place on probation the license of a midwife for various offenses. (BPC § 2519)

THIS BILL:

- 1) Extends the MBC's repeal date to January 1, 2024.
- 2) Extends the repeal dates for the OMBC, the PMBC, and the PAB until January 1, 2026.
- 3) Removes the prohibition against the MBC seeking cost recovery following a successful disciplinary action against a physician and surgeon.
- 4) Strikes the word "training" from the PTL, provides that an applicant for a physician and surgeon's license shall receive credit for each month in postgraduate training, and allows the MBC to use its discretion to grant a physician's and surgeon's license to applicants in substantial compliance with the postgraduate training requirements.
- 5) States that it is the intent of the Legislature to ensure that a physician and surgeon participating in approved postgraduate training programs is authorized to practice without undue barriers by making applicants eligible for a full physician's and surgeon's license after completing the first year of an approved postgraduate training program, with a requirement that the remainder of the 36 month postgraduate training requirement be completed prior to renewal.
- 6) Raises the statutory maximum that the MBC is authorized to charge in fees for applications for and renewals of various licenses, permits, and certificates.
- 7) Provides that the Legislature shall review fee amounts in 2022 to determine the necessity of increasing fees in order to ensure solvency of the MBC's Contingent Fund.
- 8) 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.
- 9) Requires the enforcement monitor to submit to the Department of Consumer Affairs and the Legislature an initial written report of their findings and conclusions no later than December 1, 2023 and a subsequent written report no later than March 1, 2023.

- 10) Requires licensees who are required to report specified settlements to their licensing board to provide a copy of the settlement agreement.
- 11) Requires physicians and surgeons to notify the MBC when their email address changes within 30 days.
- 12) Requires applications submitted to the MBC to be made upon an online electronic form, or on another form provided by the board.
- 13) Requires, for purposes of special faculty permit applications, that academic medical centers be accredited by the accredited by the Western Association of Schools and Colleges and Accreditation Council for Graduate Medical Education.
- 14) Allows for a licensee of the MBC to voluntarily surrender their license for ten years upon a second conviction for violating certain offenses rather than having their license revoked.
- 15) Allows the MBC's executive director to issue an administrative confidential letter of advice to a licensee to resolve a complaint for an alleged violation of the Medical Practice Act.
- 16) Requires that each application for registration as a polysomnographic technologist, technician, or trainee, as well as licensed midwives, shall be made upon an online electronic form, or other form, provided by the MBC.
- 17) Codifies a requirement that complaints against licensed midwives shall be reviewed by medical experts with pertinent education, training, and expertise in midwifery.
- 18) Narrows the offenses for which a doctor of podiatric medicine must provide their patients with information about their probation status to align with the existing requirements for physicians and surgeons under the MBC.
- 19) Removes the requirement that the MBC or the PMBC notify a licensee in writing by certified mail or electronic mail when they have not renewed their license within 60 days and provides that delinquency fees may be charged after 30 days.
- 20) Lowers the number of continuing education hours that must be completed by an osteopathic physician and surgeon as a condition of license renewal from 100 hours to 50 hours.
- 21) Eliminates the requirement that the PAB establish a passing score and time and place for each examination.
- 22) Makes various changes to laws governing the operation of the PAB to clarify that it is an independent board and not a committee within the MBC.

FISCAL EFFECT: According to the Senate Committee on Appropriations, ongoing annual costs of approximately \$74.6 million to support the continued operation of the MBC's licensing and enforcement activities; unknown costs, likely ranging in the low to mid hundreds of thousands of dollars, to hire an enforcement monitor; unknown revenue from various increased fees to be deposited into the MBC's Contingent Fund; additional unknown cost recovery revenue, which may offset enforcement costs for investigations and disciplinary proceedings.

COMMENTS:

Purpose. This bill is the sunset review vehicle for the MBC, the OMBC, the PMBC, and the PAB, authored by the Chair of the Senate Committee on Business, Professions, and Economic Development. The bill extends the sunset dates for these boards and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the sunset review oversight process.

Background.

Sunset review. In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "sunset" 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.

Medical Board of California. The first Medical Practice Act in California was enacted in 1876. The MBC has jurisdiction over physicians and surgeons, as well as special program registrants/organizations and special faculty permits which allow those who are not MBC licensees but meet licensure exemption criteria outlined in the Medical Practice Act to perform duties in specified settings. The MBC also has statutory and regulatory authority over licensed midwives, medical assistants, registered polysomnographic trainees, registered polysomnographic technicians, registered polysomnographic technologists, research psychoanalysts, and student research psychoanalysts. The MBC also approves accreditation agencies that accredit outpatient surgery settings and issues Fictitious Name Permits to physicians practicing under a name other than their own.

The MBC is comprised of 15 members: eight physicians and seven public members. All eight professional members and five of the public members are appointed by the Governor. One public member of the MBC is appointed by the Senate Committee on Rules and one public member is appointed by the Speaker of the Assembly. Current law requires that four of the physician members hold faculty appointments in a clinical department of an approved medical school in the state, but no more than four members may hold full-time appointments to the faculties of such medical schools. The MBC meets about four times per year.

The MBC's sunset review background paper outlined a number of issues and posed various questions relating to the continued operation of the board. These issues were subsequently discussed during multiple oversight hearings held by the Senate Committee on Business,

Professions, and Economic Development and the Assembly Committee on Business and Professions in early 2021. These issues included the following:

- 1) Does MBC's composition need to be updated to include additional members of the public?
- 2) What is the current timeframe for MBC regulatory packages to be approved and finalized?
- 3) Data collected by other state agencies impacts MBC's knowledge of its licensee population. MBC is supposed to receive data from a number of state agencies yet does not always receive the information necessary for MBC to do its job. What is the status of MBC's efforts to obtain important data from other state agencies?
- 4) As noted previously, MBC registers Research Psychoanalysts (RPs), individuals who practice psychoanalysis for fees for no more than one third of the individual's total professional time (which includes time spent in practice, teaching, training or research). Why does MBC administer the RP registration program rather than the Board of Psychology which oversees those practicing in psychology and has experience administering registration programs?
- 5) MBC is implementing a Physician Health and Wellness Program. MBC's prior program faced significant shortfalls and raised concerns about patient protection. How will MBC ensure the program will successfully assist physicians while ensuring there is no harm to patients?
- 6) Under ordinary circumstances, frontline healthcare providers and first responders often face difficult situations that are mentally and emotionally challenging. Are there new issues arising from, or ongoing issues being worsened by, the extreme conditions of the COVID-19 pandemic?
- 7) MBC regulates licensed midwives but regulations to allow LMs to practice independently have stalled. What is the status of LM independent practice authority and what changes may be necessary to achieve the Legislature's intent?
- 8) Current law prohibits MBC from seeking reimbursement from physicians for costs related to disciplinary action. This provision only applies to physicians and MBC still has the ability to seek cost recovery for other allied health professionals it may take disciplinary action against. In general, DCA boards are authorized to collect payment from licensees for the high costs a board pays related to disciplinary action, as investigation and prosecution charges significantly affect both fund conditions and case adjudication. Should MBC once again be authorized to seek cost recovery from physicians for disciplinary action?
- 9) MBC has not updated fees for 12 years and is now facing insolvency. Should fees be raised? Should minimum fee amounts be established in the Act?

- 10) MBC is processing more applications and processing times are growing. What is the impact of licensing delays on the profession and the public, and what steps is MBC taking to achieve efficiencies?
- 11) MBC now requires physicians to complete three years postgraduate training in order to be licensed, but issues a postgraduate training license with full practice authority within the resident's training program and affiliated institutions, or as otherwise permitted in writing by the program director. What is the status of MBC's implementation of a postgraduate training license?
- 12) Legislation passed in 2002 established a pilot program aimed at addressing primary care and dental practitioner shortages by authorizing MBC and the Dental Board of California to issue licenses for three years to physicians and dentists from Mexico who meet specified criteria. The program has not been fully implemented. What are the barriers to MBC implementing this program? What steps has MBC taken since 2003 to put the program in place?
- 13) What is the status of MBC's implementation of Assembly Bill 2138 (Chiu/Low) and are any statutory changes needed to enable the Board to better carry out the intent of the Fair Chance Licensing Act?
- 14) MBC issues Special Faculty Permits (SFP) for individuals to practice in California who are determined to be academically eminent. AB 2273 (Bloom, Chapter 280, Statutes of 2020) authorized an academic medical center (AMC) to submit applications SFPs and authorized a SFP holder, a visiting fellow, and a holder of a certificate of registration to practice medicine within the AMC and its affiliated facilities without obtaining full licensure. Are changes necessary to ensure the quality of AMCs?
- 15) MBC receives reports related to physicians from a variety of sources. These reports are critical tools that ensure MBC maintains awareness about its licensees and provide important information about licensee activity that may warrant further MBC investigation. MBC may not be receiving reports as required and enhancements to the Business and Professions Code may be necessary to ensure MBC has the information it needs to effectively do its job.
- 16) Complaints are the heart of MBC's enforcement program. Delays in complaint processing can have grave effects on patients and the public and compound MBC's efforts to protect consumers. In consumer satisfaction surveys, MBC consistently receives unfavorable feedback and response for its handling of complaints. What efforts is MBC taking to process complaints, particularly with a rise in the number of complaints received?
- 17) MBC has looked for enforcement cost savings and believes it should be authorized to have additional methods of resolving enforcement actions in what MBC calls a "non-adversarial manner". Should the Act be updated to allow MBC to have other options outside of traditional enforcement? What types of cases would benefit from these efforts? What patient and public protection impacts would these efforts have?

- 18) Like many licensing boards, MBC enters into settlement agreements with most plaintiffs in enforcement cases. What is the practical impact of settlements on patients, the public, licensees, and significantly, MBC's resources?
- 19) Various enhancements to the Act may be necessary for MBC to ensure public protection.
- 20) MBC licensees are required to disclose probationary status to patients and MBC makes this available public on its website and through other means. How has the implementation of the Patient's Right to Know Act enhanced consumer awareness with MBC and licensees? Has MBC seen any changes in its disciplinary proceedings stemming from the disclosure requirement that impacts an extremely small number of MBC licensees?
- 21) MBC commissioned a third-party study to identify whether disparity in its enforcement actions were present. Do problems still exist?
- 22) Previously, MBC's investigations were simultaneously assigned to an investigator and a DAG in a system called vertical enforcement (VE). VE was ended in 2019; yet even with the removal of the statutory VE provisions, the timeframe for investigating cases has increased from 467 days in FY 2016/17, to 510 days in FY 2017/18, 547 days in FY 2018/19, and 548 days in FY 2019/20. The issue of the quality of investigations, and enforcement timelines, is a problem that the Legislature has attempted to solve through numerous reviews of MBC, investigator, and OAG activities, yet enforcement delays remain and public protection remains threatened by the lack of swift action against violating licensees.
- 23) Growing efforts to combat the opioid crisis from a public health approach have brought attention to the important role physicians and other prescribers play in identifying patients who pose a risk for abusing or diverting controlled substances. How has MBC furthered these efforts through its role as a regulator of physicians and surgeons?
- 24) Since March 2020, there have been a number of waivers issued through Executive Orders that impact MBC operations, MBC licensees, providers, and patients throughout the state. Do any of these waivers warrant an extension or statutory changes? How has the MBC addressed issues resulting from the pandemic?
- 25) There are amendments to the Act that are technical in nature but may improve MBC operations and the enforcement of the Medical Practice Act.
- 26) Should the licensing and regulation of physicians and surgeons, licensed midwives and other allied health professionals be continued and be regulated by the current MBC membership?

This bill would respond to many of the issues discussed in the MBC's sunset background paper and implement many of its recommendations. Specifically, the bill would require that an independent enforcement be appointed to identify ways to improve the efficacy and efficiency of

the MBC's enforcement efforts. The two-year sunset date extension would provide time for the monitor's reports to be considered and prompt additional reform. The bill also requires additional reporting by licensees to the MBC regarding settlements and allows for less adversarial resolution of complaints through new delegated authority to the MBC's executive director. Further efficiencies in the licensing process would be secured by modernizing how the MBC receives online applications and communicates with licensees via email.

This bill also seeks to address issues that have arisen from the implementation of the PTL by the MBC. Since postgraduate training requirements for recast in the MBC's last sunset bill, SB 798 (Hill) of 2017, there have been reports that postgraduate trainees have been unable to engage in activities that were previously authorized after one year of residency. This bill makes some modifications to the existing PTL and states that it is the intent of the Legislature to further address the reported problems by granting full licensure to residents after one year of postgraduate training, with the condition that they complete their 36 month requirement prior to renewal.

The bill additionally enacts provisions related to midwifery. A licensed midwife (LM) is authorized to attend cases of normal pregnancy and childbirth and to provide prenatal, intrapartum, and postpartum care. The MBC has regulated since 1994 and, although other allied health professions later developed their own regulatory boards, the MBC continues to have jurisdiction over LMs. The MBC receives guidance on midwifery issues through a Midwifery Advisory Council. The MBC has reported that disciplinary actions filed against LMs are small, proportionate with the small LM population. The MBC uses its disciplinary guidelines for LMs. While this bill does not establish a new board to independently regulate LMs, it does propose to codify a requirement that complaints against LMs be reviewed by medical experts who have education, training, and expertise in midwifery. This ensures that complaints against LMs are reviewed by peers with an informed understanding of the standard of care for midwifery.

In regards to the MBC's fiscal condition, this bill would increase a number of fees. However, the proposed fee increases are significantly below what was recommended in the MBC's fee study and would likely not sustain its solvency. The bill provides that the Legislature shall review the fee amounts again in 2022 to determine whether further fee increases are necessary. Finally, the bill authorizes the MBC to seek cost recovery, which may contribute toward stabilizing its fund condition.

Osteopathic Medical Board of California. The Osteopathic Initiative Act was approved by California voters in 1922, establishing a Board of Osteopathic Examiners tasked with licensing osteopathic physicians and surgeons. The only restriction on the Legislature's power is that it may not fully repeal the Act unless the number of licensed osteopathic physicians falls below 40. In 2002, the OMBC volunteered to be included under the umbrella of the California Department of Consumer Affairs.

The OMBC is charged with the licensing and regulation of D.O.s. OMBC's statutes and regulations set forth the requirements for licensure and provide OMBC the authority to discipline a licensee. D.O.s are authorized to prescribe medication and practice in all medical and all surgical specialty areas similar to Medical Doctors (M.D.s). According to OMBC, D.O.s are trained to consider the health of the whole person and use their hands in an integrated approach to help diagnose and treat their patient.

In addition to extending the date by which the Legislature shall next review the OMBC as though it were to be repealed, this bill would implement recommendations by the OMBC to decrease the number of continuing medical education hours required as a condition of renewal for osteopathic physicians and surgeons. The OMBC currently requires D.O.s to complete 100 hours of CME every two years, with 40 of those hours being AOA Category 1, the highest credit quality as defined by the AOA which is generally obtained by attending a CME conference in-person.

In its sunset report to the Legislature, OMBC now recommends amending the law to adjust CME requirements for D.O.s in California to 50 hours of CME every two years, with 20 of those hours being American Osteopathic Association (AOA) Category 1 credit. In justifying the request, OMBC states that “California’s CME requirements for D.O.s are double than the CME requirement for their M.D. colleagues. The OMBC believes that the current difference between CME requirements for M.D.s under the Medical Board of California and D.O.s under the OMBC does not line up with the parity of skill between the two types of medical degrees.” This bill would implement that recommendation and reduce the number of CME hours required to 50.

Podiatric Medical Board of California. The PMBC is a licensing board within the Department of Consumer Affairs tasked with oversight of practitioners of podiatric medicine (podiatrists) and administers and enforces the laws relating to licensure. Podiatric medicine is a branch of medicine that focuses on the foot and ankle. In California, it is defined as “the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot.” It is unlawful to practice podiatric medicine without a license and licensed podiatrists are known as Doctors of Podiatric Medicine (DPMs).

This bill would extend the sunset date for the PMBC until January 1, 2026. Additionally, it would respond to an issue outlined in the PMBC’s sunset background paper regarding probation notification. As of July 1, 2019, DPMs are among those healing arts licensees required to provide a patient or the patient’s guardian or healthcare surrogate with a disclosure prior to the patient’s first visit if the licensee is on probation that contains the licensee’s probationary status, the length of the probation and the end date, all practice restrictions. Physicians and surgeons licensed by MBC and the Osteopathic Medical Board of California have to comply with probation notification requirements under more narrow circumstances, only if there is a final adjudication by MBC or OMBC following an administrative hearing, or the physician and surgeon stipulates in a settlement to any of the following:

- 1) The commission of any act of sexual abuse, misconduct or relations with a patient or client;
- 2) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely;
- 3) Criminal conviction involving harm to patient safety or health;
- 4) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

The sunset background paper asked whether DPMs under the PMBC should have their probation disclosure requirements narrowed to align with those currently in place for physicians and surgeons. This bill would implement that alignment and limit disclosures by DPMs to the same types of offenses for which licensees of the MBC and OMBC must report probation status to patients.

Physician Assistant Board. The PAB is a licensing board within the Department of Consumer Affairs. The PAB licenses and regulates Physician Assistants (PAs) who provide health care services with the direction and responsible supervision of a doctor of medicine or osteopathy. Although the profession has been around longer, the regulation of PAs began in California in 1975 with the passage of the Physician Assistant Practice Act.

Prior to the regulation of PA's by an independent regulatory board the Physician Assistant Examining Committee (Committee), within the jurisdiction of the MBC was responsible for oversight of the PA professions. As a committee under the MBC, all of the licensing, enforcement and administrative duties were handled by the Committee through the MBC. During the 2012 sunset review oversight process, it was recommended that the Committee transition out of the MBC to become an independent board and, as a result, SB 1236 (Price, Chapter 332, Statutes of 2012, established a stand-alone PAB. While many of the Committee's regulatory activities were handled by the new PAB, it did maintain a shared services agreement with the MBC for a portion of the PAB's enforcement work.

In addition to extending the sunset date for the PAB until January 1, 2026, this bill would make various statutory changes to reflect the independence of the PAB as a standalone board. The bill would remove a number of outdated references to the PAB having to consult with or receive prior approval from the MBC prior to taking certain actions. These changes have been requested by the PAB to further establish its independence as part of the sunset review process. Additionally, the bill implements a recommendation from the PAB's sunset background paper by eliminating the requirement that the PAB establish a passing score and time and place for each examination.

Prior Related Legislation. SB 798 (Hill, Chapter 775, Statutes of 2017) extended the repeal date for the MBC and the OMBC.

AB 2193 (Salas, Chapter 459, Statutes of 2016) extended the repeal dates for the PMBC and the PAB.

ARGUMENTS IN SUPPORT:

The **Medical Board of California** (MBC) has a "support if amended" position on a recent version of this bill. The MBC states that it "is grateful that SB 806 proposes to restore the Board's authority to obtain recovery of its investigation and prosecution costs related to disciplinary proceedings against its physician licensees." However, it has requested that the bill be amended to update its composition to impose a public member majority, implement the proposed enforcement monitor based on a prior framework, revert back to previously proposed higher fee amounts, include other statutory changes, and provide the MBC with a four-year sunset extension.

ARGUMENTS IN OPPOSITION:

The **California Medical Association (CMA)** has an “oppose unless amended” position on a recent version of the bill. According to the CMA, “recent amendments address significant issues concerning the substantial fee increase and changing the board’s composition to a public-member majority. However, we remain alarmed with providing the MBC cost recovery authority.” The CMA also argues that the bill “fails to address serious issues related to the PTL. Specifically, SB 806 changes the name of the license from the ‘Postgraduate Training License’ to the ‘Postgraduate License.’ Simply by changing the name of the license, it does not change the fact that this license is considered a restricted license.” The CMA has also signed onto a coalition letter further advocating for more thorough solutions to issues with the PTL.

POLICY ISSUES:

As originally introduced, this bill would have made significant changes to the composition of the MBC, notably increasing the number of public members so as to reduce the influence of licensed physicians on regulatory decision-making. This proposed reform was in response to recommendations made in the MBC’s sunset background paper, which provided a legal overview of recent caselaw regarding regulatory boards where a majority of members are market participants. The composition change would have also responded to calls from patient safety advocates who have criticized the MBC as unduly influenced by the perspectives of the very licensees they oversee.

Language in the bill relating to board member composition was subsequently removed prior to the bill’s passage in the Senate. This leaves unresolved the question as to whether the MBC’s current structure is appropriate. There are certainly cogent reasons to argue for the preservation of the current professional majority; regulatory boards are charged with enforcing a standard of care that is best understood by those with training and experience in the profession. However, the amendments to the bill should not abrogate a productive dialogue within the Legislature and among stakeholders regarding whether members of the public should be afforded a more dominant voice on the MBC. As the bill currently only extends the MBC’s repeal date by a shortened two years, it should be anticipated that discussions around increasing public oversight of the medical profession will continue and that the Legislature should resume its deliberation of potential reforms.

REGISTERED SUPPORT:

Center for Public Interest Law (*if amended*)
Medical Board of California (*if amended*)

REGISTERED OPPOSITION:

Altamed Health Services Corporation (*unless amended*)
California Academy of Family Physicians (*unless amended*)
California Health+ Advocates (*unless amended*)
California Chapter of the American College of Emergency Physicians (*unless amended*)
California Residency Network (*unless amended*)
California Medical Association (*unless amended*)

Community Clinic Association of Los Angeles County (*unless amended*)
Consumer Watchdog (*unless amended*)
Health Alliance of Northern California (*unless amended*)
Lifelong Medical Care (*unless amended*)
Neighborhood Healthcare (*unless amended*)
North Coast Clinics Network (*unless amended*)
San Francisco Community Clinic Consortium (*unless amended*)
Shasta Community Health Center (*unless amended*)
SEIU California (*unless amended*)

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Date of Hearing: July 14, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 826 (Committee on Business, Professions and Economic Development) – As Amended July 12, 2021

SENATE VOTE: 40-0

SUBJECT: Business and professions

SUMMARY: Makes numerous technical and clarifying provisions related to programs within the Department of Consumer Affairs.

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). (BPC §§ 100-472.5)
- 2) Establishes the California Architects Board (CAB) within the DCA to regulate architects until January 1, 2024. (BPC § 5500-5610.7)
- 3) Establishes the Contractors State License Board (CSLB) under the DCA to license and regulate contractors and home improvement salespersons. (BPC § 7000-7191)
- 4) States that there is an enforcement division within the CSLB to rigorously enforce the provisions of the Contractors State License Law, as specified, and persons employed by the CSLB as enforcement representatives have the authority to issue a written notice to appear in court, as specified. (BPC § 7011.4(a)(b))
- 5) Defines a “specialty contractor” as a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades and crafts. (BPC § 7058(a))
- 6) Prohibits the CSLB from issuing an asbestos certification, as specified, unless the contractor is registered with the Division of Occupational Safety and Health (DOSH) and the Department of Industrial Relations (DIR); however, the CSLB may issue a certification to someone who is not registered with DOSH and DIR if they provide a written statement to the CSLB that they do not perform asbestos related work. (BPC § 7058.6)
- 7) Requires the registrar of the CSLB to make available to members of the public the date, nature and status of all complaints on file against a licensee that either have been referred for accusation or have been referred for investigation and would be appropriate for suspension or revocation of the contractor’s license, as specified. (BPC § 7124.6(a))
- 8) Requires the Board to create a disclaimer accompanying the disclosure of a complaint, stating that the complaint is an allegation, as specified. (BPC § 7124.6(b))

- 9) Requires the CSLB, in collaboration with the Public Utilities Commission (PUC), to develop and make available a “solar energy system disclosure document” to be available on both the CSLB and PUC internet websites, and the document must be given to a consumer prior to the completion of a sale, financing or lease of a solar energy system. (BPC § 7169(a)(b))
- 10) Requires the solar energy system disclosure document to be printed in 16 point type, and include the total cost and payments for the system, including financing costs; information on how and to whom customers may provide complaints; and the consumer’s right to a cooling-off period of three days, as specified. (BPC § 7169(b)(1)(2)(3))
- 11) Establishes the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG) within the DCA to administer and enforce the Professional Engineers Act, the Geologist and Geophysicist Act, and the Professional Land Surveyors’ Act. (BPC §§ 6700-6799, 7800-7887, 8700-8805)
- 12) Requires an applicant for initial licensure as a professional engineer, land surveyor, or geologist to, among other things, pass a written examination with a separate section covering state law and the BPELSG’s regulation. (BPC §§ 6755.1, 7841, 8741.1)
- 13) Authorizes an applicant for licensure as a professional engineer, land surveyor, or geologist failing an examination to be examined again upon filing a new application and the payment of a fee, except that geologists must pay an application fee and not an examination fee. (BPC §§ 6758, 7846, 8746)

THIS BILL:

- 1) Replaces the reference “enforcement representative” with “investigator” or “special investigator” for purposes of the CSLB’s enforcement division personnel.
- 2) Clarifies that a contractor may not engage in asbestos related work without holding the appropriate C-22 Asbestos Abatement classification, as specified.
- 3) Updates the information required in the solar energy disclosure document to specify the applicable cancellation period instead of the three-day cooling off period.
- 4) Strikes an obsolete reference to a repealed federal act.
- 5) Clarifies that an applicant as a geologist or geophysicist may retake an examination by paying an examination fee rather than an application fee and makes conforming changes to the professional Engineers Act and the Professional Land Surveyors’ Act.
- 6) Makes other technical or clarifying changes.

FISCAL EFFECT: According to the Senate Committee on Appropriations, pursuant to Senate Rule 28.8, no significant costs anticipated as the result of the May 4, 2021, version of this bill.

COMMENTS:

Purpose. This bill is author sponsored. According to the author, “This bill is the annual ‘committee bill’ authored by the Business, Professions, and Economic Development Committee (Committee) and 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 is designed 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. However, as a committee bill, if controversy or opposition should arise regarding any provision that cannot be resolved, then that provision will be removed from the bill.”

Background. The CSLB is responsible for the implementation and enforcement of the Contractors’ State License Law (the laws and regulations related to the licensure, practice and discipline of the construction industry in California). The CSLB licenses and regulates approximately 285,000 licensees in 44 licensing classifications and 2 certifications and registers approximately 18,000 Home Improvement Salespersons. All businesses and individuals who construct or alter, or offer to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the CSLB if the total cost, including both labor and materials, of one or more contracts on the project is \$500 or more. This bill makes technical changes to provisions of the Contractors State License Law.

BPC §§ 7011.4 and 7017.3 refer to individuals who investigate CSLB enforcement cases as “enforcement representatives.” However, CSLB no longer employs enforcement representatives. According to the CSLB, on July 1, 2020, CSLB’s 122 enforcement representatives positions were reclassified to either “Investigators” or “Special Investigators.” This bill updates current law to reflect the appropriate personnel titles given to these positions.

Current law requires a contractor pass an asbestos certification examination in order to engage in specified asbestos work. However, the law does not specifically reference the C-22 specialty Asbestos Abatement Contractor license offered by the CSLB in order to do this work. The CSLB proposed to amend the current requirements specified in BPC §§ 7058.5 and 7058.6 to require the C-22 Asbestos Abatement Contractor license among the statutory requirements that allow a contractor to perform asbestos-related work in California, in addition to just the passage of the examination. The CSLB notes that this change makes the contractor asbestos requirements more accurate and modern.

BPC § 7169 specifies the information included in the solar energy system disclosure document that is required to be given to a consumer prior to completion of a sale, lease or financing of a solar energy system. The required document includes information about the consumer’s right to a “cooling off period of three days”. However, AB 2471 (Maienschein), Chapter 158, Statutes of 2020 extends the three-day right to cancel provisions in a home improvement contract to be five days for senior citizens, as specified. As such, there is now both a three-day right to cancel and a five-day cooling off period, as applicable. This bill would amend the reference to the three-day period in BPC § 7169 to reflect that there are now two “cooling off” periods.

The California Department of Food and Agriculture’s Department’s Division of Measurement Standards (DMS) regulates and enforces minimum quality standards for traditional, alternative,

and zero-emission fuels (e.g., gasoline, diesel, biodiesel, E-85, natural gas, hydrogen, electricity), lubricants (e.g., motor oil and gear oil), and other automotive products (e.g., brake fluid, transmission fluid, engine coolant). BPC § 13470.1 requires service stations to post the “maximum lawful selling price” of gasoline, as defined under the Emergency Petroleum Allocation Act of 1973. That Federal Act was revoked via Executive Order #12287 on January 28, 1981. This bill strikes BPC § 13470.1 in the BPC, which references the revoked federal law that is no longer in effect.

Board for Professional Engineers, Land Surveyors, and Geologists. The BPELSG oversees three separate practice acts. This bill would make a minor change to the fee a geologist applicant retaking an exam would pay, changing it from the application fee to the examination fee. The fee for both is currently \$175. It also makes other non-substantive changes to the section and the respective sections of the other two acts to make all three acts consistent.

Prior Related Legislation. SB 1474 (Committee on Business, Professions and Economic Development), Chapter 312, Statutes of 2020 made non-controversial, minor, and technical changes to various provisions pertaining to the regulatory boards of the DCA; simplified the process for contractor licensees to obtain a retroactive license renewal; prohibits a contract for the provision of a consumer service by a licensee regulated by a board, from including a provision limiting the consumer's ability to file a complaint with that board, as specified; and extended the sunset dates for various regulatory boards, bureaus, departments, and councils by an additional year.

SB 786 (Committee on Business, Professions and Economic Development), Chapter 456, Statutes of 2019 made non-controversial, minor, non-substantive, and technical changes to various provisions pertaining to the regulatory boards of the DCA.

AB 1070 (Gonzalez Fletcher), Chapter 662, Statutes of 2017 required the CSLB, in collaboration with the PUC, to develop a “solar energy system disclosure” document, as specified, which a solar energy system company will provide to a consumer prior to the sale, financing or leasing of a solar energy system, among other provisions.

ARGUMENTS IN SUPPORT:

Contractors State License Board writes, “The Contractors State License Board (CSLB or Board) is in SUPPORT of Senate Bill (SB) 826. This bill makes numerous technical and clarifying changes to programs within the Department of Consumer Affairs [and with respect] to CSLB.”

ARGUMENTS IN OPPOSITION:

None on file

CHAPTERING CONFLICT:

Two provisions being amended in this bill are in conflict with the amendments being made to those provisions in AB 141 (Committee on Budget), which is currently enrolled. If this bill passes this Committee, the author may wish to amend this bill to resolve any chaptering out issues with AB 141.

REGISTERED SUPPORT:

Contractors State License Board

REGISTERED OPPOSITION:

None on file

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