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# California State Assembly

## BUSINESS AND PROFESSIONS



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### **AGENDA**

Friday, September 10, 2021  
Upon adjournment of Governmental Organization Committee  
State Capitol, Room 4202

### **BILLS HEARD IN FILE ORDER**

- |    |         |                          |   |
|----|---------|--------------------------|---|
| 1. | AB 830  | Flora                    | Business: Department of Consumer Affairs: licensed professions and vocations.   |
| 2. | AB 407  | Salas                    | Optometry: assistants and scope of practice.  |
| 3. | AB 1534 | Business and Professions | California State Board of Optometry: optometry: opticianry.   |
| 4. | AB 1535 | Business and Professions | Veterinary Medical Board: application and examination: discipline and citation.   |
| 5. | AB 1536 | Business and Professions | Board of Vocational Nursing and Psychiatric Technicians of the State of California: vocational nursing and psychiatric technicians. |

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### **COVID FOOTER**

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

The 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: September 10, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 830 (Flora) – As Amended September 3, 2021

**NOTE:** This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

**SUBJECT:** Business: Department of Consumer Affairs: licensed professions and vocations.

**SUMMARY:** Makes various technical changes and noncontroversial reforms to laws governing professions regulated by 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) Provides that all boards, bureaus, and commissions within the DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (BPC § 101.6)
- 5) 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.*)
- 6) Permits the Director of Consumer Affairs to require reports from any board or other agency within the DCA as the director deems reasonably necessary on any phase of their operations. (BPC § 127)
- 7) Establishes the Alarm Company Act for purposes of regulating alarm company operators and alarm agents. (BPC §§ 7590 *et seq.*)
- 8) Establishes the Bureau of Security and Investigative Services (BSIS) within the DCA, which licenses and regulates alarm companies, private security, private investigators, and locksmiths. (BPC §§ 7512 *et seq.*)
- 9) Defines “alarm system” as an assembly of equipment and devices arranged to signal the presence of a hazard requiring urgent attention and to which police may respond. (BPC § 7590.1)
- 10) Requires alarm company operator license applicants to submit to the BSIS a personal identification form with a photograph taken within one year immediately preceding the date of the filing of the application. (BPC § 7593.1)

- 11) Requires licensees under the Alarm Company Act who carry a firearm in the course of their duties to complete a course of training in the carrying and use of firearms, receive a firearms qualification card prior to carrying a firearm, and complete a course in the exercise of the powers to arrest. (BPC § 7596.3)
- 12) Establishes the Department of Real Estate (DRE) under the Business, Consumer Services, and Housing Agency. (BPC §§ 10050 *et seq.*)
- 13) Requires a real estate licensee to disclose their name, license identification number, and unique identifier on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting in a manner that requires a real estate license or mortgage loan originator license endorsement in those transactions. (BPC § 10140.6)
- 14) Establishes the Contractors State License Board (CSLB) under the DCA to license and regulate contractors and home improvement salespersons. (BPC §§ 7000 *et seq.*)
- 15) Establishes the Cemetery and Funeral Bureau (CFB) under the DCA to license and regulate crematories, cremated remains disposers, cemeteries, cemetery managers, cemetery salespersons, cemetery brokers, funeral establishments, funeral directors and embalmers. (BPC §§ 7600 *et seq.*)
- 16) Establishes the California Architects Board within the DCA to regulate the practice of architects. (BPC §§ 5510 *et seq.*)
- 17) Requires any person who makes more than 10 services of process a year for compensation to file and maintain a verified certificate of registration as a process server with the county clerk of the county where they reside. (BPC § 22350)

**THIS BILL:**

- 1) Requires the Director of Consumer Affairs to notify the appropriate policy committees of the Legislature within 60 days after the position of chief or executive officer of any bureau or board within the department becomes vacant.
- 2) Amends the definition of “alarm agent” to specify that the person is employed to physically conduct activities within the state.
- 3) Excludes from the definition of “alarm system” a fire protection system.
- 4) Requires that all applications for licensure under the Alarm Company Act be submitted electronically beginning July 1, 2022.
- 5) Removes the requirement that applicants for licensure under the Alarm Company Act submit photographs on the personal identification form.
- 6) Prohibits an applicant for a firearms permit who is a BSIS-certified firearms training instructor from self-certifying their own completion of training requirements or from self-certifying the requalification requirements on the range for a firearms qualification card.

- 7) Makes the failure of any licensee under the Alarm Company Act who is also licensed to do business as a corporation or limited liability company in California to be registered and in good standing with the Secretary of State and the Franchise Tax Board after notice from the bureau result in the automatic suspension of the licensee by operation of law.
- 8) Authorizes a real estate licensee who is a natural person and who legally changes the surname in which their license was originally issued to continue to utilize their former surname for business associated with their license so long as both names are filed with the department.
- 9) Authorizes a business entity organized as a general corporation to include in its name any or all of the following, as specified: a fictitious name, the name of one or more licensed architects, or the term “architect,” the term “architecture,” or other variations of the term “architect” or “architecture.”
- 10) Defines “a bona fide employee of the applicant” for licensure before the Contractors State Licensing Board to mean an employee who is permanently employed by the applicant, and “actively engaged” to mean working 32 hours per week, or 80% of the total hours per week that the applicant’s business is in operation, whichever is less.
- 11) Includes the email address for registrants as a process server or professional photocopier among the specified contact information that the certificate of registration is required to contain.
- 12) Makes the failure of licensees under the Bureau for Security and Investigative Services (BSIS) who is also licensed to do business as a corporation in California to be registered and in good standing with the Secretary of State and the Franchise Tax Board after notice from the bureau result in the automatic suspension of the licensee by operation of law.
- 13) Prohibits applicants who are certified by the BSIS as firearms training instructor from self-certifying their own completion of these requirements or from self-certifying the requalification requirements for a firearms qualification card.
- 14) Requires that a cemetery authority, its board of trustees, or its corporate trustee demonstrates sufficient knowledge and expertise in investing and managing an endowment care fund.
- 15) Includes provisions to resolve potential chaptering conflicts.

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

**COMMENTS:**

**Purpose.** This bill is an omnibus vehicle, authored by the Vice Chair of the Assembly Committee on Business and Professions and intended to enact minor, technical, or noncontroversial proposals relating to licensed professions and businesses within the committee’s jurisdiction.

**Background.**

*DCA Director Reporting Requirements.* Existing law authorizes executive officers and bureau chiefs to be appointed to oversee boards and bureaus under the DCA. Committees of the Legislature frequently engage with these employees when discussing proposed changes to their

respective Acts. Often, these positions will become vacant without notice being provided to the Legislature. While the Senate will eventually be informed if the position is subject to Senate confirmation, not all committees receive timely information about all vacancies. This bill would require the Director of Consumer Affairs to notify the committees in the event that a position becomes vacant.

*Alarm Company Act.* This bill makes various changes to the Alarm Company Act intended to modernize and update its statutes. The bill would clarify that “alarm agents” only refers to those people conducting work physically in the state of California, which will resolve persistent confusion within the industry regarding who must register with the BSIS. Additional technical changes clarify that alarm agents can work on “ancillary” devices connected to and controlled by the alarm system, such as wireless video cameras, connected locks, carbon monoxide detectors, and supplementary smoke detectors. Additional updates to the definition of “alarm system” reflect that not all hazards detected require police response, such as carbon monoxide detection, smoke detection, doors left open, and leak detection.

This bill also requires that alarm companies and their employees use the online BreZE system to submit applications. Online applications have a lower percentage of applications returned for errors, are quicker to process, and facilitate contactless licensure. Currently, applications can be submitted online, or using paper applications. This bill would require all applications to be online by July 1, 2022.

Current law requires alarm license applicants to submit a picture that has been taken within one year with their application. Once received, the BSIS typically discards it, since it has no need for the picture, and it is not used by the bureau. This bill would remove the applicant photograph requirement.

The BSIS licenses firearms training instructors for the alarm industry. These instructors are required to take a training course that is also approved by the BSIS, but there is nothing in the law that says that they can’t administer this training course to themselves, or simply self-certify that they have completed this training satisfactorily. This bill would require these firearms training instructors to become certified by another training instructor.

Currently, a license number is required to sign a contract in California with a customer. Alarm company employees are often given provisional licenses while their license applications are still being reviewed by the BSIS. This bill would provide applicants with a temporary application number that can be included on contracts while their application is being reviewed. The bill also requires the alarm company employee to carry a photo identification and their temporary application and specifies that this can be digital.

*Real Estate Solicitations.* Current law requires that realtors disclose their name, among other information, on all solicitation materials to consumers and on real property purchase agreements. However, in many cases, a real estate licensee changes their name legally (often upon entering into a marriage or partnership) but wishes to continue to use their prior surname professionally. This bill would allow that, as long as the DRE is made aware of both names.

*Bureau of Security and Investigative Services.* The BSIS issues licenses, registrations, certificates, and permits. There are currently over 433,000 BSIS licenses held by about 350,000 business and individuals serving in the areas of alarm companies, locks, private investigations, private security, repossession, and firearm and baton training facilities.

The BSIS regulates the following Acts:

- 1) Alarm Company Act
- 2) Locksmith Act
- 3) Private Investigator Act
- 4) Private Security Services Act
- 5) Proprietary Security Services Act
- 6) Collateral Recovery Act

This bill makes various changes to the Alarm Company Act intended to modernize and update its statutes. The bill clarifies that “alarm agents” only refers to those people conducting work physically in the state of California, which will resolve persistent confusion within the industry regarding who must register with the BSIS. Additional technical changes clarify that alarm agents can work on “ancillary” devices connected to and controlled by the alarm system, such as wireless video cameras, connected locks, carbon monoxide detectors, and supplementary smoke detectors. Additional updates to the definition of “alarm system” reflect that not all hazards detected require police response, such as carbon monoxide detection, smoke detection, doors left open, and leak detection.

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The BSIS licenses firearms training instructors for the alarm industry. These instructors are required to take a training course that is also approved by the BSIS, but there is nothing in the law that says that they can’t administer this training course to themselves, or simply self-certify that they have completed this training satisfactorily. This bill requires these firearms training instructors to become certified by another training instructor.

Currently, a license number is required to sign a contract in California with a customer. Alarm company employees are often given provisional licenses while their license applications are still being reviewed by the BSIS. This bill would provide applicants with a temporary application number that can be included on contracts while their application is being reviewed. The bill also requires the alarm company employee to carry a photo identification and their temporary application and specifies that this can be digital.

#### **ARGUMENTS IN SUPPORT:**

The **California Alarm Association (CAA)**, supports [his bill by Assemblymember Heath Flora, stating that “this measure includes several non-controversial changes to the Alarm Act. CAA worked closely with state regulators in developing and drafting these changes.”

**ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

American Institute of Architects California  
Associated General Contractors of California  
California Alarm Association  
California Association of Realtors  
California Association of Sheet Metal & Air Conditioning Contractors National Association  
California Chapters of The National Electrical Contractors Association  
California Legislative Conference of Plumbing, Heating & Piping Industry  
California State Council of Laborers  
Construction Employers' Association  
National Electrical Contractors Association (NECA)  
Northern California Allied Trades  
Northern California Carpenters Regional Council  
Northern California District Council - ILWU  
Southern California Contractors Association  
United Contractors (UCON)  
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: September 10, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 407 (Salas) – As Amended September 3, 2021

**NOTE:** This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

**SUBJECT:** Optometry: scope of practice.

**SUMMARY:** Expands and revises the scopes of practice for qualified optometrists and optometric assistants to diagnose and treat specified disorders and dysfunctions of the visual system and authorizes optometric assistants to perform preliminary subjective refraction procedures under specified conditions.

**EXISTING LAW:**

- 1) Establishes the California State Board of Optometry (CBO) for the licensure and regulation of optometrists, registered dispensing opticians, contact lens dispensers, spectacle lens dispensers, and nonresident contact lens dispensers. (Business and Professions Code (BPC) §§ 3000 *et seq.*)
- 2) Establishes the Medical Board of California for the licensure and regulation of physicians and surgeons, including ophthalmologists specializing in the diagnosis and treatment of eye disorders. (BPC §§ 2000 *et seq.*)
- 3) Makes it unlawful for a person to engage in or advertise the practice of optometry without having first obtained an optometrist license from the CBO. (BPC § 3040)
- 4) States that protection of the public is the highest priority of the CBO in exercising its licensing, regulatory, and disciplinary functions. (BPC § 3010.1)
- 5) Provides that the practice of optometry includes the prevention, diagnosis, treatment, and management of disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services, and specifically authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat the human eye for various enumerated conditions. (BPC § 3041)
- 6) Requires an optometrist seeking certification to use therapeutic pharmaceutical agents and diagnose and treat specified conditions to apply for a certificate from the CBO and meet additional education and training requirements. (BPC § 3041.3)
- 7) Authorizes an assistant in any setting where optometry or ophthalmology is practiced who is acting under the direct responsibility and supervision of a physician and surgeon or optometrist to fit prescription lenses and perform specified services including preparing patients for examination, collecting preliminary patient data, engaging in minor testing and imaging, performing tonometry and lensometry, administering topic anesthetics, and performing nonsubjective auto refraction in connection with subjective refraction procedures performed by an ophthalmologist or optometrist. (BPC § 2544)



**THIS BILL:**

- 1) Updates and recasts terms used to define the practice of optometry.
- 2) Authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat acquired blepharoptosis through medical treatment.
- 3) Authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat ametropia and presbyopia through medical treatment.
- 4) Authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat nonmalignant conditions and diseases of the anterior segment of the human eyes and their adnexa, and preventing conditions and diseases of the human eyes and their adnexa.
- 5) Permits a certified optometrist to use or prescribe topical and oral prescription and nonprescription therapeutic pharmaceutical agents that are not controlled substances and are not antiglaucoma agents or otherwise limited or excluded.
- 6) Allows for a certified optometrist to administer authorized immunizations for influenza, herpes zoster virus, pneumococcus, and COVID-19 in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the federal Centers for Disease Control and Prevention (CDC) in persons over 18 years of age.
- 7) Authorizes optometric assistants to perform preliminary subjective refraction procedures in connection with finalizing subjective refraction procedures performed by an ophthalmologist or optometrist, under certain conditions after receiving at least 45 hours of training.

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

**COMMENTS:**

**Purpose.** This bill is sponsored by the **California Optometric Association**. According to the author:

“Optometrists do much more than prescribe glasses or contact lenses. Optometrists today are trained to diagnose and treat mild to severe eye problems such as serious eye infections, inflammations of the eye, trauma, glaucoma, and removal of foreign bodies. They also have the statutory authority to administer some immunizations. After completion of an undergraduate degree, optometrists complete four years at an accredited optometry college after which they are awarded the Doctor of Optometry degree. About 25 percent of optometrists also undertake an optional one-year residency program to enhance their experience in a particular area. California schools of optometry train optometrist to practice in all 50 states, including Alaska, Arkansas, Oklahoma, Louisiana and Kentucky where optometrists are permitted to independently perform minor surgical procedures and use anterior segment lasers. Other states (such as Georgia, Idaho, New Mexico, Oregon, Tennessee, Utah, and Virginia) allow for removal of skin tags and other small, non-cancerous lesion removals from eyelids. This health care provider training should not go to waste. Barriers should be removed to allow optometrists to practice at the fullest extent of their education and training.”

## **Background.**

*Optometry Scope Expansion.* In the wake of what many regard to be a physician shortage in California, efforts have been made to expand the scope of practice for optometrists to provide services traditionally reserved for physicians and surgeons specializing in ophthalmology. For example, legislation enacted in recent years have allowed optometrists to treat glaucoma, use therapeutic pharmaceutical agents, and employ the use of new drugs and technologies to treat certain conditions. These efforts have drawn on the extensive training optometrists receive to empower them to provide additional services and alleviate the need for patients to obtain care from an ophthalmologist. This bill would allow optometrists who have received additional education and training to become certified to use therapeutic pharmaceutical agents to diagnose and treat additional conditions of the eye.

*Acquired Blepharoptosis.* Commonly referred to as ptosis or “droopy eyelid,” blepharoptosis is a condition in which a patient’s eyesight is obscured by low-hanging upper eyelids. Blepharoptosis can either be congenital or acquired; the most common type of acquired blepharoptosis is aponeurotic, which is typically associated with elderly patients. Typically, the levator aponeurosis (tissue in the upper eyelid) will begin to sag or drop into the patient’s field of vision as they age. The federal Food and Drug Administration (FDA) recently approved a new ophthalmic solution of oxymetazoline hydrochloride (marked as “Upneeq”) to treat this condition without surgery. This bill would essentially allow optometrists to diagnose acquired blepharoptosis and treat it nonsurgically.

*Ametropia and Presbyopia.* Ametropia refers generally to any ocular disorder in which the eye's refractive abilities fail and the retina is unable to properly form the object, resulting in blurry vision. There are three types of ametropia: myopia (nearsightedness); hyperopia (farsightedness); and astigmatism (misshapen cornea). Ametropia is commonly corrected through the use of prescription glasses or contact lenses, and can be treated surgically. In addition, topical atropine drop medication, can be used to slow the progression of ametropia.

Presbyopia is similar to but distinct from ametropia. The patient becomes farsighted as a condition of aging, with the lens of the eye losing elasticity over time. Like ametropia, presbyopia can be corrected through prescription glasses or contacts, or through surgery. In early 2021, the pharmaceutical company Allergan submitted a new drug application, AGN-190584, to the FDA. If approved, this investigational eye drop, containing pilocarpine, would be the first ophthalmic solution to treat presbyopia.

This bill would allow optometrists to diagnose both ametropia and presbyopia and to treat these conditions through medical treatment.

*Subjective Refraction.* A “refraction test” is the more technical term for a vision exam that is typically intended to measure a patient’s eyesight for purposes of prescribing corrective lenses. Objective (or nonsubjective) refraction is when the measurement is obtained without any need for response or input from the patient, using a tool or technique such as retinoscopy. Subjective refraction is a technique for measuring vision acuity that utilizes patient responses, often through the use of a Snellen chart (wherein a patient recites letters in decreasing size until they can no longer read them) or a Duochrome test (where red and green letters are presented and the patient is asked which is clearer).

Current law authorizes optometric assistants to perform nonsubjective auto refraction in connection with subjective refraction procedures performed by an ophthalmologist or optometrist. This bill would allow assistants to simply perform nonsubjective refraction. Additionally, the bill would allow assistants to perform preliminary subjective refraction procedures in connection with finalizing subjective refraction procedures performed by an ophthalmologist or optometrist, subject to the following conditions:

(A) The assistant shall have at least 45 hours of documented training in subjective refraction procedures acceptable to the supervising ophthalmologist or optometrist.

(B) Any preliminary subjective refraction procedures shall be performed as follows:

(i) When the supervising physician and surgeon or optometrist is physically present at the location where the procedures are being performed, and not involving telehealth services.

(ii) In conjunction with an in-person examination being performed by the supervising physician and surgeon or optometrist.

(iii) With a supervisory ratio of no more than three assistants per supervising ophthalmologist or optometrist during the supervisor's work shift.

(C) An assistant performing preliminary subjective refraction procedures may utilize appropriate related equipment, including, but not limited to, a phoropter, trial lenses, and a retinoscope, solely for the purpose of performing those procedures.

(D) An assistant may not prescribe glasses or contact lenses, and nothing in this section shall be interpreted as authorizing those activities.

In addition to the changes made to an optometrist's scope of practice, this would represent a substantial enhancement to the duties that an optometric assistant may perform, likely resulting in more accessible and efficient treatment of vision problems for patients.

*Light Therapies.* Intense pulsed light (IPL) is a non-invasive treatment frequently used in dermatology to treat skin conditions. The therapy has also been demonstrated to treat conditions of the eye, including dry eye disease. Current law does not expressly permit IPL therapy to be performed by an optometrist. This bill would add IPL treatments to the scope of practice for an optometrist, limited to the eye and adnexa. Additionally, the bill would specifically prohibit use of IPL with laser technology.

**Current Related Legislation.** AB 691 (Chau) would expand the authority of a qualified optometrist to administer immunizations to include the administration of the COVID-19 vaccine, and authorize an optometrist to engage in specified COVID-19 testing. *This bill is pending on the Assembly floor.*

**Prior Related Legislation.** AB 1467 (Salas/Low) would have authorized an optometrist to provide services set forth in a delegation of services agreement between the optometrist and an ophthalmologist. *This bill died in the Senate Committee on Business, Professions, and Economic Development.*

AB 443 (Salas, Chapter 549, Statutes of 2017) expanded the scope of practice for optometrists to include additional procedures including the administration of specific immunizations for optometrists who meet certain training requirements.

SB 762 (Hernandez, Chapter 330, Statutes of 2018) required the training program to be endorsed by the federal Centers for Disease Control and Prevention or the Accreditation Council for Pharmacy Education.

**ARGUMENTS IN SUPPORT:**

The **California Optometric Association** (COA) is sponsoring this bill. According to the COA, “optometrists are evenly distributed throughout California, most within driving distance of patients. Doctors of optometry are highly qualified and available to see patients in the most underserved areas. Optometrists are already responsible for providing 81 percent of Medi-Cal eye care in California. It only makes sense to fully utilize our robust network of highly skilled optometrists to bridge the provider gap.”

**ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

California Optometric Association (*Sponsor*)  
Vision Service Plan (VSP)

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: September 10, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1534 (Committee on Business and Professions) – As Amended September 3, 2021

**NOTE:** This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

**SUBJECT:** California State Board of Optometry: optometry: opticianry.

**SUMMARY:** Extends the sunset date for the California State Board of Optometry (CBO) until January 1, 2026 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the Board's sunset review oversight process.

**EXISTING LAW:**

- 1) Establishes the CBO for the licensure and regulation of optometrists, registered dispensing opticians (RDOs), contact lens dispensers, spectacle lens dispensers, and nonresident contact lens dispensers. (Business and Professions Code (BPC) §§ 3000 *et seq.*)
- 2) States that protection of the public is the highest priority of the CBO in exercising its licensing, regulatory, and disciplinary functions. (BPC § 3010.1)
- 3) Makes it unlawful for a person to engage in or advertise the practice of optometry without having first obtained an optometrist license from the CBO. (BPC § 3040)
- 4) Provides that the practice of optometry includes the prevention, diagnosis, treatment, and management of disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services, and specifically authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat the human eye for various enumerated conditions. (BPC § 3041)
- 5) Requires an optometrist seeking certification to use therapeutic pharmaceutical agents and diagnose and treat specified conditions to apply for a certificate from the CBO and meet additional education and training requirements. (BPC § 3041.3)
- 6) Requires any person who is engaged in the business of filling prescriptions of ophthalmologists or optometrists for prescription lenses to be registered as registered dispensing opticians (RDOs) with the CBO. (BPC § 2550)
- 7) Provides that an optometrist, RDO, optical company, or a health plan may execute a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with an optometrist, if all of the following conditions are contained in a written agreement establishing the landlord-tenant relationship:
  - a) The practice shall be owned by the optometrist and in every phase be under the optometrist's exclusive control, including selection and supervision of optometric staff, the scheduling of patients, the amount of time the optometrist spends with patients, fees charged for optometric products and services, the examination procedures and treatment provided to patients and the optometrist's contracting with managed care organizations.

- b) The optometrist's records shall be the sole property of the optometrist.
- c) The optometrist's leased space shall be definite and distinct from space occupied by other occupants of the premises, have a sign designating that the leased space is occupied by an independent optometrist or optometrists and be accessible to the optometrist after hours or in the case of an emergency, subject to the facility's general accessibility.
- d) All signs and displays shall be separate and distinct from that of the other occupants and shall have the optometrist's name and the word "optometrist" prominently displayed.
- e) There shall be no signs displayed on any part of the premises or in any advertising indicating that the optometrist is employed or controlled by the registered dispensing optician, health plan or optical company.
- f) Except for a statement that an independent doctor of optometry is located in the leased space, the registered dispensing optician or optical company shall not link its advertising with the optometrist's name, practice, or fees.
- g) Lease or rent terms and payments shall not be based on number of eye exams performed, prescriptions written, patient referrals or the sale or promotion of the products of a registered dispensing optician or an optical company.

(BPC § 655)

- 8) Requires all licensed optometrists and RDOs who are in a colocated setting to report the business relationship to the CBO. (BPC § 2556.1)
- 9) Prohibits individuals from fitting and adjusting spectacle lenses unless they are registered with the CBO unless they are under the direct responsibility and supervision of a registered spectacle lens dispenser whose certificate of registration is conspicuously and prominently displayed on the premises, and requires the supervising registered dispenser to be on the registered premises when an unregistered individual fits and adjusts spectacle lenses, allowing for usual and customary absences including illness and vacation. (BPC § 2559.1)
- 10) Defines "mobile optometric office" as a trailer, van, or other means of transportation in which the practice of optometry is performed and which is not affiliated with an approved optometry school in California. (BPC § 1070.2(a))
- 11) Limits the ownership and operation of a mobile optometric office to a nonprofit or charitable organization that provides optometric services to patients regardless of the patient's ability to pay, and requires the owner and operator of a mobile optometric office to register with the CBO. (BPC § 1070.2(c))
- 12) Requires the CBO to adopt regulations establishing a registry for the owners and operators of mobile optometric offices no later than January 1, 2022. (BPC § 1070.2(i))
- 13) Establishes the Medical Board of California (MBC) for the licensure and regulation of physicians and surgeons, including ophthalmologists specializing in the diagnosis and treatment of eye disorders. (BPC §§ 2000 *et seq.*)

- 14) Establishes the Osteopathic Medical Board of California (OMBC), which regulates osteopathic physicians and surgeons that possess effectively the same practice privileges and prescription authority as those regulated by MBC. (BPC §§ 2450 *et seq.*)

**THIS BILL:**

- 1) Extends the sunset date for the CBO and its authority to hire an executive officer until January 1, 2026.
- 2) Retitles the Nonresident Contact Lens Seller Registration Act to the Nonresident Ophthalmic Lens Dispenser Registration Act, and revises and recasts its provisions through technical changes, relocations of statute, and updates to terms used to describe the sale of prescription lenses.
- 3) Raises the cap on fees for violations of the Nonresident Ophthalmic Lens Dispenser Registration Act to \$35,000.
- 4) Prohibits a dispenser from altering any of the specifications of an ophthalmic lens prescription, other than the color, or substitute a different manufacturer, brand, or other physical property of the lens.
- 5) Authorizes the CBO to take action against registrants charged with unprofessional conduct and deny an application for a registration if the applicant has committed unprofessional conduct, with various enumerated offenses constituting unprofessional conduct.
- 6) Requires a supervising registered optician to be physically present on the registered premises when an unregistered individual fits and adjusts spectacle lenses, notwithstanding illness or vacations, but prohibits the CBO from taking action if the supervising registered optician was not physically present on the registered premises due to reasonably unanticipated circumstances and reasonable action was taken to have another supervising registered optician be physically present on the registered premises; or if a supervising registered spectacle lens dispenser was not physically present due to a legally required employee meal or break period.
- 7) Prohibits an optometrist from knowingly providing optometric services to any patient who scheduled their appointment for optometry services through any individual, corporation, or firm engaged in the business of filling prescriptions that is not properly registered with the CBO.
- 8) Prohibits an optometrist from knowingly entering into a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with any individual, corporation, or firm engaged in the business of filling prescriptions that is not properly registered with the CBO.
- 9) Requires citations issued for an order of abatement to be posted on the front of the place of business of the dispensing optician and on its internet website, and remain posted until the violation has been corrected.

- 10) Requires an RDO that has been issued a citation for an order of abatement to notify all optometrists with which it has entered into a lease or other contract within 10 calendar days of being served with the order of abatement.
- 11) Beginning January 1, 2023, adds physicians and surgeons to existing provisions governing landlord-tenant relationships between vision care providers and optical retailers.
- 12) Requires the CBO to refer any complaints against a physician and surgeon for violations of the statute governing landlord-tenant relationships to the physician and surgeon's licensing board.
- 13) Adds references to the OMBC in various instances where the oversight of physicians and surgeons is referred to.
- 14) Codifies the CBO's authority to charge a \$40 endorsement fee to cover reasonable regulatory costs.
- 15) Extends the sunset date on provisions governing mobile optometric office to January 1, 2025 and extends the deadline by which the CBO shall adopt regulations establishing a registry for the owners and operators of mobile optometric offices to January 1, 2023.
- 16) Requires the CBO to notify the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development when it has completed the adoption of regulations establishing a registry for the owners and operators of mobile optometric offices.

**FISCAL EFFECT:** According to the Senate Committee on Appropriations, ongoing annual costs of approximately \$2.96 million and 13.5 positions to support the continued operation of the CBO's licensing and enforcement activity.

**COMMENTS:**

**Purpose.** This bill is the sunset review vehicle for the California State Board of Optometry, authored by the Assembly Business and Professions Committee. The bill extends the sunset date for the Board and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the Board's sunset review oversight process.

**Background.**

*California State Board of Optometry.* The current CBO is responsible for overseeing approximately 31,937 optometrists, opticians, and optical businesses, which as of FY 2019/20 includes 7,486 licensed optometrists, 1,121 registered dispensing opticians (RDOs), 2,846 registered spectacle lens dispensers (SLDs), and 1,127 registered contact lens dispensers (CLDs). The CBO is also responsible for issuing certifications for optometrists to use Diagnostic Pharmaceutical Agents (DPA); Therapeutic Pharmaceutical Agents (TPA); TPA with Lacrimal Irrigation and Dilation (TPL); and TPA with Glaucoma Certification (TPG); and TPA with Lacrimal Irrigation and Dilation and Glaucoma Certification (TLG). The CBO additionally issues statements of licensure and fictitious name permits.



Under the Optometry Practice Act, the practice of optometry “includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services.” Statute establishes the scope of practice for optometrists by enumerating the examinations, procedures, and treatments that an optometrist may perform. No person may engage in the practice of optometry or advertise themselves as an optometrist in California without a valid license from the CBO.

The CBO has also regulated RDOs since the Registered Dispensing Optician Program was transferred from the Medical Board of California to the CBO through the enactment of AB 684 (Alejo/Bonilla, Chapter 405, Statutes of 2015). This transition significantly increased the regulatory and oversight responsibilities of the CBO. No individual, corporation, or firm may engage in the business of filling prescriptions for lenses or perform other activities including “taking facial measurements, fitting and adjusting those lenses and fitting and adjusting spectacle frames” without a valid certificate of registration issued by the CBO.

As a healing arts board under the Department of Consumer Affairs (DCA), the CBO is entirely special funded through the collection of licensing fees and other revenue collected as part of its regulatory activities. Like with other regulatory boards, statute provides that “protection of the public shall be the highest priority for the State Board of Optometry in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

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

Currently, the sunset review process applies to 36 different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils. 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.

Each provision in this bill is directly related to an issue raised in the CBO’s sunset review background paper, which was then subsequently discussed during a public oversight hearing.

*Board Attorney.* Issue #4 in CBO’s background paper asked whether the CBO has sufficient legal counsel. Prior versions of this bill would have authorized the CBO to hire its own attorney. However, this provision was subsequently removed.

*Statutory Consolidation.* Issue #8 asked whether the chapters establishing and governing the RDO Program should be merged into the Optometry Practice Act. This bill would take many provisions governing opticianry and relocate them to be organized more cohesively with statutes governing optometry. Additionally, the bill revises and updates many of these provisions.

*RDO Regulation Enforcement.* Issue #13 asked whether the CBO's authority to compel compliance with the laws governing RDOs should be clarified or enhanced to ensure robust enforcement. AB 684 (Alejo/Bonilla) entrusted the CBO with responsibility to enforce laws and regulations governing the business relationships between optometrists and RDOs. The bill additionally made a number of changes to the requirements for optical retailers to make eye exams available to customers and enacted myriad new consumer protections in exchange for clarifying what types of relationships between optometrists and retailers would be lawful. As a result, most optical retailers in California have now been able to offer eye exams without inappropriately intermingling an optometrist's professional judgment with a retailer's financial interest. Notably, however, this bill did not include ophthalmologists in its requirements.

Subsequently, the CBO informed the Committees that one major eyewear retailer has refused to comply with the law. The CBO states that this is despite multiple efforts to communicate with the retailer to bring them into compliance. It would arguably appear as though the retailer is deliberately flouting California law. The CBO has issued a total of 21 citations to individual locations of the retailer in California for various violations of the law, including failure to obtain or maintain a registration to practice as an RDO as well as advertising violations. Fine amounts for individual citations are \$5,000 or \$55,000, with a total for all citations of \$655,000. According to the CBO, the citations themselves stem from ongoing issues with the retailer and their refusal to comply with the law. The CBO states that the retailer has repeatedly opened new locations without obtaining proper registration, despite being repeatedly warned to do so. To date, the CBO has spent nearly \$250,000 on the investigation and legal defense of the above citations. In two prior budget years, the CBO has had to request emergency budget augmentations to have the funds to continue the legal defense of the citations. In the meantime, the retailer has not corrected any of the cited violations.

The CBO argued that allowing the retailer to employ misleading advertising disadvantages the public, who believe that the stores provide eye exams and optometric services when they are not licensed to do so. The CBO asserts that the retailer diminishes California's labor market by failing to abide by California law, creating an unfair advantage and encouraging non-compliance by other companies. The CBO believes that allowing a corporation to schedule and control appointments places business efficiency above patient health.

As the CBO cannot expend more funds in this particular appeal or possible infractions by other vendors within opticianry, it has indicated that it is seeking legislative clarification to ensure the provisions of AB 684 are enforceable. The CBO requested language stating the CBO's authority to take action when an optical business has undue control over an Optometric practice. Given the importance of ensuring that the intent of AB 684 is fulfilled, the CBO's background paper indicated that the Committees may indeed wish to consider empowering the CBO with greater authority to take action against bad actors.

This bill includes several provisions aimed at enhancing the CBO's oversight and enforcement of optical businesses. First, the bill expressly prohibits an optometrist from knowingly providing optometric services to any patient who scheduled their appointment for optometry services through any individual, corporation, or firm engaged in the business of filling prescriptions that is not properly registered with the CBO. Optometrists would also be prohibited from knowingly entering into a lease or other written agreement giving rise to a direct or indirect landlord-tenant relationship with any individual, corporation, or firm engaged in the business of filling prescriptions that is not properly registered with the CBO.

Further, the bill requires citations issued for an order of abatement to be posted on the front of the place of business of the dispensing optician and on its internet website, and remain posted until the violation has been corrected. RDOs that has been issued a citation for an order of abatement would also be required to notify all optometrists with which it has entered into a lease or other contract within 10 calendar days of being served with the order of abatement.

Finally, this bill would close a significant loophole in AB 684 by requiring ophthalmologists to comply with the same laws as optometrists in regards to landlord-tenant relationships and lease agreements. The bad actor in the case described above typically utilized physicians and surgeons to evade these requirements, despite the ultimate patient experience and consumer implications remaining the same. This bill would add physicians and surgeons to the provisions of AB 684, while clarifying that physicians and surgeons would remain subject to the sole oversight of their respective licensing boards. In order to provide retailers with time to either come into compliance or propose alternative solutions to the loophole, these provisions will not go into effect until 2023.

*Standard of Care Model for RDOs.* Issue #14 asked if the CBO should treat RDOs more like trained professionals in its enforcement and licensing activities. This bill would allow for the CBO to take action against registrants for unprofessional conduct. This would align the CBO's enforcement authority against registrants with the authority that currently exists with optometry while allowing for more specific causes of action relating to opticianry.

*Mobile Optometric Offices.* Issue #18 asked whether the CBO needs statutory changes in its implementation of its registration program for nonprofits offering optometric services to patients regardless of the patient's ability to pay. This bill will require the CBO to notify the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development when it has completed the adoption of its regulations establishing a registry for the owners and operators of mobile optometric offices. This notification will enable the committees to begin tracking the success of the program. In the meantime, the CBO's deadline for completing regulations would be extended by one year, as would the sunset date on the program.

**Current Related Legislation.** AB 407 (Salas) would expand the scope of practice for qualified optometrists. *This bill is pending in the Assembly Committee on Business and Professions.*

**Prior Related Legislation.** AB 1708 (Low, Chapter 564, Statutes of 2017) was the most recent sunset bill for the Board.

#### **ARGUMENTS IN SUPPORT:**

The **California Optometric Association (COA)** supports this bill, writing that “during the sunset review process, the board identified significant obstacles preventing them from enforcing the law.” COA states that “this bill gives the board the increased fine and enforcement authority needed to make sure that state law is upheld. The bill also strengthens the provisions of AB 684 which was passed in 2015 to prevent undue corporate influence into the professional judgment of an optometrist. A corporation should not be able to contract with an ophthalmologist to get around the patient protection provisions required by AB 684. Under no circumstances should an optical corporation be allowed to interfere with what is in the best interest of the patient.”

**ARGUMENTS IN OPPOSITION:**

None on file.

**REGISTERED SUPPORT:**

California Optometric Association

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: September 10, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1535 (Committee on Business and Professions) – As Amended August 26, 2021

**NOTE:** This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

**SUBJECT:** Veterinary Medical Board: application and examination: discipline and citation.

**SUMMARY:** Enacts various changes to the regulation of veterinarians, Registered Veterinary Technicians (RVTs), Veterinary Assistant Controlled Substances Permit (VACSP) holders, veterinary schools, and veterinary premises, stemming from the joint sunset review oversight of the Veterinary Medical Board (Board) by the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development.

**EXISTING LAW:**

- 1) Creates the Veterinary Medicine Practice Act (Act), outlining the licensure requirements, scope of practice, and responsibilities of individuals practicing veterinary medicine and animal health care tasks in California. (Business and Professions Code (BPC) Section 4811 et seq.)
- 2) Establishes the Veterinary Medical Board under the jurisdiction of the Department of Consumer Affairs (DCA), responsible for enforcing the provisions of the Act, and regulating Veterinarians, Registered Veterinary Technicians, Veterinary Assistant Substance Controlled Permit holders, and veterinary premises. (BPC Section 4800 et seq.)
- 3) Provides the Board with authority to enforce the Act until January 1, 2022.
- 4) Declares that it is unlawful to practice veterinary medicine in California unless a person holds a valid, unexpired, and unrevoked license issued by the Board, with certain exceptions. (BPC Section 4825)
- 5) Outlines the requirements for obtaining a veterinarian license, which includes passing three examinations: a licensing examination that is administered on a national basis; a California state board examination; and an examination on California statutes and regulations of the Veterinary Medicine Practice Act. (BPC Section 4848(a))
- 6) Outlines the educational requirements to be eligible for registration as an RVT as either of the following:
  - a) Graduation from a two-year curriculum in veterinary technology, in a college or other postsecondary institution approved by the Board, or an equivalent as determined by the Board. In the case of a private postsecondary institution, the institution must also be approved by the Bureau for Private Postsecondary Education.

- b) A combination of education and clinical practice experience equivalent of the graduation requirement above, as determined by the Board.
- 7) Authorizes the Board to collect the following fees, to be credited to the Veterinary Medical Board Contingent Fund:
- a) An initial fee and biennial renewal fee for a veterinarian license, not to exceed \$500 (BPC Section 4905(d) and (e))
  - b) An application fee, initial registration fee, and biennial renewal fee for registered veterinary technicians, not to exceed \$350. (BPC Section 4842.5 (a), (c), and (d))
  - c) An initial fee and annual renewal fee for registration of veterinary premises, not to exceed \$400 (BPC Section 4905 (n))
  - d) An application fee and renewal fee for veterinary assistant controlled substance permits not to exceed \$100 and \$50, respectively. (BPC Section 4836.2 (b) and 4836.3 (d))
- 8) Requires all premises where veterinary medicine, dentistry and surgery is practiced to be registered with the Board. Defines “premises” to include a building, kennel, mobile unit, or vehicle. Specifies that every application for registration of veterinary premises must include the name of the responsible licensee manager acting for and on behalf of the licensed premises. (BPC Section 4853)
- 9) Requires every application for registration of veterinary premises to list the name of the responsible licensee manager who is to act and on behalf of the licensed premises. (BPC Section 4853)
- 10) Authorizes the Board to withhold, suspend or revoke the registration of veterinary premises when the licensee manager listed on the application ceases to become responsible for management of the registered premises and no substitution of the responsible licensee manager has been made through a subsequent application, or the licensee manager has had their license revoked or suspended. (BPC Section 4853.6)
- 11) Specifies a list of prohibited activities for individuals licensed under the Board, such as fraud, misleading advertising, cruelty to animals, and more. Provides that the Board may deny, revoke, or suspend a license or registration or assess a fine if any a person under its jurisdiction is found to have engaged in prohibited activities. (BPC Section 4883 et seq.)
- 12) Declares that it is the intent of the Legislature that the Board seeks ways to identify and rehabilitate veterinarians and registered veterinary technicians with impairment due to abuse of dangerous drugs or alcohol, affecting competency so that veterinarians and registered veterinary technicians so afflicted may be treated and returned to the practice of veterinary medicine in a manner that will not endanger the public health and safety. (BPC Section 4860)
- 13) Establishes diversion evaluation committees under the Board, composed of individuals appointed by the Board, whose duties and responsibilities include, among other activities, the evaluation of veterinarians and registered veterinary technicians requesting participation into

the Board's drug diversion program; reviewing and designating treatment facilities for referrals; and considering the case for each participant in determining if they may safely continue the practice of veterinary medicine or assisting in the practice of veterinary medicine. (BPC Section 4860)

- 14) Requires the Board to charge each veterinarian and registered veterinary technician who is accepted to participate in the diversion program a diversion program registration fee. The diversion program registration fee shall be set by the board in an amount not to exceed four thousand dollars (\$4,000). In the event that the diversion program registration exceeds five hundred dollars (\$500), the board may provide for quarterly payments. (BPC Section 4873)
- 15) Outlines the process for the Board to issue a citation for violations of the Act, and specifies the process for an individual to administratively contest a civil citation or the proposed assessment of a civil penalty. (BPC Section 125.9 and Section 4875.6)

**THIS BILL:**

- 1) Extends the Board's authority to enforce the Act until January 1, 2026.
- 2) Requires, beginning January 1, 2023, RVTs, veterinary assistants, and VACSP holders to wear a name tag identification in at least 18 point type in any area of the veterinary premises that is accessible to the public. Specifies that the name tag must include name and, if applicable, license or registration type and number. Allows the name tag to be removed when working with or handling animal patients.
- 3) Authorizes public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, or humane society shelters that are not registered under a premises permit with the Board to provide the following care to animals:
  - a) Administering preventative or prophylactic nonprescription vaccinations to the animal pursuant to protocols written by a California veterinarian for the purposes of preventing the spread of communicable diseases, without the presence of a veterinarian when the person has received proper training in the administration of the nonprescription preventative or prophylactic vaccinations.
  - b) Administering nonprescription medications to the animal pursuant to protocols written by a California veterinarian, for the control or eradication of apparent or anticipated internal or external parasites, including, but not limited to, fleas, ticks, or worms, without the presence of a veterinarian when the person has received proper training in the administration of the nonprescription medications for the control or eradication of those internal or external parasites.
  - c) Administering medications prescribed by a California veterinarian to the animal without the presence of a veterinarian when the shelter has received a written treatment plan from the veterinarian for that specific animal and has a dispensing protocol in place for the tracking of dispensed prescribed medications and when the person has received proper training in the administration of prescription medications.

- 4) Defines “proper training” for individuals providing care to animals at a shelter not registered under a premises permit with the Board as completing a training curriculum of at least four hours provided by a California veterinarian that includes an overview of intake procedures and preventative medicine, recognizing when an animal is required to be seen by a veterinarian, prescription and nonprescription medications, humane animal restraint techniques, vaccination injection methods and procedures, and documentation.
- 5) Requires shelters that are not registered under a premises permit with the Board to report any adverse event resulting in significant impairment or death from the care provided, on a form prescribed by the Board, including severe injuries, infections, and unintended reactions caused by the incorrect or inappropriate administration of a vaccine or medications.
- 6) Specifies that proof of graduation from a two-year curriculum in veterinary technology must be submitted directly to the Board by the college, postsecondary institution, or American Association of Veterinary State Boards.
- 7) Provides that candidates who have education equivalency certified by the American Association of Veterinary State Boards Program for the Assessment of Veterinary Education Equivalence for Veterinary Technicians shall be eligible to obtain registration as an RVT.
- 8) Eliminates the requirement that a veterinarian complete a California state board examination, and makes conforming changes to provisions related to out-of-state, temporary, and university licenses.
- 9) Specifies that if an applicant for licensure or registration fails to complete their application within one year after it has been filed, the application shall be considered abandoned and the application fee forfeited. Provides that an application submitted subsequent to the abandonment of the former application shall be treated as a new application.
- 10) Requires an applicant for licensure or registration to notify the board of any changes in mailing or employment address that occur after filing the application.
- 11) Amends the definition of a “premise” for the purposes of the Act to mean the location of operation where the various branches of veterinary medicine, dentistry or surgery is being practiced.
- 12) Requires the owners or operators of a veterinary premise to submit a premises registration application to the board, and requires the application to set forth the name of each owner or operator, including the type of corporate entity that is owning or operating the premise, if applicable.
- 13) Specifies that if the owner or operator submitting a premises registration application is a veterinary corporation, the application must set forth the titles of each officer director, or shareholder.
- 14) Specifies that if the owner or operator is a corporation or other artificial legal entity other than a veterinary corporation, the application shall set forth the names and titles of all owners, officers, general partners, if any, and the agent for service of process.



- 15) States that premises registration is non-transferrable, and that any changes in owners, operators, officers, directors, shareholders, general partners, agent for service of process to be reported to the Board within 30 days after any such change.
- 16) Authorizes the Board to:
  - a) Deny, suspend, or revoke veterinary premises registration based on prior criminal and disciplinary history of the premises registration holder or licensee manager.
  - b) Deny, suspend or revoke registration of veterinary premises in the event that a premises registration holder that is not licensed under the Board has practiced, influenced or exerted control over provision of veterinary medicine, dentistry and surgery.
  - c) Deny renewal of premises registration if there is no licensee manager associated with the premises.
- 17) Prohibits a premises registration holder who is not a California-licensed veterinarian from interfering with, controlling, or otherwise directing the professional judgment of any California licensed veterinarian or registered veterinary technician. Authorizes the board to require any information, including employment contracts, necessary for enforcement of this provision.
- 18) Renames the term “diversion” to “wellness” within the context of the Board’s drug and alcohol recovery program.
- 19) Authorizes the Board President to have the authority to suspend any wellness evaluation committee member pending an investigation into allegations of existing alcohol or drug addiction. Specifies that, if after investigation, there is evidence of an alcohol or drug addiction relapse, the Board President shall have authorized discretion to remove the member without input from the Board.
- 20) Eliminates the \$4,000 cap for the Board’s wellness program registration fee.
- 21) Clarifies the process and timeline for contesting citations issued by the Board. Specifically:
  - a) Allows a cited person to request an administrative hearing, and request an informal conference to review the citation. Specifies that the cited person must make the request for an informal conference in writing, within 30 days of the date of issuance of the citation.
  - b) Requires the Board’s executive officer or designee, within 60 days from receipt of the request, to hold an informal conference with the cited person.
  - c) Specifies that following the informal conference, the Board’s executive officer or designee may affirm, modify, or dismiss the citation, including any fine that is levied, order of abatement, or order of correction issued. The executive officer or their designee shall state in writing the reasons for the action and transmit a copy of those findings to the cited person within 30 days after the informal conference.

- d) Provides that if the citation is affirmed or modified following the informal conference, the respondent may make a request in writing to the executive officer within 30 days of the affirmed or modified citation, for a formal hearing. A cited person cannot request an informal conference for a citation that has been affirmed or modified following an informal conference.
- 22) Prohibits a licensee or registrant under the Board from making any statement, claim, or advertisement that they are a veterinary specialist or that they are “board-certified” unless that licensee or registrant is certified by an American Veterinary Medical Association Recognized Veterinary Specialty Organization.
- 23) Prohibits a licensee or registrant from exercising control over, interfering with, or attempting to influence the professional judgment of another California licensed veterinarian or registered veterinary technician through coercion, extortion, inducement, collusion, intimidation through any means, such as using compensation to require the other California licensed veterinarian or registered veterinary technician to perform veterinary services in a manner inconsistent with current veterinary medical practice.
- 24) Revises and recasts the various fees collected by the Board. Specifically:
- a) Increases the initial veterinary premises registration fee from \$400 to \$500, and increases the annual veterinary premises registration renewal fee from \$400 to \$525.
  - b) Lowers the application fee, initial registration fee, and biennial renewal RVT fee from \$350 to \$225.
  - c) Sets the VACSP application fee at \$100, creates an initial VACSP permit fee of \$100, and increases the biennial VACSP renewal fee from \$50 to \$100.
- 25) Makes other technical, conforming and non-substantive changes.

**FISCAL EFFECT:**

According to the Senate Committee on Appropriations:

Ongoing annual costs of approximately \$6.91 million (Veterinary Medical Board Contingent Fund) and 30.8 positions to support the continued operation of the Veterinary Medical Board’s licensing and enforcement activities.

The Veterinary Medical Board notes:

- Unknown decrease in revenue as a result of the elimination of the examination and discontinuation of the temporary license applications. The Board estimates revenue loss from the elimination of the examination would be approximately \$192,000. The Board anticipates revenue loss from the discontinuation of temporary licenses to be offset by individuals applying for a full reciprocity license.

- Unknown increase in revenue from additional permit and renewal fees. The Board estimates a revenue increase of approximately \$205,000 from the new initial permit fee and increased renewal fee.
- Savings of approximately \$63,000 due to the elimination of specified Board contracts, which may be redirected to other areas as needed.

The Office of Information Services (OIS) anticipates information technology costs of approximately \$22,500 to create a new initial transaction, update existing transactions to allow manual override, remove the California state board examination, add new enforcement codes, and retire temporary license types. OIS costs may be absorbed by redirection of existing maintenance resources.

### COMMENTS:

**Purpose.** This bill is one of several “sunset review” bills authored by the Assembly Committee on Business and Professions and the Senate Business, Professions, and Economic Development Committee (Committees). Each year, the Committees hold joint sunset review oversight hearings in order to review the boards and bureaus under 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 a sunset review oversight hearing for the Veterinary Medical Board on March 3, 2021. Several of the issues examined during the hearing related to the Board are also reviewed in the committee background paper “Identified Issues, Background, and Recommendations Regarding the Veterinary Medical Board,” which is published and available on the Assembly Committee on Business and Professions’ website. AB 1535 is the sunset review bill that will implement changes to the Board and its operations, as identified on the committee background paper, the sunset review oversight hearing, and stakeholder input.

### Background.

*The Veterinary Medical Board.* The Veterinary Medical Board traces its origins back to 1893, originally established as the State Board of Veterinary Examiners. Over the next century, the Board has regulated the veterinary medical profession through many of its changes and evolution: from opening the first California veterinary college in 1894, to helping eradicate the Hog cholera in 1972, to the creation of the animal health technician profession (now titled Registered Veterinary Technician) in 1975. Today, the Board licenses and regulates Veterinarians, Registered Veterinary Technicians (RVTs), Veterinary Assistant Controlled Substances Permit (VACSP) holders, veterinary schools, and veterinary premises. The Board derives its authority through the enforcement of the Veterinary Medicine Practice Act. The Board protects the California public from the incompetent, unprofessional, and unlicensed practice of veterinary medicine. The Board requires adherence to strict licensure requirements for California Veterinarians, RVTs, and VACSP holders, and ensures that each licensee possesses the level of competence required to perform animal health care services. The Board further protects the

public by investigating complaints – and if violations are found, take disciplinary actions against licensees.

*Major provisions of AB 1535.* This sunset bill proposes 11 notable changes to the Veterinary Medical Board. Specifically, the bill (1) eliminates the requirement that a veterinarian complete a California state board examination as a condition for licensure, given its redundancy with the national examination; (2) specifies changes to the Board’s veterinary premises registration application, and the Board’s enforcement authority over veterinary premises; (3) creates safeguards related to the corporate practice of veterinary medicine; (4) implements changes to the Board’s drug and alcohol diversion program; (5) clarifies the process to contest citations; (6) clarifies the use of the title “veterinary specialist” or “board-certified;” (7) authorizes the Board to abandon applications for licensure or registration; (8) requires certain registrants and permit holders to wear a name and license identification tag when interacting with the public; (9) authorizes animal shelters to provide specified care to animals without the presence of a veterinarian under certain conditions; (10) adds a pathway to licensure for foreign RVTs; and (11) revises and recasts the various fees collected by the Board. Each of these changes are discussed in detail below.

*Elimination of the California state board examination.* Existing law requires the Department to have a process for developing and validating examinations required for licensure. To that end, the DCA’s Office of Professional Examination Services (OPES) periodically conducts an occupational analysis to determine whether examinations adequately test applicants and are effective at preventing unqualified individuals from obtaining professional licensure. To obtain licensure as a veterinarian, an individual must pass three examinations to determine competency: (1) a national examination, known as the North American Veterinary Licensing Examination (NAVLE); (2) a California state board examination (CSBE) and (3) a veterinary law examination of California rules, statutes, and regulations (CVLE).

In coordination with the Board, OPES conducted a comprehensive review and linkage study of the NAVLE national examination and the CSBE state test to evaluate their continued use for veterinary licensure in California. OPES concluded that the national NAVLE met the professional and technical standards to adequately test applicants. Furthermore, it was determined that the NAVLE also already covered the practice areas tested by the state CSBE, except for California law, rules and regulations – making the state CSBE a largely redundant examination. As a result, OPES recommended that the CSBE be revised from a practice-based examination to a supplemental examination that measures California law, rules, and regulations only. OPES further recommended that this revised CSBE replaces the current CVLE. In October 2020, based on the OPES recommendations, the Board voted to pursue the elimination of the state CSBE given its redundancy with the national NAVLE. The Board subsequently established a workgroup comprised of board members and stakeholders to consider the impacts of eliminating the state examination, and draft statutory changes that would properly implement the elimination of the CSBE.

AB 1535 implements these recommended changes and eliminates the requirement that a candidate for licensure as a veterinarian pass a California state board examination. As a result, a candidate would only need to pass a national examination, and a veterinary law examination

administered by the board concerning the Veterinary Medicine Practice Act statutes and regulations.

BPC Section 4848 currently specifies a process for out-of-state licensees to have their state examination requirements waived. Because of the proposed elimination of the state CSBE, AB 1535 enacts changes for out-of-state veterinarians seeking licensure in California. Specifically, in addition to passing the veterinary law and examination administered by the Board, an applicant who has passed the national examination over five years from the date of application will need to satisfy one of three requirements: either (1) retake and pass the national licensing examination; (2) submit proof of having practiced clinical veterinary medicine for a minimum of two years and completed a minimum of 2,500 hours of clinical practice in another state, Canadian province, or United States territory within the three years immediately preceding filing an application for licensure in this state; or (3) complete the minimum continuing education requirements for the current and preceding year.

AB 1535 also makes some changes to university licenses. Created in 2016, university licenses were created specifically for faculty practicing veterinary medicine at the University of California, Davis, and Western University. University licenses provide the Board with enforcement authority in the event that a consumer or animal patient was harmed from the veterinary services provided by faculty. University license applicants, among other items, are required to take a specified educational curriculum on regionally specific and important diseases and conditions. However the Board and stakeholders note that there is a significant decrease in the demand for such educational curriculum, and that these classes are likely to no longer be offered in the future. According to the Board, California consumers are already adequately protected, since the Board has authority to discipline a licensee with a University license. As such, this bill includes the Board's CSBE workgroup recommendation to eliminate the California curriculum requirement from the university license requirement.

*Changes to Veterinary Premises Registration.* California law requires all premises where veterinary medicine, dentistry, and surgery to be registered with the Board. An application for premises registration is required to contain the name of the responsible licensee manager (known as the MGL) who is to act for and on behalf of the licensed premises. All license applicants are required to submit to a criminal background check. Based on the person's record, the Board has authority to deny license and registration applications for convictions and discipline by public agencies.

However, existing law does not require the owner or operator of the veterinary premises to be the premises registration applicant or be identified on the application. Therefore, according to the Board, it is unclear who needs to be fingerprinted and under what circumstances the Board can deny premises registrations. In addition, the buildings where veterinary medicine is practiced may be leased from a third party not involved in the practice. The Board notes that the statute is unclear whether the premises means the real estate, the brick and mortar building, or the location of the practice.

Furthermore, it is unclear if the Board has authority to deny a premises registration or MGL substitution application when a Veterinarian who had their licensed revoked or suspended is the owner or operator of the premises. Currently, a veterinarian, who was named as the premises' MGL but whose license was subsequently revoked or suspended, may submit to the Board an

application naming a new MGL associated with the premises, while the revoked veterinarian attempts to operate the premises without the Board's knowledge. The Board reports instances of such abuse, in which MGLs who have been disciplined for various violations were able to continue controlling the veterinary premises and the veterinary practice therein. This can also lead to bad actors owning or operating the premises without maintaining minimum facility standards and keep rotating MGLs. New MGLs assume responsibility, realize the premises owner will not provide necessary resources to properly maintain the premises, decide to go elsewhere, and the premises owner/operator hires a new MGL. This endless loop leads to veterinary services being provided on an ongoing basis without the unlicensed premises owner/operator ever being held responsible for the premises conditions.

Although the Board does have authority to withhold, suspend, or revoke the premises registration when an MGL leaves, there is no specified timeframe for how long the owner has to designate a new MGL. Without a specified timeframe or explicit authority to cancel the registration, the Board explains that its only options are to either hold a renewal, which could take an entire year, or go through the disciplinary process in order to suspend or revoke the registration. The Board argues that the ability to enforce a clear timeframe incentivizes compliance and enables the Board to adequately enforce the consumer protection statute.

AB 1535 implements three broad categories of changes related to veterinary premises registration to address these issues. The bill (1) clarifies that veterinary premises refers to the location of operation where veterinary medicine, dentistry and surgery is being practiced rather than the real estate; (2) requires that any owner, operator, officers, directors, shareholders, general partners or agent for service of process be clearly identified on a premises application, and requires any changes in these positions to be reported to the Board within 30 days; and (3) grants the Board with specified enforcement authority, including the ability to deny, suspend, or revoke premises registration on the basis of a premises registration holder criminal and disciplinary history.

*Safeguards related to corporate practice of medicine.* In 2017, the Board received information from veterinarians that general corporations that own or operate veterinary premises are using employment contracts to control the provision of veterinary medical care to animal patients. Examples include requiring the veterinarians to use, sell, or recommend to clients particular products that are owned by the corporation. Current statutory and regulatory law does not explicitly prohibit general corporate ownership or operation of a veterinary medical practice or influence over the standards of veterinary medicine practice. The Board explains that without statutory language, it cannot protect consumers from commercial motives of the corporation being asserted over a licensee's professional judgment. To address these concerns, AB 1535 includes provisions for veterinary corporations to be identified on a premises permit application, and prohibits a premise registration holder that is not a California-licensed veterinarian to interfere with, control, or otherwise direct the professional judgment of any California licensed veterinarian or registered veterinary technician. To enforce this provision, this bill authorizes the Board to require any information, including, but not limited to, employment contracts between the premises registration holder and a California-licensed veterinarian or registered veterinary technician as deemed necessary.

*Changes to the Board's drug and alcohol diversion program.* The Board's diversion program was established to identify and rehabilitate veterinarians and RVTs who suffer from alcohol or drug abuse addiction. This voluntary program aims to treat these licensees with the goal of eventually returning them to the practice of veterinary medicine in a manner that will not endanger public health and safety. Participants in the program are enrolled for a minimum of three years – but the length of treatment can extend based on individual needs and level of rehabilitation. Participants in a diversion program can receive many benefits to overcome addiction, including outpatient treatment, clinical case management, drug testing, and assigned support group. Under current regulations, participants in the diversion program pay a flat fee of \$2,000, which can be raised to a statutory maximum of \$4,000. Any expenses beyond the initial \$2,000 registration fee is covered by the Board. According to the Board, the minimum cost for a three-year diversion program is roughly \$16,000 – thus the Board covers on average \$14,000, or 88% of diversion costs. According to the Board, program participation has historically been low. Since 2003, there have been 24 total participants, and as of this Sunset Review, only one individual is currently participating in diversion. The Board believes that the low participation rate may be due to the lack of knowledge about this program. As a result, the Board would like to develop an outreach campaign that would educate licensees about the rehabilitative and healing benefits of the Diversion program. However, there is significant concern that the Board's fund condition would not be able to sustain the program if more participants enrolled. AB 1535 aims to sustain the Board's fund condition in the event that more participants enroll in Diversion. To that end, the bill eliminates the registration flat fee, and instead requires participants pay the administrative costs for the program.

AB 1535 also makes changes to the Board's Diversion Evaluation Committee (DEC), which assists in the administration of the Diversion program. Among other responsibilities, the DEC evaluates licensees who request participation in the program; designates the treatment facilities which licensees may be referred to; and considers whether licensees may safely continue or resume the practice of veterinary medicine. Existing law requires a majority vote of the Board to appoint members of the DEC. However, according to the Board, there is no provision for suspending or dismissing DEC members without the full Board conducting a meeting. The Board is requesting legislative authority to dismiss a DEC member who relapses or is suspected of drug or alcohol abuse, as that member's integrity with the DEC may be compromised. AB 1535 includes a provision authorizing the Board's president to suspend any diversion evaluation committee member pending an investigation into allegations of existing alcohol or drug addiction. If, after investigation, there is evidence of an alcohol or drug addiction relapse, the board president would be authorized to remove the member without input from the full Board.

Finally, AB 1535 changes the term "diversion" to "wellness" in the context of the Board's drug and alcohol abuse recovery program. According to the Board, the negative connotations the term "Diversion" brings may deter licensees from taking advantage of the program.

*Process to contest citations.* Existing statutes allow the Board to issue citations to Veterinarians, RVTs, or unlicensed persons for Act violations. The Board reports conflicting statutes regarding the timelines for contesting a citation: BPC section 125.9 allows a cited individual 30 days to contest a citation and request an informal conference or hearing. On the other hand, BPC section 4875.6 requires notification in 10 business days from receipt of the citation if the individual contests the citation and wants an informal conference. The Board

explains that this inconsistency leads to confusion amongst Board staff and cited individuals wishing to appeal the citation. AB 1535 provides clarification on the process and timelines for citations: a cited person may request an informal conference to review the acts shared in the citation. The cited person shall make the request for an informal conference in writing, within 30 days of the date of issuance of the citation, to the Board's executive officer. Upon receiving the request, the Board or its representative must hold an informal conference with the cited person within 60 days. Following the informal conference, the Board may affirm, modify, or dismiss the citation. The Board or its representative must state in writing the reasons for the action and transmit a copy of those findings to the cited person within 30 days after the informal conference. If the citation is affirmed or modified following the informal conference, the respondent may make a request in writing to the executive officer within 30 days of the affirmed or modified citation, for a formal hearing.

*Use of the title "Veterinary Specialist" or "Board-Certified."* The American Board of Veterinary Specialties (ABVS) is an organization within the American Veterinary Medical Association (AVMA). The ABVS establishes criteria for recognition of veterinary specialty organizations, ensuring well-defined levels of competency in specific areas of study or practice categories within veterinary medicine. Currently, there are 22 AVMA-Recognized Veterinary Specialty Organizations comprising 40 distinct AVMA-Recognized Veterinary Specialties. According to the AVMA, there are more than 13,500 veterinarians have been awarded diplomate status in one or more of these specialty organizations after completing postgraduate training, education, and examination requirements. Unlike some other healing arts licensees who are statutorily required to be certified by a recognized entity to advertise the licensee's specialized practice, the Veterinary Medicine Practice Act does not provide any distinction between veterinarians who are general practitioners and veterinarians who are specialists. The Board argues that this puts consumers at risk, as they may not be able to distinguish a veterinarian who has specialist training and certification from a veterinarian who claims an interest in a particular field but has no specialist training or certification. According to the Board, it is important to protect the public from misleading claims of specialized veterinary practice and ensure that consumers have full understanding of a veterinarian's qualifications. To accomplish this goal, AB 1535 contains a provision prohibiting a Board licensee or registrant from making any statement, claim, or advertisement that they are a veterinary specialist or that they are "board-certified" unless they are actually certified by an American Veterinary Medical Association-Recognized Veterinary Specialty Organization.

*Ability to abandon application.* According to the Board, it currently does not have authority to abandon applications if the applicants pay the fee but fail or are unable to correct any deficiencies on a submitted application. As a result, applications can stay on the Board's system for several years never to be completed, causing problems such as skewing Board-produced statistical reports. To ensure the Board's limited resources are spent more efficiently, AB 1535 provides that if applicant fails to complete their application within one year after it has been filed, the application shall be considered abandoned and the application fee forfeited. Any application submitted subsequent to the abandonment of the former application shall be treated as a new application. Additionally, AB 1535 requires an applicant to notify the board of any changes in mailing or employment address that occur after filing the application.



*Name and license identification tag.* An RVT registration under the Board grants an RVT the ability to perform certain animal health care tasks. For example, an RVT may induce anesthesia, apply casts and splints, or perform dental extractions under the direct supervision of a licensed veterinarian. According to stakeholders representing the RVT profession, many veterinary facilities continue to refer to their unlicensed assistants as technicians and many allow them to perform tasks legally restricted to veterinarians or RVTs. To increase consumer protection and ensure members of the public are aware of which type of veterinary professionals they interact with, AB 1535 requires RVTs, veterinary assistant, and VACSP holder to wear a name tag identification in at least 18 point type in any area of the veterinary premises that is accessible to members of the public. The name tag shall include the veterinary technician, veterinary assistant, and veterinary assistant controlled substances permit holder's name, and, if applicable, the license, registration, or permit type and number issued by the board. The name tag requirement takes effect beginning January 1, 2023.

*Animal shelter medicine.* In 2015, the Orange County Animal Shelter contacted the Board requesting guidance on the shelter's existing protocols for directing RVTs to provide animal care on in-take, in the absence of the supervising veterinarian. At that time, the Orange County Animal Shelter had been audited by the County Auditor, who inquired whether established shelter protocols complied with the Act.

Following this request, the Board began an effort to review existing and needed regulations related to the practice of animal medicine in a shelter setting. After interviewing several shelters throughout the state and examining their facility protocols, the Board determined that shelters that performed certain animal health care tasks – such as administering medication or rendering basic first aid – were required to register with the Board. However, it appeared at the time that some shelters in California were either unaware of the registration requirements, or were not able to comply with them due to the unique nature of providing animal care in a shelter environment. For example, under a premises registration, one of the more difficult requirements for shelters to meet is having a veterinarian maintaining a physical presence within the facility at all times. Some shelters in California, particularly those in rural areas, report that there are no veterinarians available in their jurisdiction, and thus cannot meet the premises registration requirements. As a result, some shelters report being unable to provide basic care to animals, such as vaccinations and parasite control.

To address these concerns, AB 1535 includes provisions authorizing public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, or humane society shelters that are not registered under a premises permit with the Board to provide limited care to deposited or impounded animals without the presence of a veterinarian under certain conditions. Specifically, shelters would be able to administer preventative or prophylactic nonprescription vaccinations to prevent the spread of communicable diseases, as well as nonprescription medications for the control or eradication of parasites, without the presence of a veterinarian, as long as the shelter has protocols written by a California veterinarian, and the person providing care has received proper training. The bill also allows shelters to administer prescription medication without the presence of a veterinarian as long as the shelter has received a written treatment plan from a licensed veterinarian for that specific animal and the shelter has a dispensing protocol in place for the tracking of dispensed prescribed medication. Finally AB 1535 defines proper training for shelter staff providing care, and requires shelters to report any

adverse event resulting in significant impairment or death from the care provided, such as severe injuries, infections, and unintended reactions caused by the incorrect or inappropriate administration of a vaccine or medications.

*Pathway to licensure for foreign RVTs.* To be eligible to become an RVT in California, the applicant has to successfully complete a national licensing examination, currently administered by the American Association of Veterinary State Boards. In order to be eligible to take the national examination, an applicant must furnish satisfactory evidence of graduation from a two-year curriculum in veterinary technology, in a college or other postsecondary institution approved by the Board. Although the Board has regulations to determine education eligibility for out-of-state applicants, it does not have a process or criteria for determining education eligibility for applicants educated outside of the United States or Canada. The Board has examined potential pathways for foreign candidates to become California RVTs, and determined that the existing process currently in place to validate the education of foreign veterinarians could be mirrored for foreign RVTs. AB 1535 implements this recommendation, and provides that a candidate may be eligible for RVT registration upon providing education equivalency certified by the American Association of Veterinary State Boards Program for the Assessment of Veterinary Education Equivalence for Veterinary Technicians.

*Fees.* The Board is a special funded entity, drawing revenues primarily from licensing, renewal, and examination fees for Veterinarians, RVTs, and VACSP holders. The Board does not receive revenue from the state's General Fund.

The Board enacted incremental fee increases in 2009, 2012, 2018, and most recently raised fees again to their statutory caps in 2020 via emergency regulations. According to the Board, the fee increases implemented through 2012 were necessary to cover basic operational costs such as staff salaries, wages, benefits and office rent, as well as staff hiring to support the Board's functions.

In 2018, the Board adopted emergency regulations to raise fees and correct a structural budget imbalance caused by increased costs in personnel services, increased pro-rata costs paid to the DCA, compensation for Subject Matter Experts and Inspectors, and implementation of additional legislative mandates. The fees were set based on a third-party audit commissioned by the Board, which concluded that not raising fees would threaten the Board's long-term sustainability and ability to execute its mission.

The Board acknowledges that those fee increases were particularly burdensome for the RVT profession. According to the 2020 California Veterinary Medical Association's Economic Issues Survey, 42% of Veterinarians reported salaries of \$81-120k, and 39% reported salaries over \$120,000. Conversely, 85% of the RVTs reported salaries of \$60,000 or less. As such, the Board has evaluated options to lower the fees for the RVT profession by drawing revenue from other sources.

AB 1535 proposes to lower the application fee, initial registration fee, and biennial renewal RVT fee from \$350 to \$225. The bill would increase the \$400 veterinary premises initial and renewal fee to \$500 and \$525, respectively. Finally, the bill sets the VACSP application fee at \$100,

creates an initial VACSP permit fee of \$100, and increases the biennial VACSP renewal fee from \$50 to \$100.

Of note, the VACSP program - which was enacted in 2016 to allow veterinary assistants to obtain or administer controlled substances - is not meeting registration projections, and thus not meeting revenue expectations. According to the Board, adding a VACSP initial permit fee and raising the renewal fee will help ensure all other licensees/registrants are not absorbing the costs of implementing the VACSP Program.

*Note on telemedicine.* A veterinarian is required to establish a veterinarian-client-patient-relationship (VCPR) before providing care to an animal patient. Among other requirements, VCPR is established when the client has authorized the veterinarian to make medical judgements, and when the veterinarian has gained sufficient knowledge of the animal to make a diagnosis, generally through an in-person examination. Existing laws and regulations provide that a VCPR must be established before care can be provided remotely via telehealth. It is also generally understood that VCPR must be re-established for any subsequent diagnosis and treatment of a new medical condition. In practice, this means a veterinarian will request to examine an animal in-person again if diagnosing or treating a new condition, even if the animal was receiving care via telemedicine on a prior medical condition.

On June 4, 2020, in response to the ongoing COVID-19 pandemic, DCA issued a VCPR waiver authorizing a veterinarian to use telemedicine to diagnose and treat an animal patient for a new or different medical condition, if a veterinarian-client-patient relationship was previously established. At the request of various stakeholders, the Board directed its research committee, the Multidisciplinary Advisory Committee, to evaluate the telemedicine waiver and determine if it should be made permanent.

On May 3, 2021, the San Francisco SPCA filed a federal lawsuit against the Veterinary Medical Board, contending that the state should not end waivers allowed during the pandemic for remote visits. The case is ongoing as of this writing.

## **ARGUMENTS IN SUPPORT:**

*The Veterinary Medical Board* writes in support: "AB 1535 provides necessary changes to the Act that, if enacted, will improve processes for applicants, licensees, consumers, and overall Board operations. The Board has spent the last two years evaluating its statutes and regulations to eliminate unnecessary barriers to licensure, streamline the licensing process, and improve consumer protection mechanisms. This bill is the product of that in-depth review."

*The California Animal Welfare Association* writes in support, noting that "recent amendments that codify the ability of shelter staff to administer non-prescription vaccinations and medications to ensure animals entering shelters receive proper care. This is a critically important move for our state. We are also sincerely appreciative of the additional amendments that provide greater clarity around the application of these laws.

**REGISTERED SUPPORT:**

Veterinary Medical Board  
California Animal Welfare Association

**REGISTERED OPPOSITION:**

None on file.

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

Date of Hearing: September 10, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1536 (Committee on Business and Professions) – As Amended August 26, 2021

**NOTE:** This bill is being heard pursuant to Assembly Rule 77.2 for concurrence in Senate amendments only.

**SUBJECT:** Board of Vocational Nursing and Psychiatric Technicians of the State of California.

**SUMMARY:** Makes changes to the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) stemming from the BVNPT's sunset review including: extending the BVNPT by three years, delegating the authority to issue default decisions and stipulated surrenders of licenses to its executive officer, requiring the BVNPT follow a timeline for approving schools, establishes fees for schools seeking approval, and makes other non-substantive and technical changes.

**EXISTING LAW:**

- 1) Establishes the BVNPT within the Department of Consumer Affairs (DCA) until January 1, 2022, to license and regulate licensed vocational nurses (LVNs) and psychiatric technicians (PTs) and administer the Vocational Nursing Practice Act and the Psychiatric Technicians Law. (Business and Professions Code (BPC) §§ 2840-2895.5 and §§ 4500-4548)
- 2) Requires, until January 1, 2022, the Governor to select an EO to perform duties delegated by the board members of the BVNPT, as specified. (BPC § 2847.1(a))
- 3) Establishes the licensing requirements for LVNs, including that they must be at least 17 years of age, have completed 12th grade or its equivalent, and have passed the National Council Licensure Examination for Practical/Vocational Nurses (NCLEX-PN) examination. (BPC §§ 2866, 2872.2)
- 4) Establishes the licensing requirements for PTs, including that they must be at least 18 years of age, have completed 12th grade or its equivalent, qualify for the California PT licensure examination by completing specified PT education or experience, and have passed the California PT licensure examination. (BPC §§ 4511)
- 5) Requires the BVNPT to discipline a licensee whose default has been entered or whose case has been heard by the BVNPT and was found guilty. (BPC § 2876)
- 6) Required the DCA Director to appoint an administrative and enforcement program monitor to the BVNPT no later than March 1, 2016, and until March 1, 2018. (BPC § 2847.5)
- 7) Defines an approved school of vocational nursing as one which has been approved by the BVNPT, gives a course of instruction in vocational nursing of not less than 1,530 hours or 50 semester units approved by the BVNPT, as specified, and provides a similar definition for psychiatric technician programs. (BPC §§ 2881, 4531)
- 8) States that it is the duty of the BVNPT, through an official representative, to inspect or review all schools of vocational nursing in California at times the BVNPT deems necessary

and further requires written reports of the inspection be provided to the BVNPT, which will then approve the schools that meet the requirements for approval. States that if a school is not maintaining the standard required by the BVNPT, a written notice must be immediately provided to the school specifying the defect or defects, and if not corrected in a timely manner, the schools may be removed from the BVNPT's approval, and provides a similar requirement for psychiatric technician programs. (BPC §§ 2883, 4532)

**THIS BILL:**

- 1) Extends the BVNPT by three years.
- 2) Provides that, upon the restoration of the BVNPT's authority to select an executive officer, the executive officer in office at the time may remain in the position until the executive officer resigns or the BVNPT selects a new executive officer.
- 3) Requires the BVNPT to delegate the authority to issue default decisions and stipulated surrenders of licenses to its executive officer.
- 4) Establishes the following requirements on educational programs:
  - a) Requires the BVNPT to establish an approval process for proposed schools specified timelines.
  - b) Establishes a fee schedule of \$5,000 for the initial application, \$15,000 for the final approval, and \$5,000 for continuing approval every four years.
  - c) Authorizes the BVNPT to reduce the continuing approval fee for a program that experiences a reduction in state funding that leads to an enrollment capacity reduction.
  - d) Requires the BVNPT to use a reduced fee of \$5,000 for the final approval of an applicant affiliated with an approved school or program in good standing that utilizes the curriculum approved by the BVNPT.
  - e) Requires the BVNPT to adopt emergency regulations by June 30, 2022 to establish an approval process for proposed schools.
  - f) Requires the BVNPT to maintain a list of inactive schools.
- 5) Requires applicants and licensees to provide the BVNPT a physical mailing address.
- 6) Requires applicants and licensees to provide the board an electronic mail address by July 1, 2022, and unless an applicant specifies in writing a preference for regular mail, requires the BVNPT to direct all license-related correspondence to applicants and licensees using the electronic mail address on file.
- 7) Makes technical, conforming, and updating changes.

**FISCAL EFFECT:** According to the Senate Committee on Appropriations, ongoing annual costs of approximately \$18.27 million (Vocational Nursing and Psychiatric Technicians Fund) and 63.6 positions to support the continued operation of the Board's licensing and enforcement activities.

The Board of Vocational Nursing and Psychiatric Technicians notes:

- 1) Annual cost savings of up to \$45,000. The bill requires the Board to delegate the authority to adopt default decisions and stipulations for surrender of a license to the executive officer. The Board notes this may create a cost savings for board member per diem and travel expenses. The bill also requires vocational nursing programs to respond to Board inquiries within two weeks, which the Board notes may create additional indirect cost savings by increasing the efficiency of the nursing education consultant (NEC).
- 2) Costs of \$541,000 in the first year and \$517,000 in the second year to hire two NECs and one staff to manage an anticipated increase in workload related to the addition of up to 20 new programs. The Board notes that it would likely require these resources ongoing, however this will require the income of the school fees to do so.
- 3) Unknown, likely significant increase in revenue from the proposed new school fee structure which would, to some extent, offset the workload costs from the addition of new programs.
- 4) Information technology cost of approximately \$10,000 for system programming and configuration changes, which may be done through the redirection of existing maintenance resources. The Office of Information Services notes that the IT workload would be impacted if regulations are required, as any system changes cannot be finalized until regulations are completed. The Office also notes that Change Control Board prioritization may be required if this work exceeds resource availability for the projected implementation date

#### COMMENTS:

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

This bill is one of the six "sunset review bills" authored by the Assembly Business and Professions Committee and the five sunset review bills authored by the Chair of the Senate Business, Professions and Economic Development Committee. Due to the COVID-19 pandemic, some of the boards set to be heard last year were pushed to this year. As a result, there were sixteen boards up for review, and some sunset review bills serve as the vehicles for multiple boards. This bill codifies a recommendation from the BVNPT's prior sunset review and its performance monitor and the remaining recommendations from the Joint Sunset Review Hearings of the BVNPT.

The committee background paper for the BVNPT's sunset review hearing raised 25 issues. For additional discussion, please refer to the *2021 Background Paper for the Board of Vocational Nursing and Psychiatric Technicians* ([abp.assembly.ca.gov/jointsunsethearings](http://abp.assembly.ca.gov/jointsunsethearings)).

**Background.** The BVNPT is a licensing entity within the Department of Consumer Affairs DCA. The BVNPT is responsible for administering and enforcing both the Vocational Nursing Practice Act and the Psychiatric Technicians Law. Those laws establish the BVNPT and outline

two distinct licensure programs, each with a separate regulatory framework for the practice, licensing, education, and discipline of licensed vocational nurses (LVNs) and psychiatric technicians (PTs). The BVNPT also approves educational programs for both licenses.

LVNs utilize technical and manual skills to provide basic nursing care under the direction of a licensed physician or registered nurse. PTs utilize technical and manual skills to provide care to clients diagnosed with mental disorders or developmental disabilities under the direction of a physician and surgeon, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse, or other professional personnel.

As of October 5, 2020, the BVNPT reported a total of 139,699 active licensees, including 128,332 LVNs and 11,367 PTs. As of March 2, 2021, the BVNPT reported 150 programs approved to offer educational programs leading to an LVN and PT license in California.

*Performance Monitor.* During the BVNPT's 2015 sunset review, the Committees identified severe deficiencies and discrepancies in the BVNPT's fund, enforcement, staffing levels, and overall management. As a result, the BVNPT's sunset legislation: 1) required the DCA internal audit unit to review the BVNPT's finances, 2) required the DCA to appoint a third-party contractor to monitor the BVNPT's performance and evaluate the BVNPT's administrative and enforcement processes, and 3) gave the BVNPT a protracted two-year extension. The legislation also merged the LVN and PT funds to avoid the need for an immediate fee increase.

At the time, the BVNPT was also having difficulty filling its executive officer position, so an accompanying urgency bill also deleted the requirement that the BVNPT's executive officer be a licensed vocational nurse, registered nurse, or psychiatric technician to open the candidate pool.

The BVNPT's 2017 sunset review focused on the BVNPT's unwillingness to address the numerous issues identified by the DCA-appointed monitor or the ongoing mismanagement. As a result, the BVNPT's sunset legislation temporarily transferred the authority to appoint an executive officer to the Governor until January 1, 2020, and extended the BVNPT until January 1, 2021, giving the authority back to the BVNPT during its next review year. However, at the request of the administration, the Governor's authority was extended until January 1, 2021. Both dates were further extended until January 1, 2022, due to the inability to perform sunset review during the early months of the COVID-19 pandemic.

*Default Decisions.* This bill codifies a recommendation from the BVNPT's prior sunset review and performance monitor. In 2017, the monitor noted that one of the improvements that could be made is to delegate the authority to approve default decisions and stipulated settlements to the BVNPT's executive officer. Using language consistent with the Medical Practice Act, this bill requires the BVNPT to delegate the authority to approve of default decisions and stipulated surrenders to its executive officer.

Default decisions are straightforward cases in which a licensee or respondent does not respond to a disciplinary notice or action within the required timeframe. Currently, the BVNPT staff reviews these cases to determine whether they meet the criteria for a default and then mail them to the BVNPT members. The BVNPT members then approve the recommendation and mail them back. Because the BVNPT staff do not exercise discretion when deciding whether to submit a default decision to the BVNPT members (the respondent is either in default or is not), the BVNPT members never disapprove them. The BVNPT has previously noted that it does not



currently have statutory authority to delegate the approval. This bill would enable the BVNPT to begin doing so immediately.

*Education Program Backlog (Issue #13 in Committee Background Paper).* Since at least 2011, the BVNPT has dealt with a large backlog in its program approval waitlist. During the BVNPT's 2011 sunset review, the Committees noted that there were 102 VN and 9 PT program applicants awaiting approval. During the BVNPT's 2014 sunset review, the BVNPT reported 135 VN and 10 PT programs awaiting approval. In 2015, it instituted a two-year moratorium on new applications to get through its backlog. By the start of 2017, the BVNPT reported 23 VN and 1 PT program applicants awaiting assignment to an NEC, and 8 VN programs and 1 PT program that were actively working with an NEC.

As of March 2, 2021, the BVNPT had a backlog of 54 VN and PT programs awaiting the assignment of an NEC to begin the approval process. The anticipated wait times for the schools at the end of the line are difficult to calculate because it depends on how quickly NECs can approve the programs ahead in line, and even when fully staffed the BVNPT only has 6 NECs.

Since 2011, the BVNPT has indicated that the length of time for the approval process varies greatly. This is due to the lack of formal deadlines. For example, the Accreditation Commission for Education in Nursing (ACEN) has deadlines at various stages of the process, such as requiring the submission of the candidacy presentation within 1 year. The BVNPT imposes no similar requirement.

While the BVNPT has internal target times, approval is largely contingent on a program's ability to submit appropriate materials, as well as resubmit materials if necessary, in a timely fashion. The BVNPT cites inadequate curriculum as the most common reason that a school must resubmit materials.

There has also been some criticism directed at the BVNPT's approval process, suggesting that the rules, regulations, and requirements for approval have not always been clear, nor have they been applied consistently. In 2011, committee staff noted that the BVNPT may need to give assurances that its staff and NECs were applying rules, regulations, and requirements consistently.

During the BVNPT's last two sunset reviews, the issues relating to overall mismanagement and enforcement issues were prioritized, so the issue of program approvals was not raised. Still, BVNPT staff have acknowledged the problem. While many of the BVNPT staff recommendations are under review, it may be beneficial to ensure that programs on the waiting list are engaged in the process, and if not, to allow other more engaged programs to progress. Therefore, this bill establishes timelines for the approval process. It also requires the BVNPT to maintain a separate list of inactive schools that will be purged periodically.

*School Approval Fees (Issue #12 in Committee Background Paper).* The BVNPT performs lengthy and intensive reviews educational schools and programs that require expensive Nurse Education Consultants (NEC). In a cost analysis performed by the BVNPT, application review costs anywhere from \$5,000 to \$30,000. This bill attempts to recover resources used by the BVNPT by charging the fess as described.

*Senate Amendments.* The Senate amendments extend the BVNPT by three years; add the majority of the school approval provisions, including a new fee; require applicants and licensees

to provide an email address to the board; and make other clarifying, technical, or conforming changes. The three-year extension is to allow the school approval backlog to be revisited and conform to the revised Sunset Review schedule.

**Current Related Legislation.** AB 1532 (Committee on Business and Professions) is the sunset review bill for the Board of Registered Nursing.

AB 1533 (Committee on Business and Professions) is the sunset review bill for the Board of Pharmacy.

AB 1534 (Committee on Business and Professions) is the sunset review bill for the Board of Optometry.

AB 1535 (Committee on Business and Professions) is the sunset review bill for the Veterinary Medical Board.

AB 1537 (Low) is the sunset review bill for the California Massage Therapy Council.

SB 800 (Archuleta) is the sunset review bill for the Department of Real Estate and the Bureau of Real Estate Appraisers.

SB 801 (Archuleta) is the sunset review bill for the Board of Behavioral Sciences and the Board of Psychology.

SB 802 (Roth) is the sunset review bill for the Bureau for Private Postsecondary Education.

SB 803 (Roth) is the sunset review bill for the Board of Barbering and Cosmetology.

SB 806 (Roth) is the sunset review bill for the Physician Assistant Board, Podiatric Medical Board of California, Osteopathic Medical Board of California, and the Medical Board of California.

**Prior Related Legislation.** SB 1474 (Senate Committee on Business, Professions and Economic Development), Chapter 312, Statutes of 2020 extended various DCA boards and bureaus set to sunset this year by one year, including the BVNPT and the Governor's authority to appoint the BVNPT's executive officer until January 1, 2022.

SB 606 (Glazer), Chapter 375, Statutes of 2019 among other things, extended the Governor's authority to appoint the BVNPT's executive officer until January 1, 2021.

AB 888 (Low), Chapter 575, Statutes of 2018 would have required the BVNPT to delegate the authority to issue default decisions and stipulated surrenders of licenses to its executive officer but was substantially amended to address a different topic in the Senate.

AB 1229 (Low), Chapter 586, Statutes of 2017 extended the operation of the BVNPT until January 1, 2021; authorized the Governor to appoint an executive officer until January 1, 2020; specified that, if the BVNPT becomes inoperative or is repealed, the director of the DCA is authorized to assume the duties of the BVNPT; required the BVNPT to submit specified reports to the Legislature until 2020; authorized the DCA director to evaluate the BVNPT's licensing program; required BVNPT staff to meet periodically with the DCA's Division of Investigation;

and authorized the DCA director to determine the need for and to implement necessary changes to the BVNPT's enforcement program.

AB 178 (Bonilla), Chapter 429, Statutes of 2015 was an urgent bill that removed the requirement that the BVNPT's executive officer be a licensed vocational nurse, registered nurse, or psychiatric technician to open the candidate pool for executive officers.

AB 179 (Bonilla), Chapter 510, Statutes of 2015 required the DCA internal audit unit to review the BVNPT's finances, required the DCA to appoint a third-party contractor to monitor and evaluate the BVNPT's administrative and enforcement processes, gave the BVNPT a protracted two-year extension until January 1, 2018, and merged the LVN and PT funds to avoid the need for an immediate fee increase.

#### **ARGUMENTS IN SUPPORT:**

The *California Association of Psychiatric Technicians* and *Service Employees International Union California (SEIU)* write in support, "Licensees, who already pay for the resources they use to be professionally licensed and regulated, should not additionally be required to subsidize the cost of school accreditation and regulation. Furthermore, licensees contribute to these schools as tuition-paying students. The schools should not be allowed to pass their accreditation costs onto the students and licensees. The schools utilize BVNPT resources and should equally pay for those resources. The licensees should not pay for the BVNPT resources used on behalf of the schools for their accreditation process. This new school fee structure will help pay for the nursing education consultants needed to address the backlog of school applications. A school fee structure will strengthen the solvency of the BVNPT, allowing it to properly perform its function to regulate and accredit nursing programs in California."

#### **ARGUMENTS IN OPPOSITION:**

None on file

#### **REGISTERED SUPPORT:**

California Association of Psychiatric Technicians  
Service Employees International Union California

#### **REGISTERED OPPOSITION:**

None on file

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