

Date of Hearing: June 27, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 547(Hill) – As Amended April 17, 2017

NOTE: This bill is double-referred, and if passed by this Committee, it will be referred to the Assembly Committee on Privacy and Consumer Protection.

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, including the California Board of Accountancy, the California Council for Interior Design, Board of Barbering and Cosmetology, and Bureau of Real Estate Appraisers. Requires that the fees collected by the California Department of Food and Agriculture recover reasonable costs of the program. Makes other technical and clarifying changes.

EXISTING LAW:

- 1) Provides for the licensing and regulation of various professions and businesses by some 26 boards, 3 committees, 9 bureaus, 2 programs, and 1 commission within the Department of Consumer Affairs (DCA) under various licensing acts within the Business and Professions Code (BPC). (BPC Section 1 et seq.)
- 2) 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)
- 3) Provides that an individual whose principal 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))
- 4) 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))
- 5) 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))

- 6) 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))
- 7) Provides for 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)).
- 8) Provides for 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)
- 9) Provides that an individual may not sign any attest report pursuant to a practice privilege unless the individual meets specified experience requirements. (BPC Section 5096.5)
- 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 (a) and (b))
- 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 the terms “appraisal,” “appraisal management company,” and “controlling person” of an appraisal management company. (BPC Section 11302)
- 19) Specifies which persons or individuals may engage in federally related transactions. (BPC Sections 11321 and 11324)
- 20) Provides for who may be a controlling person and under what circumstances they may hold a license. (BPC Section 11345.2)
- 21) Specifies the standard business practices for an appraisal management company (AMC). (BPC Section 11345.3)
- 22) Specifies under what circumstances an AMC may alter, modify or otherwise change a completed appraisal report. (BPC Section 11345.6)
- 23) 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)
- 24) 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)
- 25) 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)
- 26) 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)
- 27) 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)

28) 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))

29) 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 that a Certified Public Accountant (CPA) enter into a written nondisclosure agreement when sharing client information.
- 2) Authorizes the BOA to adopt or amend regulations consistent with Title 1, California Code of Regulations section 100 to remove or extend the repeal date of its regulations in Article 3, Division 1, Title 16 of the California Code of Regulations, or to remove the inoperative dates for the regulations in Article 4, Division 1, Title 16 of the California Code of Regulations. Specifies that the Office of Administrative Law shall consider the board’s action in changing or removing the repeal or inoperative dates of these regulations as a change without regulatory effect that exempts the board from complying with the rulemaking procedure specified in Article 5 of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
- 3) Extends the California Council for Interior Design Certification until January 1, 2022.
- 4) Defines the term “under the supervision of a licensee” in the Board of Barbering and Cosmetology practice act to mean a person supervised at all times by a licensee while performing services in a licensed establishment.
- 5) For the Bureau of Real Estate Appraisers (BREA), defines the terms “affiliate,” appraisal management services,” “appraisal panel,” “consumer credit,” “covered transaction,” “creditor,” “dwelling,” “federally regulated appraisal management company,” and “secondary mortgage participant” and re-defines the terms “appraisal” and “appraisal management company” to conform with federal regulations.
- 6) Establishes the conditions for who may use the title of a state licensed real estate appraiser and who may sign an appraisal in a federally related transaction.
- 7) Requires the AMCs establish and comply with processes and controls designed to ensure that the appraiser is independent of the transaction and meets the requisite license, education, and experience necessary to competently complete the assignment, and to ensure the company

conducts its business in accordance with federal regulations. Requires the AMC to engage appraisers with a letter that includes terms of payment.

- 8) States that an appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC accepts the appraiser for future appraisal assignments or engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market participant. Deems the appraiser part of the AMC until the date on which the AMC sends written notice to the appraiser removing the appraiser from the panel with a written explanation of its action, receives written notice from the appraiser asking to be removed, or notice of death or incapacity of the appraiser.
- 9) Requires a federally regulated AMC operating in California to report to BREA the information BREA is required to submit to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council regarding the determination of the AMC registry fee. Permits BREA to charge the AMC a state fee in an amount not to exceed the reasonable regulatory cost for processing and submitting the information.
- 10) Requires the annual administrative fee established by the DFA to recover reasonable costs incurred by the DFA for the safekeeping and certification of the state standards, for using the state standards to certify other standards, and for certifying the standards of county sealers.
- 11) Provides that “commercial purposes” does not include the determination of the weight of any animal or human by a qualified health provider for the purposes of determining the appropriate dosage of any medication or treatment of the volume, duration, or application of any medical procedure.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

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. 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 California Council for Interior Design Certification. 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 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. These provisions clarify that the scale being used by a veterinarian is not being used for commercial purposes, but rather for the proper dosage of medication or treatment of an animal.

Current Related Legislation. SB 795 (Galgiani) of 2017, would delete the current sunset date of January 1, 2019 for the authorization of out-of-state CPAs to operate in California without a specified practice privilege.

Prior Related Legislation. SB 1039 (Hill) Chapter 799, Statutes of 2016, would have made several changes to the statutes governing various boards and bureaus under the Department of Consumer Affairs (DCA); includes specified fee increases for several boards including the Dental Hygiene Committee of California (DHCC), the California Board of Optometry (CBO), the Board of Registered Nursing (BRN), the Board of Pharmacy (BOP), and the Contractors State License Board (CSLB); and eliminates the Telephone Medical Advice Services Bureau (TMAS).

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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