

Date of Hearing: September 12, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 547(Hill) – As Amended September 11, 2017

**SENATE VOTE:** 40-0

**SUBJECT:** Professions and vocations: weights and measures

**SUMMARY:** Makes technical and substantive changes to boards and bureaus under the jurisdiction of the Department of Consumer Affairs (DCA), including the California Board of Accountancy, the Bureau of Automotive Repair, the Board of Chiropractic Examiners, the Board of Podiatric Medicine, the California Council for Interior Design, the Board of Barbering and Cosmetology, Bureau of Real Estate Appraisers, and Bureau of Security and Investigative Services, and requires that the fees collected by the Department of Food and Agriculture (DFA) to recover administration costs also include reasonable costs to maintain state weights and measures standards.

**EXISTING LAW:**

- 1) Provides for the licensure and regulation of various professions and businesses, including under the licensing acts and licensing and regulatory entities within the DCA. (Business and Professions Code (BPC) Sections 1-13800, 18400-22948.25, 26000-26231.2)
- 2) Requires state agencies that procure vehicles for state use, including the Bureau of Automotive Repair when purchasing the vehicles for investigation of automotive repair dealers, to comply with contracting requirements under the Department of General Services, including:
  - a) Drug and Safety Workplace, requiring agencies that contract for goods and services to comply specified the drug free awareness statements, certification, and notices. (Government Code (GOV) Sections 8350-8357)
  - b) Nondiscrimination and Compliance Employment Programs, requiring contracts and subcontract for goods from containing a nondiscrimination clause prohibiting discrimination on specified bases by contractors or subcontractors. (GOV Section
  - c) State fleet requirements, including that state vehicles be “American-made vehicle of the light class.” (GOV Section 13332.09)
  - d) Reporting related to the commitments to small business and disabled veteran business enterprise participation and consultation related to the California Disabled Veteran Business Enterprise Program. (GOV Section 14841 and Military and Veterans Code Section 999.5)
  - e) Requirements generally applicable to state acquisition of goods, including requirements relating to bidding, the requirement that contractors are holders of a California seller’s permit, prohibitions against contracting with employers who discriminate in provision of benefits against spouses and domestic partners, prohibitions against discrimination on the

- basis of gender identity, the requirement that contractors certify that they have no more than one final finding of contempt of court, and the requirement that all businesses to certify in writing the minimum percentage of postconsumer materials in products. (Public Contract Code Section 2010, 10295.1, 10295.3, 10295.35, 10296, and 12205)
- f) Requirements under the California Taxpayer and Shareholder Protection Act of 2003, including the prohibition against contracting with expatriate corporations. (Public Contract Code Sections 10286 - 10286.1)
  - g) Requirements under the Darfur Contracting Act of 2008. (Public Contract Code Sections 10475 - 10490)
  - h) The \$2,000 limit on purchases for confidential purposes. (GOV Section 16404)
  - i) Requirements related to electronic waste recycling. (Public Resources Code Section 42480)
  - j) Requirements that the records be open to the public under the California Public Records Act. (GOV Sections 6250 - 6276.48)
- 3) Specifies that no confidential information obtained by a licensee of the Board of Accountancy (BOA), in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the licensee without written permission of the client or prospective client except under specified circumstances including disclosures made by a licensee or a licensee's duly authorized representative to another licensee in connection with a proposed sale or merger of the licensee's professional practice. (BPC Section 5063.3)
  - 4) Provides that an individual whose principle place of business is not in this state and who has a valid and current license, certificate, or permit to practice public accountancy from another state may, subject to the conditions and limitations as specified in the Accountancy Act, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license if the individual satisfies certain requirements as specified. (BPC Section 5096(a))
  - 5) Provides that the BOA may designate states as substantially equivalent for purposes of determining and accepting individual qualifications evaluations or appraisals. (BPC Section 5096(b))
  - 6) Permits an individual who qualifies for the practice privilege to engage in the practice of public accountancy in this state, and a notice, fee, or other requirements shall not be imposed on that individual by the board and specifies what services may be performed by the CPA within this state. (BPC Section 5096(c))
  - 7) Declares an individual who holds a practice privilege in California is still subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state and shall be responsible for complying with the laws, regulations and professional standards applicable to the practice of public accountancy by licensees of this state. (BPC Section 5096 (e))

- 8) Specifies the circumstances under which the individual would be required to cease practice in this state and what requirements they must meet. (BPC Section 5096 (e), (f), (g), (h) and (i)).
- 9) Specifies the circumstances under which any individual not a licensee of this state would be practicing public accountancy unlawfully and under what circumstances the practice privilege may be revoked, suspended. (BPC Sections 5096.1, 5096.2 and 5096.4)
- 10) Authorizes the BOA to adopt emergency regulations to implement, interpret, or make specific the provisions of the practice privilege. (BPC Section 5096.9)
- 11) Provides that a certified public accounting firm that is authorized to practice in another state and that does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided it meets requirements as specified. (BPC Section 5096.12)
- 12) Provides that if the BOA determines, as specified, that allowing individuals from a particular state to practice in this state pursuant to a practice privilege violates the BOA's duty to protect the public, then the BOA shall require as a condition to exercise a practice privilege in this state that those individuals shall file a notification form and the applicable fees to the BOA. (BPC Section 5096.12)
- 13) Establishes a stakeholder group, as of July 1, 2014, to consider whether the provisions regarding the practice privilege are consistent with the BOA's duty to protect the public and make other considerations as specified. (BPC Section 5096.21(e))
- 14) Requires the BOA to prepare a report to be provided to relevant policy committees of the Legislature, the DCA director and the public on or before January 1, 2018, that explains in detail if the requirements of the practice privilege have been implemented and if the implementation is complete, whether the current requirements of the practice privilege are more or less equivalent to the protections afforded by the prior requirements of the practice privilege, and describe how other state boards of accountancy have addressed referrals to those boards from the BOA, the timeframe in which those referrals were addressed, and the outcome of investigations conducted by these boards.  
(BPC Section 5096.21(f))
- 15) Repeals, as of January 1, 2019, current provisions regarding the practice privilege and instead will substitute prior provisions regarding the practice privilege which are similar to current requirements, but also required that a qualified individual notify the BOA of intent to practice in California and pay a fee in order to obtain a practice privilege in California. (BPC Section 5096.21(g))
- 16) Makes the California Council for Interior Design Certification (CCIDC) and its certification program inoperative and repealed on January 1, 2018. (BPC Section 5810)
- 17) Establishes the Barbering and Cosmetology Act and the Board of Barbering and Cosmetology (BBC) to license, regulate, and discipline professional work in hair, skin, nail care, and electrolysis; and, ensure the protection of the public is paramount when other interests are sought to be promoted. (BPC Section 7301, *et seq.*)

- 18) Defines “appraisal” as “a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.” (BPC Section 11302)
- 19) Defines “Appraisal management company” as any person or entity that satisfies all of the following conditions:
  - a) Maintains an approved list or lists, containing 11 or more independent contractor appraisers licensed or certified pursuant to this part, or employs 11 or more appraisers licensed or certified pursuant to this part.
  - b) Receives requests for appraisals from one or more clients.
  - c) For a fee paid by one or more of its clients, delegates appraisal assignments for completion by its independent contractor or employee appraisers. (BPC Section 11302)
- 20) Defines “controlling person” as one or more of the following:
  - a) An officer or director of an appraisal management company, or an individual who holds a 10 percent or greater ownership interest in an appraisal management company.
  - b) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal services and that has the authority to enter into agreements with independent appraisers for the completion of appraisals.
  - c) An individual who possesses the power to direct or cause the direction of the management or policies of an appraisal management company. (BPC Section 11302)
- 21) Specifies which persons or individuals may engage in federally related transactions. (BPC Sections 11321 and 11324)
- 22) Provides for who may be a controlling person and under what circumstances they may hold a license. (BPC Section 11345.2)
- 23) Specifies the standard business practices for an appraisal management company (AMC). (BPC Section 11345.3)
- 24) Specifies under what circumstances an AMC may alter, modify or otherwise change a completed appraisal report. (BPC Section 11345.6)
- 25) Specifies that the California Department of Food and Agriculture (CDFA) has general supervision of the weights and measures and weighing and measuring devices sold or used in the state. (BPC Section 12100)
- 26) Provides that the CDFA shall investigate conditions in the various counties and cities in respect to weights and measures, and to the sale of goods, wares and merchandise, commodities and foodstuffs in containers. (BPC Section 12101)

- 27) Provides for the enforcement of the weights and measures laws by the State Sealer and by county sealers of weights and measures of each county.  
(BPC Section 12103.5)
- 28) Provides, until January 1, 2019, that the CDFA may establish by regulation an annual administrative fee to recover reasonable administrative and enforcement costs incurred by the CDFA for exercising supervision over and performing investigations in connection with specified activities performed by sealers, and requires the administrative fee to be collected for every device registered with each county office of weights and measures and paid annually to the CDFA. (BPC Section 12241)
- 29) Provides that the CDFA shall provide for submission for approval of types and designs of weights, measure, or weighing, measuring, or counting instruments or devices, used for commercial purposes, and shall issue certificates of approval of such types or designs as he or she shall find to meet requirements and the tolerances and specifications as specified.  
(BPC Section 12500.5)
- 30) Defines “commercial purposes” as including the determination of the weight, measure, or count of any commodity or thing which is sold on the basis of weight, measure, or count; or the determination of the weight, measure, or count of any commodity or thing upon which determination of a charge for service is based.  
(BPC Section 12500(e))
- 31) Provides that “commercial purposes” does not include the determination of the weight, measure, or count of any commodity or thing which is performed within a plant or business as part of the manufacturing, processing, or preparing for market of that commodity or thing, or the determination of charges for the transmission of letters or parcels of less than 150 pounds, except when that determination is made in the presence of the customer charged for the services. (BPC Section 12500(e))

**THIS BILL:**

- 1) Requires DCA to report annual progress on the transition of state boards and bureaus to a new professional and business licensing platform.
- 2) Removes an obsolete code section for a DCA division that no longer exists.
- 3) Exempt the vehicles used by the Bureau of Automotive Repair in investigative and sting operations from various requirements for state fleet vehicles and other goods procured through the Department of General Services.
- 4) Increases, until January 1, 2019, the annual renewal for the Board of Chiropractic Examiners (BCE) from \$250 to \$300 and requires the BCE to submit a report to the appropriate policy and fiscal committees of the Legislature by July 1, 2018, that contains, at a minimum, the status of the BCE's fee audit and an update on the BCE's plans for restructuring its license fees.
- 5) Authorizes the Board of Occupational Therapy to charge the fee necessary to query the National Practitioner Data Bank and makes other technical or clarifying changes.

- 6) Permits the Board of Podiatric Medicine to increase various fees related to certificates to practice podiatric medicine.
- 7) Permits the Board of Registered Nursing to assign petitions for reinstatement or modification to an administrative law judge and explicitly permits the board to employ legal counsel.
- 8) Permits the Board of Psychology to increase the delinquency fee for licenses.
- 9) Permits the Board of Pharmacy to employ legal counsel.
- 10) Increases the fees for various licenses and registrations under the Bureau of Security and Investigative Services, increases the statutory maximum for these fees, and make other technical and clarifying changes related to the bureau.
- 11) Changes the timeline of eligibility to file a petition to the Veterinary Medical Board after disciplinary action that resulted in a license or registration being revoked.
- 12) Requires that a Certified Public Accountant (CPA) enter into a written nondisclosure agreement when sharing client information.
- 13) Authorizes the Board of Accountants to adopt or amend regulations to ensure uninterrupted implementation of practice privilege provisions, as specified.
- 14) Extends the California Council for Interior Design Certification sunset date until January 1, 2022.
- 15) Makes a clarifying change to a definition in the Board of Barbering and Cosmetology Act.
- 16) Requires employees or agents of a licensed funeral establishment to receive documented training and instruction relating to the duties of a funeral director at least once every three years.
- 17) Defines multiple terms for the Bureau of Real Estate Appraisers (BREA) and makes various substantive and technical changes to conform to federal regulations for real estate appraisers.
- 18) Prohibits a business from representing itself to the public as an appraisal management company, either in advertising or business name, without a registration certificate.
- 19) Requires that appraisal management companies maintain records for each service request, as specified.
- 20) Requires that federally regulated appraisal management companies operating in California report to the BREA and permits the state to charge a processing fee.
- 21) Requires that fees collected by DFA to recover administration costs for county sealers of weights and measures also include reasonable costs to maintain safekeeping and certification of state standards, the physical weights that are used to test the accuracy of commercial devices.

- 22) Clarifies that licensed veterinarians, physicians or their staff members that use of a scale to determine a treatment or medication dosage for a patient is not a use for a "commercial purpose" under the weights and measures law.
- 23) Contains language double jointing this bill with SB 800 (Committee on Business, Professions and Economic Development), pending on the Assembly Floor.
- 24) Contains language consistent with minor and technical changes in SB 800 (Committee on Business, Professions and Economic Development), pending on the Assembly Floor, to resolve chaptering out conflicts.

**FISCAL EFFECT:** According to the Assembly Appropriations Committee:

- 1) One-time cost to the Board of Pharmacy of \$185,000 in 2018-19 and \$177,000 ongoing to employ Legal Counsel. (Pharmacy Board Contingent Fund)
- 2) Projected temporary revenue increase of \$334,350 in 2017-18 and \$668,700 in 2018-19 (State Board of Chiropractic Examiners' Fund) from the temporary \$50 chiropractic license renewal fee increase necessary to keep the fund solvent.
- 3) Projected revenue increase of \$3.4 million (Private Security Services Fund) in 2018-19 and up to \$4.7 million ongoing to the Bureau of Security and Investigative Services (BSIS) from licensing fee increases and new statutory limits based on the outcome of a recent fee audit.
- 4) Minor and absorbable costs for all remaining activities to all impacted boards and bureaus.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author, "The provisions of this bill are intended to be an 'omnibus' bill, of which make several, substantive and technical changes to a number of Boards and Bureaus under the Department of Consumer Affairs, along with other clarifying changes to the Weighmaster's Act. In addition, this bill serves as the sunset vehicle for the non-profit interior design regulatory program. It is believed that these changes are non-controversial, but because of the substantive nature are better suited for this 'omnibus' vehicle as opposed to a 'Committee' bill."

**Background.** This bill includes a number of technical and substantive provisions for boards and bureaus that are not currently in the sunset review process, including: the BOA, Board of Barbering and Cosmetology, and the BREA. Additionally, this bill extends the sunset date of the California Council for Interior Design Certification to January 1, 2022.

*Changes to the Board of Accountancy (BOA).* Existing law prohibits confidential information being disclosed by a licensee without written permission from the client, except in the case of sale or merger of the licensee's professional practice. This bill would require that the purchaser of the practice enter into a written agreement to protect the confidentiality of client information.

This bill also allows the BOA to extend existing regulations without it being considered a change with regulatory effect. This allows the BOA to extend regulations without being subject to the Administrative Procedure Act and potentially causing harm to licensees by creating uncertainty in the meantime while the extension is being reviewed.

*Changes to the Bureau of Automotive Repair (BAR).* The BAR acquires and maintains a fleet of vehicles for undercover operations with the sole purpose of gathering evidence in the investigation of alleged violations of the Automotive Repair Act (sting operations). Documented undercover vehicles are a critical tool in the BAR's effort to enforce the laws and regulations associated with the Automotive Repair Act and the Vehicle Inspection and Maintenance (aka Smog Check) Program.

However, the BAR notes that vehicles used in undercover operations BAR are subject to oversight by the Department of General Services. The Department of General Services' laws and regulations governing the acquisition and characteristics of state fleet vehicles are inappropriate for undercover vehicles. For example, vehicles selected for undercover operations must meet specific parameters identified by the BAR's Field Operations staff that match the profile of the shop that is under investigation.

However, a typical vehicle purchased through a state contract is a light duty, two-door or four-door sedan and has solar reflective paint that is gold, silver, or white. A minimum proportion of vehicles purchased must rely on alternative fuel. Unlike vehicles purchased for the state fleet, undercover vehicles must be used, out of warranty, and in poor condition so they can be diagnosed and/or repaired for compensation.

Further, there have been reports of automotive repair dealers who use California Public Records Act requests to identify undercover vehicles. This bill addresses both of these issues by providing these exemptions.

*Changes to the California Council for Interior Design Certification (CCIDC).* Without an extension, the CCIDC will sunset on January 1, 2019. This language extends the date of the CCIDC to January 1, 2022.

*Changes to the Barbering and Cosmetology Act.* The bill defines "under the supervision of a licensee" as "a person supervised at all times by a licensee while performing services in a licensed establishment." This definition clarifies the expectations of individuals training in a salon or barber shop and helps to protect consumers from harm.

*Changes to the Bureau of Real Estate Appraisers.* The BREA requested that language be included in the bill to align California law with federal law regulating appraisal management companies (AMC's). The changes to statute under this bill will establish minimum requirements to applied by the state in registering AMC's to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act and regulations set by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection.

Additionally, definition of "appraisal management company" is revised to "a person that (1) provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates, (2) provides those services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations, and (3) within a given 12-month period, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States" This is a conforming change to federal law.



*Changes to the Weights and Measures Law.* The inspection and testing of weighing and measuring devices is overseen by a county sealer of weights and measures. The mission of county sealers is to provide "fair competition and equity in the marketplace" and to ensure consumers reliably get what they paid for. The county department of weights and measures ensures the accuracy of weighing and measuring devices, verifies the price, quantity and labeling of packaged and bulk commodities, and verifies quality, advertising and labeling standards for petroleum products. Sealers and their offices enforce the laws and regulations of the state under the oversight of DFA.

DFA established an annual administration fee to recover reasonable administration and enforcement costs generated from performing supervision and inspections. The department maintains physical standards in a suitable laboratory to be used in the certification, calibration and sealing of county standards. This bill permits DFA to also include reasonable costs incurred by the department for safekeeping and certification of state standards in the annual administrative fee.

The weights and measures program now applies to virtually all weighing and measuring devices used commercially (including gas pumps, water meters, electric meters, truck scales, cattle scales, grocery scales, taxi meters, etc.), with the exception of farm milk tanks and grocery store check-out scanners. This bill clarifies that commercial purposes do not include the determination of a weight of an animal or human by a licensed veterinarian, physician or staff member for the purposes of determining the appropriate medication dosage or medical treatment.

*Fee Increase for the BSIS.* This bill contains fee increases for the licensee's regulated by the BSIS, which is operating at a deficit. This issue was first raised during the BSIS' 2014 sunset review. According to the BSIS, the causes of the deficit are both ongoing and new. The current fee amounts have been in place anywhere from 11 to 22 years, depending on the license type. However, the BSIS' costs to carry out its regulatory duties have increased. Consequently, the BSIS and DCA point out that inflation has created a revenue-expenditure imbalance.

In addition, the BSIS notes that new statutory mandates implemented by the Committees during sunset review have resulted in increased personnel expenses and growing administrative costs. For example, new insurance requirements for company licenses, mandatory inspections of firearms training facilities, and new requirements for BSIS firearms permits have increased the BSIS' staff and costs. Also, many of these statutory mandates and regulatory changes have resulted in necessary changes to the BSIS' IT system which has led to maintenance costs.

The BSIS' independent fee audit has noted that the current fee structure is also problematic in that some industry fees are set so low that they are not fully covering the BSIS' related costs for regulating that industry. As a result, fee revenue from other licensing types is likely subsidizing activities for these industries. The proposed fee adjustments address the impact of inflation as well as more appropriately aligning fee amounts with the workload incurred by the BSIS associated with each fee.

*Fee increase for the Board of Podiatric Medicine.* Assuming full expenditures, the BPM projects a deficit within FY 17-18. The BPM's current fee schedule (excluding initial and renewal fees) have not been increased in over 25 years. According to the BPM's independent fee audit, current workload costs the agency significantly more now than 25 years ago. While these fees were initially requested last session, the BPM was willing to wait one year before implementing the increase.

*Fee Increase for the Board of Chiropractic Examiners.* This bill increases the renewal fee for a chiropractor license from \$250 to \$300. This increase was requested by the BCE midway through this year. Based upon updated budget projections from the DCA, the BCE will likely be negative in FY 18-19. However, because the BCE looking to restructure its fees entirely (and potentially reduce or maintain its current renewal fee), this bill only extends the renewal until January 1, 2019, and requires the BCE to report back on its progress before the increase repeals.

*Fee for Board of Occupational Therapy and the National Practitioner Databank.* This bill authorizes the California Board of Occupational Therapy (CBOT) to charge a pass-through fee for querying the National Practitioner Databank in the same manner that it currently does for the fingerprint checks. However, the language does not mandate that the CBOT check the databank to ensure the CBOT has the discretion to check the databank only when the workload is within its capacity and budget.

**REGISTERED SUPPORT:**

Board of Chiropractic Examiners  
Board of Pharmacy  
Board of Podiatric Medicine  
Board of Psychology  
California Association of Licensed Security Agencies, Guards and Associates  
California Podiatric Medical Association  
Grah Safe and Lock

**REGISTERED OPPOSITION:**

None on file.

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