California State Assembly

BUSINESS AND PROFESSIONS

MARC BERMAN
CHAIR

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AGENDA

Tuesday, April 23, 2024
9:30 a.m. -- 1021 O Street, Room 1100

BILLS HEARD IN FILE ORDER

1.	AB 1862*	Vince Fong	Engineering, land surveying, and architecture: limited liability partnerships.
2.	AB 2015	Schiavo	Nursing schools and programs: faculty members, directors, and assistant directors.
3.	AB 2233	Schiavo	Building standards: toilet compartments.
4.	AB 2194	Joe Patterson	Physician assistants: supervision: doctors of podiatric medicine.
5.	AB 2550	Gabriel	Business establishments: building standards: retail food safety.
6.	AB 2622	Juan Carrillo	Contractors: exemptions: advertisements.
7.	AB 3029*	Bains	Controlled substances.
8.	AB 3167	Chen	California Private Postsecondary Education Act of 2009: highly qualified nonprofit institution.
9.	AB 2164*	Berman	Physicians and surgeons: licensure requirements: disclosure.
10.	AB 2688*	Berman	Medical Board of California: appointments: removal.
11.	AB 3054*	Berman	Cannabis: appointees: prohibited activities.
12.	AB 3251	Business and Professions	Accountancy.
13.	AB 3252*	Business and Professions	Shorthand court reporters: sunset: certification.
14.	AB 3253*	Business and Professions	Board for Professional Engineers, Land Surveyors, and Geologists: licensees.
15.	AB 3254*	Business and Professions	Endowment care cemeteries: reporting.
16.	AB 3255	Business and Professions	Vocational nursing.

* ***Proposed for Consent***

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1862 (Vince Fong) – As Introduced January 18, 2024

SUBJECT: Engineering, land surveying, and architecture: limited liability partnerships.

SUMMARY: Deletes the sunset dates on provisions authorizing licensed engineers, land surveyors, and architects to form limited liability partnerships (LLPs).

EXISTING LAW:

1) Establishes the Board of Professional Engineers, Land Surveyors and Geologists (BPELSG) under the Department of Consumer Affairs (DCA) to license and regulate engineers, land surveyors and geologists. (Business and Professions Code (BPC) §§ 6710, 8710 *et seq.*)

2) Establishes the California Architects Board (CAB) under the Department of Consumer Affairs (DCA) to license and regulate architects. (BPC §§ 5510 *et seq.*)

3) Authorizes one or more civil, electrical or mechanical engineers or land surveyors, to practice within the scope of his or her license, as specified, as a sole proprietorship, partnership, LLP, firm, or corporation if specified conditions are met including, but not limited to, business ownership by licensees, a licensee in this state is in charge of the business, and licensing information is included in any promotional or advertisement materials. (BPC §§ 6738(a), 8729(a))

4) Sunsets the authorization for civil, electrical, or mechanical engineers and land surveyors to operate as an LLP on January 1, 2025. (BPC §§ 6738, 8729)

5) Defines "professional LLP services" to mean the practice of architecture, the practice of public accountancy, the practice of engineering, the practice of land surveying, or the practice of law and prohibits an LLP or foreign LLP from rendering professional services unless through licensed persons. (California Corporations Code (CORP) §§ 16101(a)(14); 16951)

6) Requires a registered LLP or foreign LLP practicing architecture, engineering or land surveying to comply with liability insurance or secured payments for liabilities dependent upon the number of licensed persons rendering professional services on behalf of the corporation, as specified, and repeals the liability insurance or secured payment requirement for registered an LLP or foreign LLP practicing engineering or land surveying on January 1, 2025. (CORP §§ 16956(a)(3)(4))

7) Sunsets the authorization for persons licensed to engage in the practice of architecture to form an LLP or foreign LLPs on January 1, 2025. (CORP § 16101)

THIS BILL:

1) Deletes respective sunset provisions authorizing licensed civil engineers, electrical engineers, mechanical engineers, land surveyors, and architects to form LLPs.

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

COMMENTS:

Purpose. This bill is sponsored by the **American Council of Engineering Companies of California.** According to the author:

> Engineering, land surveying and architecture firms are critical in the building and maintenance of the state's infrastructure. Assembly Bill 1862 will maintain the current liability and tax structure for these firms as they continue to build residential, commercial, public, and industrial projects.

Background. In 1994, the Legislature enacted the Beverly-Killea Limited Liability Company (LLC) Act, under which a foreign or domestic LLC is prohibited from rendering professional services in this state unless expressly authorized under applicable provisions of law. Professional services are those services for which a license, certification, or registration is required under specified statutes due to their specialized nature and enhanced risk for potential consumer or public harm. The original rationale for this exclusion of professional services was that service providers who harm others by their misconduct, incompetence, or negligence should not be able to limit their liability by operating as an LLC (or LLP), and thus become potentially judgment-proof.

Beginning with the creation of limited liability partnerships (LLPs) for attorneys and accountants in 1995 by SB 513 (Calderon, Chapter 679, Statutes of 1995), however, certain licensed professionals have been able to enjoy limited liability protections, with tax advantages similar to LLCs, upon meeting specified conditions. Generally, operation as an LLP offers both liability and tax advantages by combining the limited liability attributes of a corporation with the federal tax advantage of operating as a general partnership. For liability purposes, partners in an LLP have no personal liability for the torts of the other partners in the partnership and stand to lose only the amount they contributed or are obligated to contribute under the terms of the partnership agreement. In a general partnership, however, the partner would be jointly and severally liable with the other partners for any tort of the partnership, including a tort of one of the individual partners. In both settings, the individual partner who committed the wrongdoing would be personally liable for their tort.

In authorizing licensed attorney and accountant firms to form LLPs, SB 513 conditioned the authorization upon a requirement that the LLP purchase a liability insurance policy or maintained bank deposits of at least $100,000 per limited liability partner (or an aggregate of not less than $500,000 for fewer than five partners and not more than $5,000,000 for all others). Moreover, only partnerships with a net worth of $10 million or more are allowed to become LLPs. Subsequently, in 1998, the Legislature allowed for architects to form LLPs under the same conditions as accountants and attorneys, for a trial period of ten years (AB 469 (Cardoza, Chapter 504, Statutes of 1998)). In 2006, the sunset for architects was extended to 2012, and the liability coverage requirement was increased to $1,000,000 for partnerships of five or fewer licensees, and an additional $100,000 per additional licensee up to a maximum of $5,000,000

(AB 2914 (Leno, Chapter 426, Statutes of 2006)). The following year, SB 414 (Corbett, Chapter 80, Statutes of 2007) updated the liability coverage requirement for accountants and attorneys to mirror those increased for architects.

In 2010, SB 1008 (Padilla, Chapter 634, Statutes of 2010) was enacted to allow engineers and land surveyors to organize as LLPs and required those LLPs to carry the same liability insurance amounts as those required of accountants and architects. Those provisions included a sunset of January 1, 2016. Additionally for architects, SB 560 (Gorell, Chapter 291, Statutes of 2011) extended the sunset for persons licensed to engage in the practice of architecture to form LLPs to January 1, 2019. In 2015, SB 284 (Cannella, Chapter 157, Statutes of 2015) extended this sunset on the authorization for professional engineers, and land surveyors ability to organize and operate as LLPs, subject to certain insurance liability coverage requirements, to January 1, 2019. Moreover, SB 284 authorized persons licensed to engage in the practice of engineering or land surveying to form foreign limited liability partnerships, as specified. Finally, in 2018, Senator Cannella again extended this sunset for professional engineers and land surveyors, as well as licensed architects, to January 1, 2026 with the passage of SB 920 (Chapter 150, Statutes of 2018).

As part of the BPELSG's sunset review this year, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development published a background paper that, among other recommendations, requested the BPELSG to notify the committees of any complaints received from consumers related to engineers or land surveyors offering services through an LLP. In response to this request, the BPELSG notes that no complaints or inquiries have come from consumers, other licensees, or the public related to engineers or land surveyors offering services through an LLP. In fact, the only inquiries the BPELSG notes having received are from licensees who are concerned as to whether they need to change their business structure in light of the impending LLC sunset. As such, the BPELGS took a support position on this bill, and argues that it will help clarify confusion amongst their licensees regarding their legal ability to form or maintain LLPs.

Current Related Legislation.

AB 3253 (Committee on Business and Professions) is the sunset bill for the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG), which, among other things, extends the date by which the BPELSG is authorized to regulate professional engineers and land surveyors to January 1, 2029. *This bill is pending in this committee.*

SB 1452 (Ashby) is the sunset bill for the CAB and the Landscape Architects Technical Committee, which, among other things, extends the date by which these entities are authorized to regulate professional architects to January 1, 2029. *This bill is pending in the Senate Judiciary Committee.*

Prior Related Legislation.

SB 920 (Cannella), Chapter 150, Statutes of 2018, extended the sunset on the authorization for persons licensed to engage in the practice of engineering, land surveying, or architecture to form limited liability partnerships (LLPs) until January 1, 2026. The bill, as introduced, proposed to remove the sunset entirely.

SB 284 (Cannella), Chapter 157, Statutes of 2015, extended the sunset on the authorization for professional engineers and land surveyors ability to organize and operate as LLPs, subject to certain insurance liability coverage requirements, to January 1, 2019.

SB 560 (Gorell), Chapter 291, Statutes of 2011, extended the sunset for architecture LLPs to January 1, 2019. The bill, as introduced, proposed to remove the sunset entirely.

SB 1008 (Padilla), Chapter 634, Statutes of 2010, authorized licensed engineers and land surveyors to organize and operate as LLPs, as specified, and requires engineers and land surveyors organizing as LLPs to carry insurance liability coverage, as specified. This authorization was set to sunset on January 1, 2016.

AB 2914 (Leno), Chapter 426, Statutes of 2006, extended the sunset date of architecture LLPs until January 1, 2012, and increased the amount of insurance that such LLPs must hold.

AB 1596 (Shelley), Chapter 595, Statutes of 2001, extended the sunset date of statutes permitting architects to organize as LLPs, to January 1, 2007.

AB 469 (Cardoza), Chapter 504, Statutes of 1998, authorized architects to form LLPs subject to certain minimum income and liability insurance requirements, and included a January 1, 2002, sunset date.

SB 469 (Beverly and Killea), Chapter 1200, Statutes of 1994, prohibited a foreign or domestic LLC from rendering professional services in this state unless expressly authorized under applicable provisions of law.

ARGUMENTS IN SUPPORT:

This bill is sponsored by the **American Council of Engineering Companies of California (ACEC-CA),** and is supported by a coalition of organizations representing affected licensees including the **American Institute of Architects** and the **California Land Surveyors Association.** In a joint letter of support, this coalition writes: "The ability to organize as an LLP is one more simple tool California businesses can employ that allows them to be nimble in our economy. For these reasons, we support [this bill]."

This bill is supported by the **Board of Professional Engineers, Land Surveyors, and Geologists (BPELSG).** According to the BPELSG: "In the years since this authorization was first granted, there have been no enforcement actions or complaints before the Board relating to its licensees forming LLPs, nor has the Board received any inquiries from consumers regarding licensees forming LLPs."

POLICY ISSUE(S) FOR CONSIDERATION:

Regulatory oversight of LLPs. As noted by the author and stakeholders in support of this bill, other licensed professionals in the state—including attorneys and alarm companies—are afforded the ability to form LLPs in perpetuity, some subject to specified conditions. Moreover, the BPELSG, which regulates and licenses two of the professions covered under this bill, is in support and notes they have not received any complaint or concerning inquiry in relation to professional engineer or land surveyor LLPs. As such, it is sensible that of the various

professional licenses issued by the state, the license types under this bill should be allowed to continue forming LLPs.

Nevertheless, the paradox remains that granting a degree of limited liability to a regulated professional that has the potential to harm others by their misconduct, incompetence, or negligence runs counter to the entire driving principle of licensing and carefully regulating certain professions. In completely deleting the sunset provisions, there is concern that the Legislature may be abdicating some degree of oversight and a tool for accountability in the very rare case that an LLP formed under these provisions causes a consumer or the public harm. As such, the author may wish to consider extending the current sunset date as the bill continues to move forward to ensure the Legislature has insight into the outcomes resulting from LLPs.

REGISTERED SUPPORT:

American Council of Engineering Companies of California
American Institute of Architects California
American Society of Civil Engineers, Region 9
Board for Professional Engineers, Land Surveyors, and Geologists
California Geotechnical Engineers Association
California Land Surveyors Association
Structural Engineers Association of California

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Edward Franco / B. & P. / (916) 319-3301

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2015 (Schiavo) – As Introduced January 31, 2024

SUBJECT: Nursing schools and programs: faculty members, directors, and assistant directors.

SUMMARY: Requires all faculty members, assistant directors, and directors of an approved school of nursing to be actively licensed with the Board of Registered Nursing (BRN) as a registered nurse (RN) and to be approved by the BRN, as specified.

EXISTING LAW:

1) Regulates the practice of nursing under the Nursing Practice Act. (Business and Professions Code (BPC) §§ 2700-2838.4)

2) Establishes the BRN within the Department of Consumer Affairs (DCA) to administer and enforce the Nursing Practice Act and license RN. (BPC § 2701)

3) Makes it unlawful for anyone to conduct a school or program of nursing unless the school has been approved by the BRN. (BPC §§ 2785-2789, 2798)

4) Defines "an approved school of nursing" or "an approved nursing program" as one that has been approved by the BRN, gives the course of instruction approved by the BRN, covering two or more academic years, is connected with one or more hospitals, and is an institution of higher education. "Institution of higher education" includes community colleges offering an associate of arts or associate of science degree and private postsecondary institutions offering an associate of arts, an associate of science, a baccalaureate degree, or an entry-level master's degree, and is an institution that is not a private postsecondary school. (BPC § 2786(a))

5) Requires the BRN to approve schools of nursing and nursing programs that offer a course of instruction leading to licensure as an RN, and prohibits the operation of a school of nursing unless approved by the board. (BPC §§ 2785-2759, 2798)

6) Requires the BRN to determine by regulation the required subjects of instruction be completed in an approved school of nursing for licensure as a registered nurse and shall include the minimum units of theory and clinical experience necessary to achieve essential clinical competency at the entry-level of the registered nurse. The BRN's regulations must be designed to require all schools to provide clinical instruction in all phases of the educational process, except as specified. (BPC § 2786(c))

7) Reduces ongoing approval requirements for approved schools of nursing or nursing programs that are actively accredited by an institutional or programmatic accreditor recognized by the United States Department of Education (USDE), including requiring the BRN to accept faculty hiring decisions made by the approved program director if included within the scope of accreditation. (BPC § 2786.2(b)(1)(C))

8) Establishes various requirements for BRN approval of faculty and directors. (California Code of Regulations, Title 16, §§ 1425, 1425.1)

THIS BILL:

1) Requires all faculty members, assistant directors, and directors of an approved school of nursing or nursing program to hold an active license in good standing as an RN issued by the BRN and be approved by the BRN as possessing the minimum qualifications established by the BRN.

2) Requires, to obtain approval as a faculty member, assistant director, or director of an approved school of nursing or nursing program, an individual to submit a completed application in the form prescribed by the BRN and that is accompanied by evidence, statements, or documents, as required by the BRN.

3) Requires a faculty member to be clinically competent in the nursing area in which they teach.

4) Defines "clinically competent" to mean that the faculty member possesses and exercises the degree of learning, skill, care, and experience ordinarily possessed and exercised by staff-level RNs of the nursing area to which the faculty member is assigned.

5) Specifies that clinical competence is established through direct patient care experience obtained within the previous five years by either of the following:

    a) One year of continuous, full-time experience, or its equivalent, providing direct patient care as an RN in the designated nursing area.

    b) One academic year of RN-level clinical teaching experience, or its equivalent, in the designated nursing area that demonstrate clinical competency.

6) Requires the BRN, upon receipt of an application, to display an individual's faculty approval status, including the approved level and content areas, and the status of their nursing license through an online search tool administered by the department.

7) Makes BRN approval valid for a period of five years.

8) Authorizes the BRN to renew the approval with evidence of continued clinical competence.

9) Requires an approved school of nursing or nursing program, before extending an offer of employment to a faculty member, assistant director, or director, to use the online search tool administered by the DCA to verify both of the following:

    a) The applicant holds a clear and active RN license.

    b) The applicant is approved to teach in the level and content areas relevant to the open position or assignment.

10) Authorizes an approved school of nursing or nursing program, if an applicant has a current faculty position in a nursing content area and does not meet the requirements for clinical competency relevant to a different position, to use the BRN's faculty remediation process to assist the faculty member to become approved in the new nursing content area.

11) Authorizes the BRN to grant a one-year temporary faculty approval in a nursing content area while the applicant is completing a BRN-approved remediation plan that will meet the clinical competence requirement for nursing content area approval.

12) Specifies that temporary approval only applies to instruction in theory and must be conditioned on the applicant being under mentorship and supervision of the content expert for that nursing content area.

13) Requires an approved school of nursing or nursing program to report to the BRN changes in the nursing program's director and assistant director of nursing positions.

14) Specifies that an approved school of nursing or nursing program is not required to report to the BRN any of the following faculty changes:

    a) A change in a faculty member's teaching area.

    b) An offer of employment for a faculty member position.

    c) Termination of employment of a faculty member.

15) Requires the BRN's executive officer to develop a uniform method for evaluating requests and granting the approvals.

16) Authorizes the executive officer to revise the uniform method as necessary and makes the development or revision of the uniform method exempt from the requirements of the Administrative Procedure Act.

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

COMMENTS:

Purpose. This bill is sponsored by the *Board of Registered Nursing*. According to the author, "One of the ways to address the statewide nursing shortage is to make sure nursing school instructors are efficiently certified to provide that instruction, and if they're lacking, the opportunity to quickly meet those qualifications. [This bill] will provide both teaching nurses and their prospective employers greater confidence in the hiring process by decoupling the teaching credential approval process from the hiring process, allowing nurses to close any qualification gaps and enabling nurses to proactively seek multiple instructor opportunities."

Background. The BRN is a licensing entity within DCA that is responsible for administering and enforcing the Nursing Practice Act, which is the chapter of laws that establishes the BRN and outlines the regulatory framework for the practice, licensing, education, and discipline of RNs and advanced practice registered nurses. The BRN is also one of the few licensing boards that actively approve and regulate educational programs that offer the degrees necessary for licensure. In-state programs that offer a course of instruction leading to an RN license must seek approval from the BRN to operate.

At the end of fiscal year 2021-22, the BRN reported a total of 152 approved RN programs, including 91 associate degree in nursing (ADN) programs, 48 bachelor of science in nursing (BSN) programs, and 13 entry-level master's (ELM) programs.

Faculty and Director Approval. As part of its nursing school and education program approval process, the BRN reviews proposed faculty members and directors to determine whether they meet the BRN's standards for education and experience. This bill would (1) codify the BRN's regulations requiring faculty and director approval and (2) modify the process to allow faculty and directors to apply directly to the BRN, rather than through the hiring program.

According to the BRN, it does not approve proposed faculty or directors until after the nursing program has gone through much of the hiring process and an offer is extended to a potential candidate. If the candidate does not meet the qualifications, then the program must move on to another candidate or utilize the BRN's "Faculty Remediation Guidelines" to help the candidate meet the BRN's requirements. The BRN is sponsoring this bill to allow faculty to apply for "portable" approval that is independent of a program's hiring process.

This bill also allows faculty and directors to display BRN approval on the BRN's BreEZe licensing database and requires programs to check for approval prior to extending an offer for employment. Because faculty are required to be approved as "clinically competent" in the area of nursing they seek to teach, the database would also show what areas they approved for.

Prior Related Legislation. AB 2684 (Berman), Chapter 413, Statutes of 2022, was the BRN's 2022 sunset review bill and, among other things, required the BRN to accept faculty approval decisions made by the approved program director of an actively accredited approved school of nursing.

ARGUMENTS IN SUPPORT:

The *Board of Registered Nursing* (sponsor)writes in support:

> The Board's current process ties faculty approval to the nursing program, not the individual applicant. Nursing programs go through their recruitment, application screening, interviews, and at the very end of the hiring process, prior to extending a final offer to their top candidate, submit them to the Board for review to ensure that they meet the Board's minimum qualifications for faculty approval. If the applicant is not approved, the entire hiring process could have to start all over again. If the applicant is approved, that approval is limited to the one nursing program who submitted the applicant to the Board.
>
> [This bill] would authorize the Board to provide a faculty approval that is portable and can be instantly verified by prospective employers. Under the proposed process, an applicant would apply directly to the Board and their approval status would be connected to their Registered Nurse license on the Department of Consumer Affairs license look up page. This would allow nursing programs to verify whether an individual is approved to teach, at what level, and in what content area at the same time they are verifying whether the applicant has an active nursing license.
>
> The bill would ensure that nursing program's finite resources are spent interviewing applicants who have already met the minimum qualifications and have been approved by the Board. It would also mean that approved faculty can apply for similar positions at other nursing programs without having to go back through Board approval.

Moreover, having the approval process tied to the applicant, rather than the nursing program, would allow the Board to remove onerous faculty reporting requirements that are currently shouldered by the nursing programs.

Lastly, the bill provides nursing programs with added flexibility by authorizing the Board to grant temporary approval for existing faculty who are in the process of completing a remediation plan to teach a theory course in a new content area.

ARGUMENTS IN OPPOSITION:

The *Association of Independent California Colleges and Universities* (AICCU) writes in opposition:

> [This bill] would require an approved school of nursing or nursing program—before extending an offer of employment to a faculty member, assistant director, or director—to verify that the California Board of Registered Nursing (BRN) has already approved that individual to teach in the level and content areas relevant to the open position or assignment. We believe that this conflicts with the intent and spirit of AB 2684 (Berman, 2022), which among other things, required BRN to "accept faculty hiring decisions made by the approved program director" for approved schools that are actively accredited by an institutional or programmatic accreditor. AB 2684 rightly shifted faculty hiring processes in a manner that better aligned with accreditation standards, and we believe that the policy proposed under [this bill] moves in the opposite direction.
>
> [This bill] creates a new credentialing process for registered nurses to become faculty in programs or schools of nursing that does not exist for any other health care profession in the State. To our knowledge, there are no other health professions (doctors, dentists, physical therapists, clinical counselors, etc.) in California whose licensing board requires a separate approval process for faculty teaching in schools of the profession. Nursing program directors report that open positions are already difficult to fill, given those with nursing degrees can usually earn more working in a healthcare setting than as program faculty. By creating an additional hoop for potential faculty to jump through, we believe that this will it even more difficult to identify and hire competent nursing faculty than it already is.
>
> While we appreciate the discussions about how to improve the nursing education pipeline, we do not see compelling evidence or data to demonstrate the need for [this bill]. Instead, we believe that the Legislature should maintain its commitment to the policies approved in 2022 via AB 2684, which provides more appropriate changes to the faculty hiring processes in nursing programs.

POLICY ISSUE FOR CONSIDERATION:

Approval of Faculty at Accredited Programs. During the BRN's 2022 sunset review,[1] stakeholders argued that the BRN's faculty requirements may be unnecessary or are at least duplicative of accreditors. The State Auditor found that some of BRN's requirements for nursing programs overlap with standards imposed by national nursing program accreditors and recommended that the Legislature consider restructuring the BRN's oversight to leverage portions of the accreditors' review to reduce duplication and more efficiently use state resources.

The goal of accreditation is to ensure that postsecondary institutions (higher education) meet acceptable levels of quality. According to the USDE, there are two basic types of educational accreditation, "institutional" (historically known as regional) and the other referred to as "specialized" or "programmatic" (historically known as national). Institutional accreditation applies to an entire institution, indicating that each part contributes to the institution's learning objectives. Programmatic accreditation normally applies to specific programs, departments, or schools that are parts of an institution.

In California, all public institutions maintain institutional accreditation, so all RN programs offered at community colleges benefit from Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges accreditation. In addition, all private postsecondary institutions that offer educational programs must have Bureau for Private and Post-Secondary Education approval. Many of the criteria reviewed by the BRN, including faculty, facilities, and resources are also reviewed by accreditors.

Accreditation can be expensive, so fewer programs have optional programmatic accreditation. Given that the BRN may offer similar services to programmatic accreditation, there some programs may have no reason to seek additional programmatic accreditation.

The State Auditor did note that there are differences between the BRN's faculty approval requirements and those of accreditors, including the BRN's requirement for at least one year of direct patient care experience in the last five years. Stakeholders argued at the time and continue to argue that approved program directors should be trusted to select whomever they believe to be most qualified.

As a result of the sunset review and the State Auditor's recommendations, accredited schools of nursing and nursing programs that are approved by the BRN are no longer required to obtain approval from the BRN for specified changes within the scope of their accreditation, including faculty hiring decisions.

As drafted, this bill bypasses that exemption by codifying the BRN's regulations requiring faculty approval and requiring all faculty to be approved at the individual level, which negates or at the very least conflicts with the requirement that the BRN "accept faculty hiring decisions made by the approved program director."

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[1] 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. 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 and bureaus. For more information, see the background paper on the BRN's 2022 Sunset Review, accessible at: https://abp.assembly.ca.gov/jointsunsethearings.

AMENDMENTS:

Approval of Faculty at Accredited Programs. To ensure that the sunset recommendations are not impacted, amend the bill to (1) strike the codification of the BRN's approval requirements and instead authorize the BRN, by virtue of its existing requirements, to establish faculty and director approval independent of a program's hiring process; (2) clarify that there are no new requirements on programs that do not currently exist; and (3) clarify that the bill will not impact the exemptions regarding faculty approval of accredited schools or programs.

Strike the contents of the bill through line 10 of page 4:

2787. ~~(a) All faculty members, assistant directors, and directors of an approved school of nursing or nursing program shall hold an active license in good standing as a registered nurse issued by the board and shall be approved by the board as possessing the minimum qualifications established by the board pursuant to this section.~~

~~(b) To obtain approval as a faculty member, assistant director, or director of an approved school of nursing or nursing program pursuant to this section, an individual shall submit a completed application in the form prescribed by the board and shall be accompanied by evidence, statements, or documents, as required by the board.~~

~~(c) A faculty member shall be clinically competent in the nursing area in which they teach. For purposes of this subdivision, "clinically competent" means that the faculty member possesses and exercises the degree of learning, skill, care, and experience ordinarily possessed and exercised by staff-level registered nurses of the nursing area to which the faculty member is assigned. Clinical competence is established through direct patient care experience obtained within the previous five years by either of the following:~~

~~(1) One year of continuous, full-time experience, or its equivalent, providing direct patient care as a registered nurse in the designated nursing area.~~

~~(2) One academic year of registered nurse-level clinical teaching experience, or its equivalent, in the designated nursing area that demonstrate clinical competency.~~

~~(d) Upon approval of an application submitted pursuant to subdivision (b), the board shall display an individual's faculty approval status, including the approved level and content areas, and the status of their nursing license through an online search tool administered by the department.~~

~~(e) Board approval pursuant to this section is valid for a period of five years and the board may renew the approval with evidence of continued clinical competence.~~

~~(f) Before extending an offer of employment to a faculty member, assistant director, or director, an approved school of nursing or nursing program shall use the online search tool administered by the department to verify both of the following:~~

~~(1) The applicant holds a clear and active license issued by the board.~~

~~(2) The applicant is approved by the board pursuant to this section to teach in the level and content areas relevant to the open position or assignment.~~

~~(g) (1) If an applicant has a current faculty position in a nursing content area and does not meet the requirements set forth in subdivision (c) regarding clinical competency relevant to an open or new position or assignment, an approved school of nursing or nursing program may use the board's faculty remediation process to assist the faculty member to become approved in the new nursing content area.~~

~~(2) The board may grant a one-year temporary faculty approval in a nursing content area while the applicant is completing a board-approved remediation plan that will meet the clinical competence requirement specified in subdivision (c) for nursing content area approval. Temporary approval pursuant to this paragraph shall only apply to instruction in theory and shall be conditioned on the applicant being under mentorship and supervision of the content expert for that nursing content area.~~

On page 4, after line 10:

If the board requires the approval of the faculty or directors pursuant to Section 2786, then the following apply:

(a) The board may approve an individual to serve as a member of the faculty or a director or assistant director of an approved school of nursing or nursing program.

(b) The board shall approve an applicant for individual approval if the applicant submits a completed application in the form prescribed by the board demonstrating that the applicant meets the requirements established by the board for faculty, directors, and assistant directors of an approved school of nursing or nursing program.

(c) The individual approval under this section shall be valid for five years and may be renewed if the individual demonstrates to the board that they continue to meet the requirements established by the board for faculty, directors, and assistant directors of an approved school of nursing or nursing program.

(d) The board shall display an approved individual's faculty, director, or assistant director approval status, including the approved faculty level and content areas, if applicable, and the status of their nursing license through an online search tool administered by the department.

(e)(1) If an applicant for approval under this section has a faculty position and does not meet a requirement established by the board for a different position, the board may accept a remediation plan submitted by an approved school of nursing or nursing program to help the applicant meet the requirement.

(2) If the board accepts the plan submitted under paragraph (1), then the board may approve the applicant to instruct in theory under the mentorship and supervision of the content expert identified in the plan for up to one year.

~~(h) An~~ *(f) If required by the board for directors and assistant directors of an approved school of nursing or nursing program, an* approved school of nursing or nursing program shall *continue to* report to the board changes in the nursing program's director and assistant director of nursing positions.

~~(i)~~ *(g)* An approved school of nursing or nursing program shall not be required to report to the board any of the following faculty changes:

(1) A change in a faculty member's teaching area.

(2) An offer of employment for a faculty member position.

(3) Termination of employment of a faculty member.

(h) This section does not require any approval exempted under Section 2786.2.

~~(j) (1) The executive officer shall develop a uniform method for evaluating requests and granting approvals pursuant to this section.~~

~~(2) The executive officer may revise the uniform method developed pursuant to this subdivision, as necessary. The development or revision of the uniform method shall be exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code).~~

REGISTERED SUPPORT:

Board of Registered Nursing (sponsor)
California State Council of Service Employees International Union
Santa Clarita Community College District - College of The Canyons

REGISTERED OPPOSITION:

Association of Independent California Colleges & Universities

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2233 (Schiavo) – As Amended April 15, 2024

SUBJECT: Building standards: toilet compartments.

SUMMARY: Requires the Division of the State Architect to propose building standards for adoption that would increase the number of ambulatory accessible toilet stalls required to be provided for patrons.

EXISTING LAW:

1) Establishes the Building Standards Commission (BSC) within the Department of General Services and requires the BSC to administer the processes related to the adoption, approval, publication, and implementation of California's building codes, which serve as the basis for the design and construction of buildings in California. (Health and Safety Code (HSC) §§ 18901 et seq.)

2) Requires the State Architect to develop amendments for building regulations and submit them to the BSC for adoption to ensure that no accessibility requirements of the California Building Standards Code shall be enhanced or diminished except as necessary for (1) retaining existing state regulations that provide greater accessibility and features, or (2) meeting federal minimum accessibility standards of the federal Americans with Disabilities Act of 1990 as adopted by the United States Department of Justice, the Uniform Federal Accessibility Standards, and the federal Architectural Barriers Act. (Government Code § 4459(a))

3) Requires any building standard adopted or proposed by state agencies to be submitted to, and approved or adopted by, the BSC prior to codification. Prior to submission to the BSC, building standards must be adopted in compliance with the Administrative Procedure Act. Building standards adopted by state agencies and submitted to the commission for approval must be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards which shall, to the satisfaction of the commission, justify the approval in terms of specified criteria. (HSC § 18930(a))

4) Requires publicly and privately owned facilities, where the public congregates to be equipped with sufficient temporary or permanent restrooms to meet the needs of the public at peak hours, with specified exemptions. (HSC § 118505)

5) Requires the BSC to adopt standards with respect to all state-owned or state-occupied facilities where the public congregates and over which it has jurisdiction. (HSC § 118505(b)(1))

6) Specifies that where no state agency has the authority to adopt building standards applicable to state buildings, the BSC shall adopt, approve, codify, and publish building standards providing the minimum standards for the design and construction of state buildings, including buildings constructed by the Trustees of the California

State University and, to the extent permitted by law, to buildings designed and constructed by the Regents of the University of California. (HSC § 18934.5)

7) Requires the Office of the State Architect to adopt standards with respect to all facilities where the public congregates and that are not covered the BSC, unless otherwise exempt. (HSC § 118505(b)(2))

8) Specifies that building standards pertaining to public restrooms shall apply to facilities where the public congregates that commence construction, or that undertake structural alterations, repairs, or improvements exceeding 50 percent of the entire facility. (HSC § 118505(d))

9) Defines "facilities where the public congregates" for these purposes to mean sports and entertainment arenas, community and convention halls, specialty event centers, amusement facilities, and ski resorts. (HSC § 118505(e))

10) Exempts hotels, restaurants and food facilities, public and private elementary and secondary schools, and qualified historic buildings from public restroom building standards adopted by either the BSC or the Division of the State Architect (DSA). (HSC § 118505(f))

THIS BILL:

1) Requires the Division of the State Architect, as part of the next intervening edition of the California Building Standards Code, adopted after January 1, 2025, to propose for adoption building standards that increase the total minimum number of ambulatory accessible toilet compartments to 5 percent of the total number of toilet compartments, while requiring at least one ambulatory accessible toilet compartment.

2) Specify that the proposed standards shall be in addition to wheelchair accessible toilet compartment standards.

3) Requires the proposed standards to apply to privately funded public accommodations, commercial facilities, and publicly funded buildings.

4) Requires the Division of the State Architect to consider additional changes to ambulatory accessible toilet compartment standards to improve accessibility.

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by **Disability Rights California**. According to the author:

> Given the aging population of the state, as well as the countless numbers of folks with varying degrees of injury or other health related mobility issues, California must be more proactive to remove barriers for these populations. Legislation which expands restroom access for those with mobility difficulties this measure would provide additional accessible public restrooms.

Background.

Wheelchair and Ambulatory Accessible Toilet Stalls. In multi-stall restrooms at least one toilet stall, or 5% of toilet stalls (or of the combination of toilet stalls and urinals), whichever is greater, are required to be wheelchair accessible.[1] Wheelchair accessible toilet stalls are required to be of a certain size to accommodate a wheelchair and have grab bars behind and next to the toilet on one side. Additionally, when there are six or more toilet stalls (or combination of toilet stalls and urinals), there must be the same number of ambulatory accessible toilet stalls as wheelchair accessible toilet stalls. These requirements are more stringent than federal accessibility requirement, which only require one toilet stall to be wheelchair accessible, and when there are more than six toilet stalls, or toilet stalls and urinals, just one ambulatory accessible toilet stall.[2]

Building Standards Commission. The BSC is charged, in part, with administering California's building code adoption process; reviewing and approving building standards proposed and adopted by state agencies; codifying and publishing approved building standards in the California Building Code (CBC); and resolving conflict, duplication, and overlap in building standards.

California Building Code. To protect the health and safety of people and property, the CBC regulates the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures in the state. The CBC is comprised of building standards adopted by state agencies without change from national model codes; building standards adopted and adapted from national model codes; and building standards, authorized by the California Legislature, that address issues and concerns specific to California. The CBC is published every three years, though intervening code adoption cycles produce supplements 18 months into each triennial period. Amendments to California's building standards are subject to a lengthy and transparent public participation process throughout each code adoption cycle.

Division of the State Architect. State law requires several state agencies to develop building standards for various building occupancies and building uses. The DSA is responsible for building standards related to accessibility for places of public accommodation, public schools, publicly funded housing, and state-owned or -leased essential service buildings.[3] This bill would require the State Architect to propose building standards that increase the number of ambulatory accessible toilet stalls available to patrons. In doing so, the author argues that this bill will benefit individuals who have mobility issues, which affect approximately 11% of adults in California.[4]

Current Related Legislation.

AB 2550 (Gabriel) would require the Building Standards Commission to adopt various building standards related to food facilities. *AB 2550 is pending in this committee.*

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[1] Title 24 CCR § 11-B-213.3.1
[2] 2010 ADA Standards for Accessible Design
[3] Building Standards Commission Frequently Asked Questions
[4] CDC's National Center on Birth Defects and Developmental Disabilities, Disability Impacts California

Prior Related Legislation.

AB 783 (Ting), Chapter 223, Statutes of 2023, requires cities, counties, and cities and counties to notify applicants for a business license or permit in writing of the requirement that single-user toilet facilities must be identified as all-gender toilet facilities.

AB 2322 (Wood), Chapter 285, Statutes of 2022, requires the State Fire Marshal (SFM) to research and develop mandatory building standards for fire resistance, as specified, and authorizes the SFM to propose these building standards to the BSC and requires the BSC to consider them for adoption.

SB 1194 (Allen), Chapter 839, Statutes of 2022, authorizes a local government to require, by ordinance or resolution, that multiuser public toilet facilities within its jurisdiction be designed, constructed, and identified for use by all genders.

ARGUMENTS IN SUPPORT:

None on file

ARGUMENTS IN OPPOSITION:

None on file

IMPLEMENTATION ISSUES:

Prescriptiveness. The consideration, development, and adoption of building standards is a deliberative process subject to Administrative Procedures Act and other laws that enable standards-developing agencies to use their authority and expertise to develop standards as well as facilitate transparency and public input. By requiring the DSA to adopt prescriptive building standards, this bill may render that deliberative process meaningless as it would have no bearing on the outcome. Moreover, any future modifications would require legislative authorization. If this bill passes this committee, the author may wish to amend to bill instead require the DSA to consider proposing standards for adoption that may increase the total number of ambulatory stalls in a restroom.

Applicability of Access-Related Building Standards. Existing law already requires access-related building standards to apply to all places of public accommodation, therefore if this bill passes this committee, the author may wish to strike paragraph (3) of subdivision (a) of the bill, which currently specifies that the proposed standards shall apply to privately funded public accommodations, commercial facilities, and publicly funded buildings.

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2194 (Joe Patterson) – As Amended April 15, 2024

SUBJECT: Physician assistants: supervision: doctors of podiatric medicine.

SUMMARY: Relaxes restrictions on the ability for a physician assistant (PA) to assist a doctor of podiatric medicine (DPM), replacing them with any conditions that may be agreed to by a PA and a supervising physician in a practice agreement.

EXISTING LAW:

1) Regulates the practice of medicine, including podiatric medicine, under the Medical Practice Act. (BPC §§ 2460-2499.8)

2) Establishes the Medical Board of California (MBC) to license physician and surgeons and administer and enforce the Medical Practice Act. (BPC §§ 2001-2004)

3) Prohibits the practice of medicine, including using drugs or devices, severing or penetrating tissue, or using any other method in the treatment of diseases, injuries, deformities, or other physical and mental conditions without a physician and surgeon license, unless authorized by another law. (BPC §§ 2051, 2052, 2453)

4) Establishes the Podiatric Medical Board of California (PMBC) to license DPMs and administer and enforce the article of the Medical Practice Act regulating the practice of podiatry. (BPC §§ 2460-2499.8)

5) Defines "podiatric medicine" as the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot, and the nonsurgical treatment of the muscles and tendons of the leg that govern the functions of the foot and prohibits the practice of podiatric medicine unless licensed as a DPM. (BPC § 2472)

6) Regulates and licenses PAs under the Physician Assistant Practice Act and establishes the Physician Assistant Board (PAB) to administer and enforce the act. (BPC §§ 3500-3546)

7) Defines "practice agreement" as the writing developed through collaboration among one or more physicians and surgeons and one or more PAs that defines the medical services the PA is authorized to perform and that grants approval for physicians and surgeons on the staff of an organized health care system to supervise one or more PAs. (BPC § 3501(k))

8) Defines "organized health care system" as any entity that lawfully provides medical services. (BPC § 3501(j))

9) Defines "supervision" to mean that a physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a PA. (BPC § 3501(f)(1))

10) Authorizes a PA to perform medical services if: (1) the PA renders the services under the supervision of a physician and surgeon; (2) the PA renders the services under a practice

agreement; (3) the PA is competent to perform the services; and (4) the PA's education, training, and experience have prepared the PA to render the services. (BPC § 3502(a))

11) Requires a practice agreement to address the following:

    a) The types of medical services a PA may perform. (BPC § 3502.3(a)(1)(A))

    b) Policies and procedures to ensure adequate supervision of the PA, including, but not limited to, appropriate communication, availability, consultations, and referrals between a physician and surgeon and the PA. (BPC § 3502.3(a)(1)(B))

    c) The methods for the continuing evaluation of the competency and qualifications of the PA. (BPC § 3502.3(a)(1)(C))

    d) The furnishing or ordering of drugs or devices by a PA. (BPC § 3502.3(a)(1)(D))

    e) Any other provisions agreed to. (BPC § 3502.3(a)(1)(E))

12) Authorizes a PA under the supervision of a physician and surgeon to assist a DPM if: (1) the DPM is a partner, shareholder, or employee in the same medical group as the supervising physician and surgeon; (2) the assistance is according to patient-specific orders from a supervising physician and surgeon; (3) a supervising physician and surgeon is available to the PA for consultation when assistance is rendered; and (4) the assistance is limited to performing those duties included within the scope of practice of a DPM. (BPC § 3502(b))

THIS BILL:

1) Modifies which DPMs a PA may assist:

    a) Removes DPMs who are a partner, shareholder, or employee in the same medical group as the supervising physician and surgeon.

    b) Adds DPMs who are a partner, shareholder, or employee in the same partnership, group, or professional corporation as the supervising physician and surgeon.

    c) Adds DPMs who are on the staff of an organized health care system.

2) Modifies the conditions under which a PA under the supervision of a physician and surgeon may assist DPMs:

    a) Deletes the requirements specific to assisting DPMs: (1) that the assistance be according to patient-specific orders from a supervising physician and surgeon, (2) that a supervising physician and surgeon be available to the PA for consultation, and (3) that the PA be limited to the scope of practice of a DPM.

    b) Instead requires the assistance to be pursuant to the practice agreement.

3) Clarifies that a DPM may participate in a practice agreement.

4) Clarifies that a practice agreement may authorize a DPM to cosign a treatment plan prepared by a PA.

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

COMMENTS:

Purpose. This bill is sponsored by the *California Podiatric Medical Association*. According to the author, "Access to timely care is paramount in podiatric settings. Currently, a workforce barrier impedes optimal access. [This bill] aims to rectify this by enabling podiatric doctors, who specialize in foot and ankle care, to hire and utilize physician assistants across all practice settings. This is not a matter of scope, but rather an essential change to help deliver the best care to patients."

Background. PAs are licensed healthcare professionals trained to provide health care services under the supervision of a physician and surgeon. In California, PAs must complete an accredited PA medical training program associated with a medical school that includes classroom studies and clinical experience, in addition to any undergraduate and health care training required for entry into the program. According to the American Academy of Physician Assistants, most programs are three academic years and award master's degrees. Applicants must also pass the Physician Assistant National Certifying Examination. Once licensed, PAs must complete 50 hours of continuing education every two years.

A PA is authorized to perform the medical services a physician may perform, subject to a written document called a "practice agreement." A practice agreement is developed through collaboration between one or more supervising physicians and one or more PAs, except that a physician is only allowed to supervise up to four PAs at any given time. The agreement outlines the medical services the PAs may perform, and aside from restrictions around prescribing and specifically identified specialties or procedures in the PA Practice Act, there is no legal limit on what the agreement can authorize. Instead, the limits are established in the practice agreement by the signing physicians and PAs, taking into consideration the training and competence of the PAs and the type and level of supervision needed to provide the authorized services safely and effectively.

The Physician Assistant Board (PAB). The PAB is the regulatory agency responsible for licensing PAs and enforcing the PA Practice Act. The PAB reported 15,879 licensed PAs at the end of fiscal year (FY) 2021-22.

Podiatry. Podiatry is the practice of medicine on the human foot, including the ankle and tendons that insert into the foot. DPMs are the licensed healthcare providers who practice podiatry. Because podiatric health conditions can be complex, or may be the result of a broader health condition, DPMs will work closely with physicians in the event treatment is needed beyond the DPM scope of practice. The overall medical field relating to musculoskeletal care is orthopedics.

Podiatric Medical Board of California (PMBC). The PMBC is the regulatory agency responsible for licensing DPMs and enforcing the podiatry laws. The PMBC reported 2,198 licensed DPMs at the end of FY 2021-22.

Podiatry-Specific PA Practice. Existing law authorizes a PA to assist a DPM in providing podiatry care but limits the conditions under which the assistance can be provided. First, the assistance must be within the scope of services authorized under the PA's practice agreement. This bill does not modify that requirement.

Second, the DPMs must be a partner, shareholder, or employee in the same medical group as the PA's supervising physician, requiring a practice relationship between any supervising physician and DPM that the PA will assist. This bill maintains the practice relationship requirement but replaces the term "medical group" with the terms "partnership, group, or professional corporation."

Third, the assistance must be according to patient-specific orders from a supervising physician. Although not currently defined in statute, an order is generally used as a mechanism for delegating something, such as the treatment of a condition or performance of tests, to another provider. When giving an order, the ordering provider must determine the medical necessity of the order. As a result, before a PA may assist a DPM, the supervising physician must assess each patient and order the PA to assist the treating DPM. This bill removes that requirement, leaving any requirements for a patient-specific order to the terms of the practice agreement.

Fourth, a supervising physician must be available to the PA for consultation when assistance is rendered. This bill also removes that requirement, but the practice agreement still requires the PAs and supervising physicians to specifically agree on policies and procedures to ensure adequate supervision, including appropriate communication, availability, consultations, and referrals.

Fifth, the assistance is limited to the scope of practice of a DPM, meaning the PA may not perform any service beyond the care of the foot and ankle, even if it falls within a broader scope of services authorized under the PA's practice agreement. This bill removes that limitation, leaving the need for a patient-specific order up to the terms of the practice agreement.

Lastly, the practice agreement must be signed by the PA and any supervising physicians and developed through collaboration among one or more physicians and one or more PAs. While there is no restriction on who may collaborate in the development of the agreement nor any practice restrictions other than what may be agreed upon, this bill clarifies that a DPM may participate in the practice agreement and that the agreement may authorize a DPM to cosign a treatment plan prepared by a PA.

Prior Related Legislation. SB 697 (Caballero), Chapter 707, Statutes of 2019, revised and loosened the way PAs are supervised by physicians, including allowing multiple physicians to supervise a PA; renamed "delegation of services agreement" to "practice agreement"; and eliminated various specific statutory components of supervision, generally allowing supervising physicians to determine the appropriate level of supervision for PAs.

ARGUMENTS IN SUPPORT:

The *California Podiatric Medical Association* (sponsor) writes in support:

> [D]espite DPMs ability to independently perform complicated surgeries and provide critical podiatric medical services in and out of the hospital setting, their profession is still denied many critical components that their physician counterparts enjoy even though their services and care may be virtually indistinguishable. One of these elements is the ability to utilize physician assistants (PA) in their practice.

> While current law may authorize PAs to assist DPMs in the same medical group, its current structure is untenable as it specifies that the PA may only assist the DPM under "patient-specific orders" from their supervising physician. This creates a situation where a busy physician must insert themselves into the care of each patient and approve every patient's treatment plan created by the PA despite the fact it is the DPM who is solely responsible for the actual care of the patient and that the PA is still limited to procedures within the DPM's scope. Not only does this current structure provide barriers (i.e. finding a physician who can do this) and complicate the relationship between the PA and the DPM, it does not address how PAs may assist DPMs under the current system of practice agreements which now governs the services PAs may provide.
>
> [This bill] addresses this problem by removing the requirement that a PA may only assist a DPM per a physician's "patient-specific" orders, and instead authorizes PAs to assist DPMs under a practice agreement, which is developed along with the PAs' supervising physicians. This practice agreement will establish general guidelines on what services PAs in the medical group may provide to the DPMs without the need to seek approval for every single patient.

The *California Academy of PAs* (CAPA) is currently opposed to this bill unless it is amended, as discussed under the arguments in opposition section of this analysis. However, it is supportive of the portions of the bill replacing the statutory requirements on assisting DPMs with the limits contained in any relevant practice agreement, writing:

> Currently, in an unwelcome vestige of the pre-SB 697 era, PAs can only assist podiatrists with a patient-specific order to do so. This means that the physician must each and every time approve the PAs assistance to the podiatrist, in advance, before care is given to the patient. That makes no sense. A PA and physician should be able to agree for a PA to assist a DPM on the same more global terms that a PA and physician could agree for the PA to perform surgical procedures. The proposed amendments delete this patient-specific requirement and CAPA supports that deletion because doing so removes a bureaucratic disincentive to PAs assisting DPMs.
>
> The proposed amendments also relatedly delete the language in code that prevents PAs and physicians from agreeing to collaborate with DPMs in ways that may exceed the DPM's limited scope. Currently, a "physician assistant assisting a doctor of podiatric medicine shall be limited to performing those duties within the scope of practice of the doctor of podiatric medicine." This makes no sense. A PA can perform broader medical services than a DPM. A PA and a physician in their practice agreements should be able to agree to offer patients of DPMs the full range of services they are licensed to provide.
>
> The proposed amendments delete this legal antique and replace it, properly, wisely, with language that permits PAs and physicians to offer a DPM whatever help might be needed, if memorialized in a practice agreement between the PA and the physician. This, too, is a welcome change that CAPA supports.

ARGUMENTS IN OPPOSITION:

Although the *California Academy of PAs* (CAPA) writes in partial support as discussed under the arguments in support section of this analysis, it is currently opposed to this bill unless it is amended to delete, "For purposes of implementing paragraph (1), a doctor of podiatric medicine may participate in the practice agreement. The practice agreement may include authorizing a doctor of podiatric medicine to cosign a treatment plan prepared by the physician assistant."

> The first sentence is foundationally objectionable because it conveys a legal entitlement to another health professional (DPM) to participate in a practice agreement between a physician and a PA This legal right to insist on such "participation" even if the PA and physician object will, at best, inevitably confuse who can legally and competently do what and when and under what circumstances, and, at worst, risks thoroughly wrecking the model of collaboration that currently exists between physicians and PAs, to the enormous benefit of their patients.
>
> The second sentence regarding co-signing is foundationally objectionable because it represents exactly the kind of micro-managing of PA practice that was the hallmark of the law prior to SB 697. It represents a giant step backward for PA practice and is incompatible with providing the most effective, non-bureaucratic driven health care to patients.

The *California Orthopaedic Association* writes in opposition to the supervision provisions no longer in the bill, but also the current bill:

> The California Podiatric Medicine Association has been proposing some amendments that would allow the podiatrist to be included as a provider in the physician/PA practice agreement. This would allow a podiatrist to directly supervise a PA and direct patient care for patients that the supervising physician might not have ever seen. This is also not appropriate or good patient care. PAs and orthopedic surgeons oppose expressly in code mandating the inclusion of podiatrists in these relationships. Such mandates represent a retreat from the physician-PA collaborative model that was the hallmark of SB 697 (Caballero) of 2109 reforming PA practice. Moreover, they are simply not needed. PAs and physicians are free, if they wish, under current law to shape their relationships as including podiatrists.
>
> We have also seen proposed amendments that would allow PAs to assist DPMs under a generalized practice agreement that is not patient specific. Those proposed amendments still suffer the same underlying problem as the bill…. the supervising physician would be liable and responsible for any treatment performed by the PA and perhaps even for treatment recommended by the DPM and performed by the PA, whether or not the supervising physician made the recommendation and was aware of the treatment.
>
> Orthopaedic surgeons and podiatrists commonly work together in the treatment of patients with foot and ankle injuries. If podiatrists feel they need an assistant, perhaps they should create their own category of podiatric assistants, rather than attempt to change the law allowing them to supervise PAs.

The *Physician Assistant Board* at its meeting held on March 4, 2024, voted to oppose the introduced version of this bill, which included the ability for DPMs to supervise PAs, citing concerns over (1) a DPM's ability to supervise a PA with a scope of practice beyond podiatry and (2) the lack of "training requirements that a physician assistant would need to complete to be adequately supervised by a podiatrist." This bill no longer authorizes a DPM to supervise a PA in the way a physician and surgeon is required to.

POLICY ISSUES FOR CONSIDERATION:

1) *Patient-Specific Orders and Employer Pressure*. Stakeholders have expressed opposition to the removal of the requirement for a supervising physician to assess each patient and issue a patient-specific order before a PA assists a DPM in treating the patient. The intent of removing the requirement is to allow PAs to assist DPMs in situations where it would be an unnecessary redundancy for the patient to have to be seen by the PA's supervising physician before being seen by the DPM.

   The redundancy occurs in situations where a patient appropriately sees a DPM before seeing a physician, and in particular the supervising physician. In those situations, a PA within the DPM's medical group would not be able to assist the DPM without the PA's supervising physician also assessing the patient to make the order. Further, the PA would not be able to assist even if the patient had seen a physician but not within the practice.

   Take for example: a patient's primary care physician examines the patient and determines podiatric care is medically necessary. The patient then takes the physician's order to a DPM to receive the recommended care. If there is a PA in the DPM's practice, the PA would not be able to assist the DPM unless the patient was seen again by the supervising physician within the practice, even though the patient could theoretically see the same PA separately.

   While there are situations where a patient may have a condition that requires services beyond a DPM's scope of practice, the expectation is that the DPM would refer the patient to an appropriate provider. Under this bill, the expectation would be that the PA would also be able to treat or refer in accordance with their practice agreement, no different than if the patient went directly to the PA. In addition, if a physician or PA agree that a patient-specific order requirement is necessary, it can still be included in the practice agreement.

   Opposing stakeholders have argued that this potential redundancy is not significant enough to overcome the potential risks to patients because a physician may not always have discretion in what may or may not be included in a practice agreement. For example, in a larger practice or organized health system with many PAs and supervising physicians, there may be a standardized practice agreement that, while formed through collaboration among physicians and PAs at the administrative level, is essentially non-negotiable at the practice level. While the supervising physician is not legally required to sign the agreement, if they feel there is an employer expectation to sign the agreement, they may be concerned about employer retaliation and sign the agreement even if they are uncomfortable.

   However, concerns around the ability for supervising physicians to amend or decline to sign a practice agreement due to employer pressure is a problem that affects the entire practice agreement model, not just the requirement being debated under this bill. In addition, due to legal requirements on the way medical groups are structured, DPMs are prohibited from voting on matters related to the practice of medicine outside of the DPM scope of practice.

2) *Liability*. A related concern for the opposition is that, when a physician feels pressured by their employer to sign a take-it-or-leave-it practice agreement, the physician will be liable for any services provided by a PA that may lead to patient harm. Under the way practice agreements are intended to work, the relevant licensing board (MBC for physicians, PAB for PAs, and PMBC for DPMs), or the courts in egregious cases, would investigate and determine whether how much of the harm was the result of the PA's incompetence in executing the services authorized in the practice agreement, the improper execution of the supervision in the practice agreement, problems with the terms or development of the practice agreement, and any other causal factors.

   Ideally, an investigation would also provide a supervising physician the opportunity to demonstrate that they had no realistic choice other than to accept the terms of the practice agreement and attempt to execute the agreement to the best of their ability. While that may not always be the case, any undue liability would be the result of deficiencies in the contractual process as a whole, and not just specific to this bill.

IMPLEMENTATION ISSUES:

1) *Unnecessary Clarification*. This bill clarifies that a DPM may participate in the practice agreement and that the practice agreement may authorize a DPM to cosign a PA's treatment plan, but nothing currently prohibits either of these. The opposition argues this could result in the unintended consequence of requiring a supervising physician and PA to allow a DPM to participate in the process.

2) *Missing Modifier*. The bill appears to be missing a link between the organized health care systems where the DPM is on staff and the supervising physician. If intended to be consistent with the requirement that the supervising physician be in the same practice as the DPM, then the author may wish to clarify that the DPM is on staff at the same organized health care system as the supervising physician.

AMENDMENTS:

1) *Unnecessary Clarification*. To address the concerns regarding unintended consequences, the bill would need to be amended to delete the unnecessary clarifying language. CAPA has represented to this committee that, once the deletion is in print and assuming no other changes, CAPA will switch from an oppose to a support position on the bill.

   On page 4 of the bill, strike lines 19-23:

   ~~(2) For purposes of implementing paragraph (1), a doctor of podiatric medicine may participate in the practice agreement. The practice agreement may include authorizing a doctor of podiatric medicine to cosign a treatment plan prepared by the physician assistant.~~

2) *Missing Modifier*. To address the concerns regarding the missing modifier, amend the bill as follows:

On page 4 of the bill, lines 3-18:

(b) ~~(1)~~ Notwithstanding any other law, a physician assistant performing medical services under the supervision of a physician and surgeon may assist a doctor of podiatric medicine who is on the staff of ~~an~~ *the same* organized health care system or who is a partner, shareholder, or employee in the same partnership, group, or professional corporation as the supervising physician and surgeon, pursuant to a practice agreement. A physician assistant assisting a doctor of podiatric medicine shall be limited to performing those duties authorized in the practice agreement.

REGISTERED SUPPORT:

California Podiatric Medical Association (sponsor)
California Academy of PAs (as proposed to be amended)

REGISTERED OPPOSITION:

California Orthopedic Association
Physician Assistant Board

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2550 (Gabriel) – As Amended March 11, 2024

NOTE: This bill was double referred to the Assembly Health Committee, where it passed on a 16-0-0 vote.

SUBJECT: Business establishments: building standards: retail food safety.

SUMMARY: Requires the Building Standards Commission, as a part of the next triennial update of the California Building Standards Code that occurs on or after January 1, 2025, to adopt various building standards related to retail food establishments.

EXISTING LAW:

1) Establishes the California Retail Food Code (CRFC) to provide for the regulation of retail food facilities. Establishes health and sanitation standards at the state level through the CRFC, while enforcement is charged to local agencies, carried out by the 58 county environmental health departments and four city environmental health departments (Berkeley, Long Beach, Pasadena, and Vernon). (Health & Safety Code (HSC) § 113700 et seq.)

2) Defines a "food facility" as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level. Excludes various entities from the definition of a "food facility," including a cottage food operation, and a church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs no more than three days in any 90 day period. (HSC §113789)

3) Establishes requirements for satellite food services, including requiring satellite food service only be operated by a fully enclosed permanent food facility that meets the requirements for food preparation and service and that is responsible for servicing the satellite food service operation; that the permit holder of the permanent food facility submit to the enforcement agency written standard operating procedures prior to conducting the service, as specified; that all food preparation be conducted within a food compartment or fully enclosed facility; and, that service areas have overhead protection that extends over all food handling areas. (HSC §114067)

4) Prohibits a grease trap or grease interceptor from being located in a food or utensil handling area unless specifically approved by the enforcement agency. (HSC §114201)

5) Requires grease traps and grease interceptors to be easily accessible for servicing. (HSC §114201)

6) Requires a food facility at all times to be constructed, equipped, maintained, and operated as to prevent the entrance and harborage of animals, birds, and vermin, including, but not limited to, rodents and insects. (HSC § 114259)

7) Requires the premises of each food facility to be kept free of vermin. (HSC §114259.1)

8) Requires passthrough window service openings to be limited to 216 square inches each. Prohibits service openings being closer together than 18 inches. Requires each opening to be provided with a solid or screened window, equipped with a self-closing device. Requires screening to be at least 16 mesh per square inch. Authorizes passthrough windows of up to 432 square inches be approved if equipped with an air curtain device. Requires counter surface of the service openings to be smooth and easily cleanable. (HSC §114259.2)

9) Requires the walls and ceilings of all rooms to be of a durable, smooth, nonabsorbent, and easily cleanable surface, except for:

   a) Walls and ceilings of bar areas in which alcoholic beverages are sold or served directly to the consumers, except wall areas adjacent to bar sinks and areas where food is prepared;

   b) Areas where food is stored only in unopened bottles, cans, cartons, sacks, or other original shipping containers;

   c) Dining and sales areas;

   d) Offices;

   e) Restrooms that are used exclusively by the consumers, except that the walls and ceilings in the restrooms shall be of a nonabsorbent and washable surface; and

   f) Dressing rooms, dressing areas, or locker areas.

   (HSC §114271)

10) Requires the Department of Alcoholic Beverage Control to administer the provisions of the Alcoholic Beverage Control Act, including the licensing of individuals and businesses in the manufacture, importation, and sale of alcoholic beverages. (Business & Professions Code § 23000 et seq.)

11) Establishes the Building Standards Commission (BSC) within the Department of General Services and requires the BSC to administer the processes related to the adoption, approval, publication, and implementation of California's building codes, which serve as the basis for the design and construction of buildings in California. (HSC §§ 18901 et seq.)

12) Specifies that where no state agency has the authority to adopt building standards applicable to state buildings, the BSC shall adopt, approve, codify, and publish building standards providing the minimum standards for the design and construction of state buildings, including buildings constructed by the Trustees of the California State University and, to the extent permitted by law, to buildings designed and constructed by the Regents of the University of California. (HSC § 18934.5)

THIS BILL:

1) Requires as a part of the next triennial update of the California Building Standards Code that occurs on or after January 1, 2025, the BSC to adopt building standards that do all of the following:

    a) Authorize a business establishment with less than 150 square feet of seating area or that is takeout only to operate without providing customer restrooms.

    b) Authorize a business establishment, regardless of whether the business establishment sells alcohol, with a maximum occupancy of 49 persons to provide restrooms without urinals.

    c) Authorize a business establishment to install up to 1,000 square feet of patio seating without providing additional restrooms.

    d) Authorize a business establishment that serves alcohol to satisfy a requirement to provide restrooms by exclusively providing restrooms for use by all genders.

    e) Authorize a business establishment with a maximum occupancy of 100 occupants to operate without drinking fountains.

    f) Authorize a business establishment to operate cooking equipment, for the purpose of baking, that does not produce cooking odors, smoke, grease, or vapor without installing a Type 1 hood, as described in the California Mechanical Code over the cooking equipment.

    g) Authorize a business establishment to operate an under-the-counter dishwasher without installing a mechanical exhaust system over the dishwasher.

2) Defines “alcohol” to mean ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

3) Prohibits a food facility from locating a grease trap or grease interceptor in a food preparation area, and exempts an aboveground grease trap installed under a 3-compartment sink from this prohibition. Any food facility approved with a grease trap or grease interceptor that is in operation before the effective date this new requirement is also exempt.

4) Increases the size of a passthrough window service opening to 432 square inches.

5) Exempts the following areas from the existing requirement that a food facility’s walls must be durable, smooth, nonabsorbent, and easily cleanable:

    a) Walls and ceilings of any areas in which beverages are prepared, or sold or served directly to the consumers, except wall areas adjacent to sinks and areas where food is prepared.

    b) Restrooms that are used exclusively by employees, except that the walls and ceilings in the restrooms must be a washable surface.

6) Exempts a temporary food facility that is approved for limited food preparation from the existing requirement that temporary food facilities be equipped with overhead protection for all food preparation, food storage, and warewashing areas if environmental factors that could contaminate the food are absent due to the location of the facility or other limiting conditions.

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the **Independent Hospitality Association.** According to the author:

> As small restaurants across California struggle to survive, state action is needed to help facilitate more outdoor dining and small business opportunities, in a manner consistent with public health guidance. Neighborhood restaurants are the backbone of communities across California, but too many are barely hanging on by a thread. Supporting their start up efforts and operational needs offers a lifeline that can help keep these establishments afloat, and we must do all we can to assist them during these challenging times. [This bill] ensures that restaurants are fully supported as they continue to innovate their business practices and safely operate.

Background.

California Building Code. To protect the health and safety of people and property, the California Building Code (CBC) regulates the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures in the state. The CBC is comprised of building standards adopted by state agencies without change from national model codes; building standards adopted and adapted from national model codes; and building standards, authorized by the California Legislature, that address issues and concerns specific to California. The CBC is published every three years, though intervening code adoption cycles produce supplements 18 months into each triennial period. Amendments to California's building standards are subject to a lengthy and transparent public participation process throughout each code adoption cycle.

Building Standards Commission. The BSC is charged, in part, with administering California's building code adoption process; reviewing and approving building standards proposed and adopted by state agencies; codifying and publishing approved building standards in the CBC; and resolving conflict, duplication, and overlap in building standards. The BSC's authority and expertise to develop and propose building standards is limited to the following nonresidential occupancy types and subject areas:

- Specified state buildings as well as buildings constructed by the Trustees of the California State University and the Regents of the University of California.
- Seismic retrofit standards for state buildings including those owned by the University of California and California State University.
- Standards for parking lot lighting systems for the University of California, California State University, and California Community Colleges.

- Green building standards for nonresidential occupancy types for which no other state agency has authority.[1]

Several other state agencies are tasked with developing building standards for various building occupancies and building uses, including all of the following:

- Department of Housing and Community Development – Residential occupancies (hotels, motels, single- and multi-family dwellings), including residential accessibility standards
- Office of the State Fire Marshal – Assembly buildings, nursing homes and housing, fire and panic safety
- Division of the State Architect – Accessibility for places of public accommodation, public schools, publicly funded housing, state-owned or -leased essential service buildings
- Office of Statewide Health Planning and Development – Hospitals, clinics, skilled nursing facilities and correctional treatment centers
- California Department of Public Health (CDPH) – Public swimming pools, organized camps, and food establishments
- California Energy Commission – Natural resource conservation in buildings
- State Historical Building Safety Board – Designated historical buildings and sites
- Department of Food and Agriculture – Meat, poultry and dairy processing plants
- Board of State and Community Corrections – Local detention facilities
- Department of Water Resources – Water conservation, floodplain management, life safety and flood resilient construction
- California State Library – State libraries
- Department of Consumer Affairs – Barber and beauty shops, pharmacies, acupuncture clinics, veterinary hospitals, insulation and structural standards related to pest control
- California State Land Commission – Marine oil terminals

This bill would, in part, require the BSC to adopt specific building standards related to retail food facilities (e.g. restaurants) that the author and sponsor believe will ease regulatory burdens and cut costs for small business owners, many of whom the author asserts are people of color.

California Retail Food Code. According to the CDPH, "The portion of the California Health and Safety Code known as the California Retail Food Code contains the structural, equipment, and operational requirements for all California retail food facilities. Provisions of the California Retail Food Code are primarily enforced by 62 local environmental health regulatory agencies.

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[1] California Building Standards Commission Frequently Asked Questions

The California Department of Public Health, Food and Drug Branch, plays a supporting role in the enforcement of the California Retail Food Code by providing technical expertise to evaluate processes and procedures and to answer technical and legal inquiries for local agencies, industry and consumers."[2] The California Food Code's purpose is to prevent and provide safeguards to minimize foodborne illness, protect the health of the employees, ensure the safety of food, require the use of nontoxic and cleanable equipment, and specify the level of sanitation necessary for food facilities.[3]

As noted in the Assembly Health Committee of this bill:

> The CRFC is modeled after the federal Food and Drug Administration's (FDA) Model Food Code (Food Code), which is updated every four years to enhance food safety laws based on the best available science. Between each four-year period, the FDA makes available a Food Code Supplement that updates, modifies, or clarifies certain provisions. The Food Code assists food control jurisdictions at all levels of government by providing them with a scientifically sound technical and legal basis for regulating the retail and food service segment of the industry, such as restaurants, grocery stores, and institutions like nursing homes. Forty-eight states and territories have adopted food codes patterned after the Food Code, representing 80% of the US population.

This bill would revise several provisions in the CRFC to allow above-ground grease traps to be installed in kitchens, increase the size of passthrough windows and delete the requirement that they be equipped with an air curtain device, relax wall and ceiling finish requirements in beverage preparation areas and employee restrooms, and clarifies overhead protection requirements for temporary food facilities.

Current Related Legislation.

AB 2233 (Schiavo) requires the Division of the State Architect to propose building standards for adoption that would increase the number of ambulatory accessible toilet stalls required to be provided for patrons. *AB 2233 is currently pending in this committee.*

ARGUMENTS IN SUPPORT:

As the sponsor of this bill, the **Independent Hospitality Association** writes in support:

> This bill will provide relief to California's small businesses by implementing various solutions to help reduce the burden of "dead rent." It will reduce unnecessary regulatory burdens by updating regulations that have yet to account for changes in technology, or that are unclear and do not increase worker or customer safety. Including allowing small neighborhood restaurants to operate without a drinking fountain. Drinking fountain requirements are not only redundant for restaurants that are designed for food and beverage service, but can also cost $10,000, which can often be as high as 10% of a small business's opening cost. Allowing a small business to operate without the requirement for separate gender restrooms and instead allowing gender-neutral restrooms. Separate-gender restroom policies are outdated and expensive, given that a new restroom can

[2] Retail Food Program
[3] California Retail Food Code

amount to $25,000 - a price many small businesses cannot afford. And providing clarity to small businesses when conducting outdoor community events utilizing food preparation, food storage and ware washing areas by providing clarification on what overhead protective measures are needed.

IMPLEMENTATION ISSUES:

Designated State Entity. Building standards related to retail food establishments fall outside the scope of the BSC's authority. The author may wish to consider whether another entity would be better suited to propose the types of building standards contemplated by this bill.

Prescriptiveness. The consideration, development, and adoption of building standards is a deliberative process subject to Administrative Procedures Act and other laws that enable standards-developing agencies to use their authority and expertise to develop standards as well as facilitate transparency and public input. By requiring the BSC to adopt prescriptive building standards, this bill may render that deliberative process meaningless as it would have no bearing on the outcome. Moreover, any future modifications would require legislative authorization. The author may wish to amend to bill instead require the BSC to consider adopting the building standards enumerated in this bill.

AMENDMENTS:

At the author's request, amend the bill as follows:

On page 4, after line 7:

(1) Authorizes a business establishment ~~with less than 150 square feet of seating area or~~ that is takeout only to operate without providing customer restrooms.

On page 4, after line 29:

(b) For the purposes of this section, "alcohol" has the same meaning *as* defined in Section 23003 of the Business and Professions Code.

On page 5, after line 4:

(1) An aboveground grease trap installed under a three-compartment ~~sink.~~ *sink under the following conditions:*

(A) A structural hardship can be determined preventing the grease trap from being installed in an area not designated for food preparation or storage or a utensil handling area.

(B) The site can provide a cleaning or maintenance plan that indicates how and when this grease trap will be accessed for service to prevent any cross contamination of food or food contact surfaces.

(C) The site can provide procedures that will be taken to properly clean and sanitize the area following servicing.

On page 5, after line 12:

114259.2. *(a)* Passthrough window service openings shall be limited to 432 *that are limited to no more than 216* square inches each. The service openings shall not be closer together than 18 inches. Each opening shall *inches and shall* be provided with a solid or screened ~~window, equipped with a self-closing device.~~ *window that is closed when not in use.* Screening shall be at least 16 mesh per square inch. The counter surface of the service openings shall be smooth and easily cleanable.

(b) A passthrough window service opening of up to 432 square inches is approved if equipped with an air curtain device or equipped with a self-closing device. The counter surface of the service opening shall be smooth and easily cleanable.

(c) A passthrough window service opening that is larger than 432 square inches is approved if equipped with both a self-closing device and an air curtain device. The counter surface of the service opening shall be smooth and easily cleanable.

(d) The enforcement agency may approve alternative passthrough window or other service openings if the proposed alternative can adequately maintain exclusion of vermin or other means of contamination.

On page 5, after line 26:

(1) Walls and ceilings of *bar* areas in which beverages are ~~prepared, or sold or served~~ *sold, served, or dispensed* directly to the consumers, except wall areas adjacent to *bar* sinks and areas where food is prepared.

On page 5, after line 33:

(5) Restrooms that are used exclusively by the employees or consumers, except that the walls and ceilings in the restrooms shall be of a *nonabsorbent and* washable surface.

REGISTERED SUPPORT:

Independent Hospitality Coalition (Sponsor)
All Day Baby
Barra Santos
California Restaurant Association
Central City Association
Council of Infill Builders
Creative Space
Cuernavaca's Grill
Dtla Chamber of Commerce
Found Oyster LLC
Golden Gate Restaurant Association
Inclusive Action for The City
Joint Venture Restaurant Group, INC.
Kitchen Culture Recruiting

Last Word Hospitality
Little Tokyo Service Center
Open Face Food Shop
Pouring With Heart LLC
Public Counsel
Red Dog Saloon LLC
Ronan
Rossoblu
Santa Monica Chamber of Commerce
Shins Pizza
Simi Valley Chamber of Commerce
Smorgasburg Ventures LLC
Superfine
The Copper Room
The Main St. Business Improvement Association
Tropicalia INC
West Hollywood Chamber of Commerce

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2622 (Juan Carrillo) – As Introduced February 14, 2024

SUBJECT: Contractors: exemptions: advertisements.

SUMMARY: Authorizes a person who does not have a contractor's license to both advertise for and perform construction work or a work of improvement if the total cost of labor, materials, and all other items, is less than $5,000.

EXISTING LAW:

1) Establishes the Contractors State License Board (CSLB) under the Department of Consumer Affairs (DCA) to implement and enforce the Contractors State License Law (License Law), which includes the licensing and regulation of contractors and home improvement salespersons. (Business and Professions Code (BPC) §§ 7000 et seq.)

2) Requires any person who advertises or puts out any sign, card, or device that would indicate to the public that they are a contractor, or who causes their name or business name to be included in a classified advertisement or directory under a classification for construction or work of improvement covered under the License Law be subject to the License Law regardless of whether their operations as a builder are exempt. (BPC § 7027)

3) Makes it a misdemeanor for any person to advertise for construction or work of improvement covered by the License Law unless that person holds a valid license from the CSLB, except as specified. (BPC § 7027.1)

4) Permits a person who is not licensed by the CSLB to advertise for construction work or a work improvement covered under the License Law, only if the aggregate contract price for labor, material, and all other items on the project or undertaking is less than $500 and the individual states in the advertisement that the individual is not licensed, as specified. (BPC § 7027.2)

5) Requires the CSLB to issue a citation to a person, if upon inspection or investigation, the registrar has probable cause to believe that the person is acting in the capacity of or engaging in the business of a contractor or salesperson within this state without having a license or registration in good standing to so act or engage. (BPC § 7028.7)

6) States that the License Law does not apply, if the aggregate contract price for labor, materials, and all other items, is less than $500, that work or operation being considered of casual, minor, and inconsequential nature. (BPC § 7048)

7) States that the minor work exemption does not apply in any case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than $500, as specified, and the exemption does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a

contractor or that he or she is qualified to engage in the business of a contractor. (BPC § 7048)

8) States that a person who engages in the business of, or acts in the capacity of a contractor, without having a license in connection with the offer or performance of repairs to a residential or non-residential structure, for damage caused by a natural disaster, for which a state of emergency is proclaimed by the Governor, or a major disaster declared by the president of the United States is punishable by a fine up to $10,000 or by imprisonment. (BPC § 7028.16)

THIS BILL:

1) Authorizes a person who is not licensed pursuant to the License Law to advertise for construction work or a work of improvement covered by the License Law if the aggregate contract price for labor, materials, and all other items on a project or undertaking is less than $5,000 and the person states in the advertisement that they are not licensed by the CSLB.

2) Exempts from the License Law a work or operation on one undertaking or project by one or more contracts, if the aggregate price for labor, materials, and all other items, is less than $5,000, that work or operation being considered of casual, minor, or inconsequential nature.

3) Makes non-substantive and conforming changes.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

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

> In 1998 the legislature saw fit to raise the limit for non-licensed professionals to do handyman work from $300 to $500. In the quarter-century since then a lot has changed, but the cap for handypersons has remained stuck at $500 for labor and materials. The skyrocketing costs of materials since the pandemic has created a market in which even a simple ceiling fan installation can cost $500 and up. Additionally, current market conditions have caused most licensed contractors to turn down smaller jobs, making it difficult or impossible for homeowners with relatively minor projects to find a contractor willing to take the job.
>
> The result of this dynamic is a flourishing black-market where consumers and handypersons are forced to operate outside of the law. This means that there is little recourse or responsibility for the consumer and for the handyperson if something goes wrong. [This bill] is a long over-due update to the exemption that would allow professionals to do handyman work thereby bringing these jobs and consumer transactions back into the legal light.

Background.

The CSLB is responsible for the implementation and enforcement of the License Law, which governs the licensure, practice, and discipline of the construction industry in California. The CSLB issues licenses to business entities and sole proprietors. Each license requires a qualifying

individual (a "qualifier") who directly supervises and controls construction work performed under the license. The qualifying individual must be at least 18 years old, have at least four years of specified work experience, undergo a criminal background check, and pass both a law and business exam as well as a trade-specific exam.[1] Additionally, licensed contractors are required to maintain a contractor's bond and workers' compensation insurance, and pay various fees.[2]

The CSLB currently issues four license types: "A"' General Engineering Contractor license; "B" General Building Contractor license; "B-2" Residential Remodeling Contractor license; and "C" Specialty Contractor licenses of which there are 42 classifications. Each licensing classification (e.g. electrical, drywall, painting, plumbing, roofing, and fencing) specifies the type of contracting work permitted in that classification. Specific license holders are also eligible for Asbestos or Hazardous Substance Removal certifications issued by the CSLB.

Any business or individual who constructs or alters, or offers to construct or alter, any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the CSLB if the total cost of labor, materials, and all other items of one or more contracts on the project is $500 or more. If less than $500, the work is considered "casual, minor or inconsequential," and a license is not required. Known as the "minor work exemption," this exemption does not apply in any case where the construction work is only a part of a larger project, as specified. Nor does the exemption apply to an individual who advertises that they are a licensed contractor.

Contracting for work valued at $500 or more without a license is a misdemeanor, punishable by up to six months in jail and/or up to a $5,000 fine. Moreover, contracting without a license when one is required in a state or federally-declared disaster area can result in felony charges. The CSLB may issue a citation to an unlicensed individual who violates the License Law, but otherwise has very limited enforcement capability.

The threshold for contracting work without a license was last updated in 1998, when SB 2217 (O'Connell) Chapter 633, Statutes of 1998, increased the dollar amount for the exemption from $300 to $500. Until 2004, there was also a statutory requirement that an individual performing work under the $500 exemption threshold notify the consumer that the individual was not a licensed contractor. That requirement was removed in 2004 by SB 1914 (Senate Business and Professions Committee), Chapter 865, Statutes of 2004, because the CSLB has no jurisdiction over unlicensed individuals performing work under the exemption.

Since 1998, the purchasing power of $500 has drastically decreased; $500 in 1998 has the same buying power as $966.37 today.[3] As such, handypersons may be priced out of work that they were once legally allowed to perform. This bill would increase the minor work exemption from $500 to $5,000. According to the author's office, this change provides a pathway for low-income individuals to build wealth.

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[1] Get Licensed to Build Guide (ca.gov)

[2] Fees include an original application fee, currently set at $450, and initial license fee, which ranges from $200 to $350. Additionally, licensees are required to pay renewal fees biennially for active licenses, which currently range from $450 to $700, if paid on time, and every four years for inactive licenses, which currently range from $300 to $500, if paid on time. Reactivating a license currently ranges from $450 to $700. Additional fees may also be assessed based on specific requirements for each license classification or type of business entity.

[3] CPI Inflation Calculator (bls.gov)

Current Related Legislation.

SB 1071 (Dodd) would exempt any applicant or licensee that has no employees from workers compensation insurance requirements, if the applicant or licensee provides both an affidavit to the CSLB affirming they have no employees and adequate proof demonstrating they are operating without employees. *SB 1071 is pending in the Senate Business, Professions, and Economic Development Committee.*

SB 1455 (Ashby) is the sunset review vehicle for the CSLB and will be amended to extend the sunset date for the CSBL and enact technical changes, statutory improvements, and policy reforms in response to issues raised during the CSLB's sunset review oversight process. *SB 1455 is pending in the Senate Business, Professions, and Economic Development Committee.*

Prior Related Legislation.

AB 1874 (Smith) of 2022 would have authorized a person who is not licensed as a contractor to advertise for construction work or a work of improvement if the total cost of labor is less than $500 and the person states in the advertisement that they are not a licensed contractor. *AB 1874 failed passage in this committee.*

AB 899 (Cunningham) of 2021 would have required the CSLB to annually adjust the $500 amount by regulation to reflect the rate of inflation, as measured by the Consumer Price Index or other method of measuring the rate of inflation that the CSLB determines is reliable and generally accepted. *AB 899 died pending a hearing in this committee.*

SB 304 (Archuleta) of 2021 would have increased from $500 to $1,000 the value of a construction contract that is not subject to regulation under the License Law, so long as the nature of the work performed is considered casual, minor, or inconsequential. *SB 304 bill died in Senate Appropriations.*

SB 1189 (McGuire), Chapter 364, Statutes of 2020, created a B-2 Residential Remodeling Contractor license as a new classification of contracting business and revised the definition of home improvement.

SB 315 (Lieu), Chapter 392, Statutes of 2014, prohibited a person who is not licensed as a contractor to advertise for construction work that would cost more than $500, including labor and materials.

AB 2217 (O'Connell), Chapter 633, Statutes of 1998, increased from $300 to $500 the value of a construction contract that is not subject to regulation by the CSLB, so long as the nature of the work performed is "casual, minor, or inconsequential."

ARGUMENTS IN SUPPORT:

The **Institute for Justice** writes in support of this bill:

> This bill would allow unlicensed contractors to take on more small-scale projects without the burden of licensing requirements. For many low-income workers and individuals from marginalized or underrepresented communities, obtaining a contractor's license can be a daunting and expensive process. To qualify for licensure, applicants must have

> documented in the previous 10 years at least four full years of relevant work experience and take an examination. An applicant must additionally purchase a $25,000 contractor's bond, which can cost some individuals over $2,000 a year to maintain. By significantly increasing the contract price threshold, [this bill] would offer a pathway for these unlicensed contractors to gain valuable experience, earn money, and establish themselves in the industry without the initial financial burden of licensure. Moreover, expanding the licensing exemption would provide consumers with more affordable options for essential home improvement, repair, and maintenance services. In a state where homeownership costs are skyrocketing, many Californians are struggling to afford basic upkeep and repairs for their homes. By allowing unlicensed contractors to take on smaller projects valued up to $5,000, homeowners will have greater access to affordable and reliable services, which would alleviate some of the financial burdens associated with homeownership.

ARGUMENTS IN OPPOSITION:

The **California Chapters of the National Electrical Contractors Association, California Legislative Conference of the Plumbing, Heating and Piping Industry, and the California Association of Sheet Metal and Air Conditioning Contractors** collectively write in opposition:

> This bill would undermine existing consumer protections by allowing unlicensed, unbonded, and uninsured contractors to perform work up to $5,000 in any home or business. Routine plumbing, electrical and HVAC services that require skills, training, special safety equipment and knowledge will now fall below this threshold. In these situations, the consumer is exposed to significant risk of property damage, fraud and economic harm from unlicensed contractors with little recourse for corrective action through the CSLB. Furthermore, the CSLB licensed contractors who have successfully demonstrated industry knowledge, have obtained bonds, and carry workers compensation insurance are also harmed by [this bill]. Under this bill, these licensed contractors would be forced to compete in the open marketplace on price with unlicensed contractors who don't share the same knowledge, investments in equipment or normal expenses related to bonds and workers compensation insurance to protect their customers.

POLICY ISSUE(S) FOR CONSIDERATION:

Consumer Harm. By increasing the "minor work exemption" to $5,000, this bill would increase the financial risk that could be assumed by a consumer. In addition, increasing the threshold as proposed may also expand the scope of work that may be performed without a contractor's license. Licensure demonstrates competency via passage of state licensing exams and proof of qualifying work experience, so there is less assurance that the work performed will be satisfactory. Further, while the CSLB has the ability to hold licensed contractors accountable for contracted work, there is little the CSLB can do for consumers if an unlicensed individual fails to complete a project or the completed work is unsatisfactory. Between 2015 and 2020, approximately 26% of complaints from residential consumers stemmed from construction work valued between $501 and $5,000. Whereas licensed contractors are required to maintain a contractor's bond, unlicensed individuals are not. In a majority of cases involving unlicensed work, a consumer's only means of recourse being to seek restitution through the civil courts—an option that may not be feasible for every consumer. Additionally, if the handyperson does not

have workers' compensation insurance, the consumer may be held liable for injuries sustained during the work by the unlicensed contractor or their employees.

Employee Protection. Increasing the "minor work exemption" to $5,000 could increase scope of the work that an unlicensed person could do to include larger projects that would require employees. However, it is unclear whether an unlicensed individual can obtain a workers' compensation insurance policy without a contractor's license. Workers' compensation insurance provides several benefits including coverage of medical expenses, temporary and permanent disability benefits (payments for lost wages), supplemental job displacement benefits, and death benefits—none of which an employee would be entitled to if the unlicensed individual does not have workers' compensation insurance.[4]

Unfair Competition for Licensed Contractors. There is considerable time and expense in obtaining and maintaining a contractor's license. Consequently, this bill would create an unfair advantage if unlicensed individuals are able the same services as a licensed contractor but at a lower cost.

License Renewal. Licensed contractors may choose to forgo license renewal if they can perform the same work under the "minor work exemption," the result of which may be more unlicensed activity.

AMENDMENTS:

To address concerns related to consumer harm, employee protection, unfair competition, and unlicensed activity, the author has agreed to amend the bill as follows:

On page 2, after line 2:

> 7027.2. *(a)* Notwithstanding any other provision of this chapter, a person who is not licensed pursuant to this chapter may advertise for construction work or a work of improvement covered by this chapter only if the aggregate contract price for labor, material, and all other items on a project or undertaking is less than ~~five~~ *one* thousand dollars ~~($5,000),~~ *($1,000), as adjusted pursuant to subdivision (b),* and the person states in the advertisement that the person is not licensed under this chapter.
>
> *(b) Commencing on January 1, 2026, and annually thereafter, the board shall adjust the amount specified in subdivision (a) to reflect the rate of inflation, as measured by the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.*

On page 2, after line 12:

> 7048. (a) This chapter does not apply to a work or operation on one undertaking or project by one or more contracts, if the aggregate contract price for labor, materials, and all other items, is less than ~~five~~ *one* thousand dollars ~~($5,000),~~ *($1,000), as adjusted pursuant to subdivision (d),* that work or operation being considered of casual, minor, or inconsequential ~~nature.~~ *nature, and the work or operation meets all of the following:*

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[4] California Department of Industrial Relations Division of Workers' Compensation FAQs For Employees

(1) The work or operation does not require a building permit.

(2) The work or operation does not include one of the following trades or crafts:

(A) C-16 Fire Protection.

(B) C-22 Asbestos Abatement.

(C) C-57 Well Drilling.

(3) The person performing the work or operation does not do any of the following:

(A) Make structural changes to load bearing portions of an existing structure, including, but not limited to, footings, foundations, load bearing walls, partitions, and roof structures.

(B) Install, replace, substantially alter, or extend electrical, mechanical, or plumbing systems or their component parts, or the mechanisms or devices that are part of those systems.

(b) This section does not apply in a case wherein the work of construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than ~~five~~ *one* thousand dollars ~~($5,000)~~ *($1,000), as adjusted pursuant to subdivision (d),* for the purpose of evasion of this chapter or otherwise.

(c) This section does not apply to a person who ~~advertises~~ *does either of the following:*

(1) Advertises or puts out a sign or card or other device that might indicate to the public that the person is a contractor or that the person is qualified to engage in the business of a contractor.

(2) Employs another person to perform, or assist in performing, the work or operation.

(d) Commencing on January 1, 2026, and annually thereafter, the board shall adjust the amount specified in subdivisions (a) and (b) to reflect the rate of inflation, as measured by the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

REGISTERED SUPPORT:

California Association of Realtors
Institute for Justice

REGISTERED OPPOSITION:

California Association of Sheet Metal & Air Conditioning Contractors National Association
California Landscape Contractors Association
California Legislative Conference of Plumbing, Heating & Piping Industry
California State Association of Electrical Workers
California State Pipe Trades Council
Coalition of California Utility Employees
National Electrical Contractors Association
State Building & Construction Trades Council of California
Western States Council Sheet Metal, Air, Rail and Transportation

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3029 (Bains) – As Amended April 11, 2024

NOTE: This bill is double referred and previously passed the Assembly Committee on Public Safety with a vote of 8-0-0.

SUBJECT: Controlled substances.

SUMMARY: Adds xylazine and its derivatives to Schedule III of California's Uniform Controlled Substances Act (UCSA), contingent upon it receiving the same designation under the federal Controlled Substances Act (CSA); requires a coroner or medical examiner to, under certain circumstances, conduct a toxicology analysis when confirming the manner of death, and if suspected to be due to drug overdose, requires a test for the presence of specified substances including xylazine, fentanyl, and ketamine.

EXISTING LAW:

1) Provides for the regulation of veterinary medicine under the Veterinary Medicine Practice Act and prohibits the practice unlicensed of veterinary medicine. (Business and Professions Code (BPC) §§ 4800-4917)

2) Establishes the Veterinary Medical Board (VMB) within the Department of Consumer Affairs (DCA) to license and regulate the veterinary medicine profession. (BPC § 4800)

3) Makes it unlawful to practice veterinary medicine in California unless the individual holds a valid, unexpired, and unrevoked license issued by the VMB. (BPC § 4825)

4) Provides that a person practices veterinary medicine when they, among other things, administer a drug or medicine for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals. (BPC § 4826(c))

5) Prohibits a controlled substance, or xylazine, from being ordered, prescribed or administered unless the veterinarian has performed and in-person physical examination of the animal patient or made appropriate and timely visits to the premises where the animal patient is kept. (BPC § 2826.6(i)(5))

6) Authorizes a drug, including a controlled substance, to be administered by a registered veterinary technician or a veterinary assistant under specified conditions. (BPC § 4836.1)

7) Mandates that a veterinary assistant must obtain a valid veterinary assistant controlled substance permit furnished by the VMB. (BPC § 4836.1(b)(1)

8) Requires coroners to determine the manner, circumstances, and cause of death in the following circumstances:

    a) Violent, sudden, or unusual deaths;

b) Unattended deaths;

c) Known or suspected homicide, suicide, or accidental poisoning;

d) Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration, or sudden infant death syndrome;

e) Deaths in whole or in part occasioned by criminal means;

f) Deaths known or suspected as due to contagious disease and constituting a public hazard;

g) Deaths from occupational diseases or occupational hazards;

h) Deaths where a reasonable ground exists to suspect the death was caused by the criminal act of another; and,

i) Deaths reported for inquiry by physicians and other persons having knowledge of the death.

(Government Code (GOV) § 27491)

9) Grants the coroner discretion to determine the extent of the inquiry required to determine the manner, circumstances and cause of death, and permits a coroner to authorize a physician to sign the certificate of death if that physician has sufficient knowledge to reasonably state the cause of a death occurred under natural circumstances. (GOV § 27491(b))

10) Requires the California Department of Public Health (CDPH) to establish an Internet-based electronic death registration system for the creation, storage, and transfer of death registration information. (Health & Safety Code (HSC) § 102778)

11) Establishes the Uniform Controlled Substances Act in California, which divides controlled substances into five schedules ranging with the most serious and heavily controlled substances, classified as Schedule I, to the least serious and most lightly controlled substances, classified as Schedule V. (HSC §§ 11053 – 11058)

12) Authorizes specified healing arts professionals licensed under the DCA to prescribe, furnish, or administer controlled substances to a patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance, and only in the quantity and for the length of time as are reasonably necessary. (HSC § 11210)

13) Authorizes persons who, under applicable federal laws or regulations, are lawfully entitled to use controlled substances for the purpose of research, instruction, or analysis, to obtain and use specified controlled substances upon registration with and approval by the California Department of Justice (DOJ). (HSC § 11212)

14) Prohibits a veterinarian from prescribing, administering, or furnishing a controlled substance for themselves or any other human being. (HSC § 11240)

15) Mandates that a prescription written by a veterinarian shall state the kind of animal for which it is ordered, and the name and address of the owner or person having custody of the animal. (HSC § 11241)

16) Clarifies that no prescription is required in the case of the sale of controlled substances at retail pharmacies by pharmacists to any of the following:

    a) Physicians;

    b) Dentists;

    c) Podiatrists;

    d) Veterinarians;

    e) Pharmacists, under specified conditions, or;

    f) Optometrists.

    (HSC § 11250(a))

17) Clarifies that no prescription is required in the case of sales at wholesale of controlled substances by pharmacies, jobbers, wholesalers, and manufacturers to any of the following:

    a) Pharmacies;

    b) Physicians;

    c) Dentists;

    d) Podiatrists;

    e) Veterinarians;

    f) Other jobbers, wholesalers or manufacturers;

    g) Pharmacists, under specified conditions, or;

    h) Optometrists.

    (HSC § 11251)

18) Makes possession of a non-narcotic Schedule III controlled substance a misdemeanor subject to imprisonment in county jail for up to one year, and a felony in cases where the person has one or more prior convictions for an offense classified as a violent felony or one that requires registration as a sex offender. (HSC § 11377(a))

19) Makes possession for sale of a non-narcotic Schedule III substance a felony subject to imprisonment in county jail for 16 months, 2 years or 3 years. (HSC § 11378)

20) Makes trafficking of a non-narcotic Schedule III substance a felony subject to imprisonment in county jail for 2, 3, or 4 years. (HSC § 11379)

21) Makes manufacturing, producing, or preparing a non-narcotic Schedule III controlled substance either directly or indirectly by chemical extraction or independently by means of chemical synthesis a felony punishable by imprisonment in county jail for 3, 5, or 7 years and a fine of up to $50,000. (HSC § 11379.6(a))

22) Makes offering to manufacturing, producing, or preparing a non-narcotic Schedule III controlled substance either directly or indirectly by chemical extraction or independently by means of chemical synthesis a felony punishable by imprisonment in county jail for 3, 4, or 5 years. (HSC § 11379.6(e))

THIS BILL:

1) Requires a coroner or medical examiner, or their deputy, to conduct a toxicology analysis or drug screening if it is required to determine or confirm the cause of death, as specified.

2) Requires a coroner or medical examiner to conduct a toxicology analysis or drug screening to test for the presence of fentanyl, fentanyl analog, ketamine, gamma hydroxybutyric acid, xylazine, or other emerging adulterants as determined by the CDPH.

3) Requires a toxicology analysis or drug screening to be reported to the CDPH.

4) Makes xylazine and its derivatives a Schedule III controlled substance under California's UCSA, contingent upon the federal government making xylazine a Schedule III substance under the federal CSA.

5) Provides that xylazine is not treated as a Schedule III controlled substance under the following circumstances:

    a) Dispensing, prescribing, or administering a drug containing xylazine to a nonhuman species, as specified;

    b) Dispensing, prescribing, or administering xylazine to a nonhuman species, as specified;

    c) The manufacturing, distribution, or use of xylazine as an active pharmaceutical ingredient for manufacturing an animal drug, as specified;

    d) The manufacturing, distribution or use of a xylazine bulk chemical for pharmaceutical compounding by licensed pharmacists, as specified, or by veterinarians in the event that xylazine as an active pharmaceutical ingredient, as specified, becomes unavailable.

    e) Any other use approved or permissible under the Federal Food, Drug, and Cosmetic Act.

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

COMMENTS:

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

> "Xylazine is being mixed with other drugs sold on the streets, most notably fentanyl, under the street name 'tranq'. Since xylazine is not an opioid, the standard overdose treatments like naloxone or Narcan can be less effective or even fail. California lacks policy to fully track

xylazine's growing role in our opioid crisis, much less mitigate its dangers. AB 3029 will reclassify xylazine as a Schedule III controlled substance while protecting its legitimate uses in veterinary medicine, and require coroners and medical examiners to test for xylazine, fentanyl and other drugs in suspected overdose deaths. This bill is an important step toward containing a rising threat before it becomes a bigger problem."

Background.

Overview of the Opioid Crisis. Opioids are a class of drugs prescribed and administered by health professionals to manage pain. The term "opioid" is commonly used to describe both naturally occurring opiates derived from the opium poppy as well as their manufactured synthetics. Common examples of prescription opioids include oxycodone (OxyContin, Percocet); hydrocodone (Vicodin, Norco, Lorcet); codeine; and morphine. Heroin is also an opioid, but is ineligible for lawful prescription in the United States.

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

In October of 2017, the White House declared the opioid crisis a national public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country, a declaration that was most recently renewed in March of this year. According to the Centers for Disease Control and Prevention (CDC), as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28 percent increase over the previous year. The CDPH estimated that nearly 2,000 Californians died of an opioid overdose in 2016.

The nature of the country's opioid crisis has evolved over the past several years as illicitly manufactured fentanyl has replaced prescribed pain management medication as the dominant source of opioid-related overdoses. Fentanyl is a synthetic opioid that is up to 100 times stronger than morphine. Fentanyl is often pressed into pills to imitate more common (and less potent) pharmaceutical products, and other drugs can be unknowingly "laced" with fentanyl. Over 70,000 Americans died of a fentanyl overdose in 2021, including 5,961 deaths in California – approximately 83% of all opioid-related deaths in California. In response to this growing epidemic, Governor Newsom released a "Master Plan for Tackling the Fentanyl and Opioid Crisis" in 2023, that among other things, dedicated significant funding toward fentanyl prevention and detection, recovery programming, and stronger enforcement measures.

Federal vs. State Controlled Substances Scheduling. The federal Controlled Substances Act classifies a number of drugs and chemicals into one of five schedules. Drugs falling within Schedules II through V may be prescribed only by health practitioners in possession of a federal Drug Enforcement Agency (DEA) registration and are ranked according to the drug's potential for abuse, with lower numbered schedules representing drugs with a higher risk of abuse or dependence. Schedule III drugs, substances, or chemicals are those defined as having a moderate potential for physical and psychological dependence, but that have some form of

federally-recognized medical value. According to the DEA, examples of other Schedule III substances include Tylenol with codeine, ketamine, anabolic steroids, and testosterone.

California also has its own schedule of controlled substances under the Uniform Controlled Substances Act. While the federal and state schedules are typically aligned in regards to how medications are classified, there have been conflicts between the federal and state acts, typically when the federal government reschedules a substance or exempts a specific drug from the Controlled Substances Act. When this occurs, statute in California typically must be legislatively amended to reconcile the differences.

Professionals of the healing arts that are licensed by various medical boards under the DCA are permitted to administer, prescribe, and dispense controlled substances under varying degrees of control, and subject to rigorous tracking and reporting requirements. Specific to veterinary medicine, licensed veterinarians are permitted to order, prescribe, and administer controlled substances, or xylazine, so long as they perform an in-person examination of the patient and confirm such a substance is medically necessary. In addition, registered veterinary technicians permitted by the Veterinary Medical Board (VMB), and veterinary assistants that possess a valid controlled substances permit issued by the VMB, may obtain and administer a controlled substance to a patient. Importantly, law expressly prohibits veterinarians from ordering, prescribing or furnishing a controlled substance to themselves or any human.

Xylazine in Veterinary Medicine. Xylazine is a drug approved by the federal Food and Drug Administration for veterinary use for a wide array of purposes, such as sedation, anesthesia, and pain relief for many animal species, particularly livestock and horses. Specifically, xylazine binds and blocks catecholamine receptors that would otherwise spike adrenaline and trigger a "fight or flight" response in the body. When administered to an animal, xylazine serves as a strong and reliable sedative for veterinarians. Examples of xylazine's uses in the field include keeping a horse or bovine animal calm during the cleaning or suture of a wound, or providing relief in an emergency situation such as a musculoskeletal injury in a horse. It is also a common zoological medicine in care for exotic species. It can be administered on its own, or in conjunction with butorphanol—a schedule IV controlled opioid—to strengthen the sedative effect for certain animal patients. Additionally, xylazine can be administered in conjunction with ketamine or telazol—both schedule III substances—to induce anesthesia.

Veterinarians note that xylazine is not only an important drug for the health of the animal patient, but is critical to the safety of the veterinarian and assisting staff as well. Xylazine is mostly used in equine, bovine, and exotic animal patients, a category which poses risk to the doctor if the patient becomes agitated or uncontrollable. For example, xylazine is used by equine veterinarians as part of administering arthritic care to prevent the horse from kicking the veterinarian.

The veterinary community has largely been supportive of efforts to address illicit xylazine usage and better regulate it as a controlled substance. In March of 2023, the American Veterinary Medical Association (AVMA) joined as a key supporter of the Combating Illicit Xylazine Act currently under consideration in Congress, which, similar to this bill, would categorize xylazine as a Schedule III controlled substance under the federal CSA, while ensuring exemptions for legitimate veterinary uses.

Xylazine as a "street drug". In recent years, xylazine has seen a sharp increase in popularity in the illicit drug market. Sometimes referred to as "Tranq" in illicit drug circles, xylazine is typically mixed with other narcotics and drugs such as fentanyl, cocaine, and heroin. Effects of

xylazine on humans includes difficulty breathing, dangerously low blood pressure, extremely slowed heart rate, and an increase in abscesses and ulceration of the skin that can become necrotic. Research from the DEA demonstrates wide variance in toxicity among humans, with fatal dosages ranging from trace amounts to as high as 16,000 nanograms-per-milliliter[1]. Critically, naloxone—the common antidote to reverse opioid overdoses, also known under the popular brand name Narcan—has no effect on xylazine, and there is currently now known antipode for xylazine that is safe for humans.

According to data from CDC, the rate of xylazine overdose deaths in 2021 was 35 times higher than the rate found in 2018, with increased usage demonstrated across all age, sex, and race demographics. Additional CDC research indicates that, among 21 jurisdictions, the monthly percentage of illicitly manufactured fentanyl (IMF) involved deaths in which xylazine was also detected increased 276% between January 2019 and June 2022. DEA laboratory results show a sharp increase in xylazine detected in the illicit drug market across all four U.S. census regions, with instances in the West increasing 112% between 2020 and 2021. Demonstrably, there is a quickly growing epidemic related to xylazine abuse in the illicit drug market.

In April of 2023, the Biden-Harris Administration designated fentanyl combined with xylazine as an emerging threat to the United States, convening an interagency working group to develop a national response plan to the growing threat xylazine poses to public health. This response plan, released in July 2023, focused on six "pillars of action": (1) testing, (2) data collection, (3) evidence-based prevention, harm reduction, and treatment, (4) supply reduction, (5) scheduling, and (6) research. The response plan called for the federal government to "progress toward decisions on possible regulatory actions under [the CSA], including scheduling of xylazine while simultaneously maintaining the legitimate supply of xylazine in veterinary medicine, and prioritizing facilitation of access to xylazine for research purposes.". In parallel, the 118th Congress is currently considering legislation that would add xylazine to Schedule III of the federal CSA, with similar exemptions contained in this bill for legitimate veterinary use. Further, the press release announcing the response plan called on local law enforcement and elected officials across the country to "coordinate with their public health colleagues in order to enhance the efficacy of their efforts to reduce and disrupt the illicit supply chain and go after traffickers."

In response, several states across the nation have taken action to combat the spread of illicit xylazine abuse. According to research compiled by the National Governors Association, most states have engaged in a communication and public awareness plans to inform the public of the increasing threat of xylazine, and many are considering legislation or other rulemaking actions to strengthen state regulations concerning xylazine. Ohio and Pennsylvania have taken executive action to classify xylazine as a Schedule III controlled substance under their respective laws, while West Virginia passed state legislation placing it on Schedule IV, and Florida has existing state law establishing xylazine as Schedule I substance.

In November of 2023, Governor Newsom issued a press release calling on legislation to prevent illegal xylazine use and distribution, building upon his "Master Plan for Tackling the Fentanyl and Opioid Crisis" released earlier that same year. In response to the growing risk illicit xylazine poses to public health, and the urge for California to proactively respond to the crisis, the author has put forward this bill to better regulate, track, and ideally reduce xylazine use in the state.

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[1] Drug Enforcement Administration (DEA), Diversion Control Division; Xylazine Report; November 2022

Current Related Legislation.

SB 1502 (Ashby & Berman) would add xylazine to Schedule III of the state's Uniform Controlled Substances Act. *This bill is pending in the Senate Appropriations Committee.*

AB 2136 (Jones-Sawyer) would exclude equipment, products, and materials that are designed for use or marketed for use in testing or analyzing a controlled substance from the definition of "drug paraphernalia" under the Uniform Controlled Substances Act. *This bill is pending in the Assembly Public Safety Committee.*

Prior Related Legislation.

AB 1399 (Friedman), Chapter 475, Statutes of 2023 expanded the authority of a licensed veterinarian to establish a veterinarian-client-patient relationship and practice veterinary medicine through the use of telehealth.

AB 1885 (Kalra), Chapter 389, Statutes of 2022 authorized a veterinarian to recommend the use of cannabis on an animal for potential therapeutic effect or health supplementation purposes.

AB 2215 (Kalra), Chapter 819, Statutes of 2018, among other things, prohibited the VMB from disciplining, or denying, revoking, or suspending the license of, a licensed veterinarian solely for discussing the use of cannabis on an animal for medicinal purposes, absent negligence or incompetence.

AB 2589 (Bigelow), Chapter 81, Statutes of 2018 exempted human chorionic gonadotropin (hCG) from the regulations associated with Schedule III controlled substances when possessed, sold to, purchased by, transferred to, or administered by a licensed veterinarian, or a licensed veterinarian's designated agent, exclusively for veterinary use.

ARGUMENTS IN SUPPORT:

This bill is supported by the **California Veterinary Medical Association (CVMA).** According to CVMA: "While AB 3029 will add xylazine to California's list of controlled substances as a schedule III drug, it does so by also incorporating language to help ensure that veterinarians will be able to maintain vital access to xylazine for use in legitimate veterinary practices and procedures that benefit our animal patients… The CVMA is grateful to Dr. Bains and her staff for being sensitive to the needs of the veterinary profession and for being receptive to suggestions in bill language that will balance public protection with appropriate provisions for veterinary access in regard to xylazine."

REGISTERED SUPPORT:

California Veterinary Medical Association
Peace Officers Research Association of California (PORAC)

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3167 (Chen) – As Amended March 21, 2024

NOTE: This bill was double referred to the Assembly Committee on Higher Education, where it passed 11-0-0.

SUBJECT: California Private Postsecondary Education Act of 2009: highly qualified nonprofit institution.

SUMMARY: Authorizes a highly qualified nonprofit institution, as defined, to register with the Bureau for Private Postsecondary Education (BPPE or bureau) by paying a registration fee and complying with specified requirements for registration.

EXISTING LAW:

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

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

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

4) Requires the BPPE to adopt regulations establishing minimum operating standards for private postsecondary educational institutions. (EDC § 94885)

5) Prohibits a person from opening, conducting, or doing business as a private postsecondary educational institution in this state without obtaining an approval to operate from the bureau. (EDC § 94886)

6) Allows a public institution of higher education that is operated by another state, and that maintains a physical presence in California to apply for an approval to operate from the bureau. (EDC § 94949.8)

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

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

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

10) Exempts from the Act institutions that meet specified criterion, including institutions that are accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges. (EDC § 94874)

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

12) Defines "independent institutions of higher education" as nonpublic higher education institutions that grant undergraduate degrees or graduate degrees and are accredited by an agency recognized by the United States Department of Education. (EDC § 66010(b))

13) Authorizes an independent institution of higher education that is except due to its accreditation status to execute a contract with the bureau for the bureau to review and, as appropriate, act on complaints concerning the institution. (EDC § 94874.9(b))

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

15) Requires an out-of-state private postsecondary educational institution to register with the bureau, pay a fee, provide specified information, and comply with certain reporting requirements. (EDC § 94801.5)

16) Prohibits institutions that are operating in this state and subject to approval or registration requirements from engaging in specified business practices. (EDC § 94897)

17) Specifies that an institution, as described, is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets specified provisions. (34 Code of Federal Regulations § 600.9)

THIS BILL:

1) Authorizes a highly qualified nonprofit institution to register with the BPPE, pay a fee as specified, and comply with all of the following:

    a) The institution shall provide the BPPE with all of the following information, as applicable, for consideration of initial registration by the BPPE as specified:

        i) Evidence of institutional accreditation;

        ii) Evidence that the institution is approved to operate in the state where the institution maintains its main administrative location;

        iii) The agent for service of process, as specified;

        iv) A copy of the institution's catalog and, if the institution uses enrollment agreements, a copy of a sample enrollment agreement;

v) Whether or not the institution, or a predecessor institution under substantially the same control or ownership, had its authorization or approval revoked or suspended by a state or by the federal government, or, within five years before submission of the registration, was subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid, or is subject to such an action that is not final and that was ongoing at the time of submission of the registration;

vi) Whether or not the institution, or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution, had been subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency within five years before submitting the registration. If so, the institution shall provide the BPPE a copy of the operative complaint with the registration;

vii) Whether or not the institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or has had its accreditation revoked or suspended within the five years before submitting the registration;

viii) Whether or not the institution, within five years before submitting the registration, has settled, or been adjudged to have liability for, a civil complaint alleging the institution's failure to provide educational services, including a complaint alleging a violation of Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.) or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than two hundred fifty thousand dollars ($250,000). The institution will provide the BPPE a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement, and the BPPE shall consider, as specified, all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution; and

ix) Any additional documentation the BPPE deems necessary for consideration in the registration process.

b) When considering whether to approve, deny, or condition initial registration based upon the information provided by an institution, the BPPE will do all of the following:

i) Not consider any individual submission made, as specified, to be solely determinative of the institution's eligibility for registration but, exercising its reasonable discretion, approve, reject, or condition registration based upon a review of all of the information provided, as specified;

ii) Provide an institution with reasonable notice and an opportunity to comment regarding any determination to deny, condition, or reject initial registration before that determination becomes final. After the determination becomes final, the

institution may seek review of the BPPE's decision through an action brought as specified; and,

iii) Require the initial registration, if approved, to memorialize that the institution agrees, as a condition of its registration, to be bound by this section and that its registration may be rejected, conditioned, or revoked for failure to comply with this section, as specified. The agreement shall be signed by a responsible officer of the institution.

c) An institution that is registered with the BPPE and enrolls a student residing in California shall report in writing to the BPPE, within 30 days, the occurrence of any of the following:

i) The institution has its authorization or approval revoked or suspended by a state or by the federal government, or has been subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid;

ii) The institution or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution is subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency. If so, the institution shall provide the BPPE a copy of the operative complaint;

iii) The institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or the accreditation of the institution is revoked or suspended; and,

iv) The institution settles, or is adjudged to have liability for, a civil complaint alleging the institution's failure to provide educational services, including a complaint alleging a violation of Title IX, or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than $250,000. The institution will provide to the BPPE a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement, and the BPPE shall consider, pursuant to subdivision (b), all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution.

d) The requirements of the Student Tuition Recovery Fund (STRF), as specified, and regulations adopted by the BPPE related to the fund, for its students residing in California. These requirements may be waived if the institution places an approved surety bond, or other security in lieu of a bond, on file with the BPPE.

e) The institution will provide disclosures pursuant to the requirements for the Student Tuition Recovery Fund, established in Article 14 (commencing with Section 94923), and regulations adopted by the BPPE related to the fund, or information related to an institutional surety bond or other security in lieu of a bond, as appropriate, for its students residing in California.

2) Specifies that, upon receipt of any of the notifications, as specified, the BPPE will, within 30 days of receiving the notice, request the institution to explain in writing why the institution should be permitted to continue to enroll California residents. If the BPPE, after reviewing the information submitted in response to the request and after consultation with the Attorney General, issues a written finding that there is no immediate risk to California residents from the institution continuing to enroll new students, the institution shall be permitted, pending completion of a review by the BPPE, to continue to enroll new students or the BPPE may, in its discretion, limit enrollments.

3) Specifies that any institution under review, as specified, may have its registration revoked by the BPPE if, after further review, the BPPE issues a written finding that there is a substantial risk posed to California residents by the institution continuing to enroll California residents.

4) Specifies that an institution will have the right to reasonable notice and an opportunity to comment regarding any determination to revoke registration or to limit enrollment before that determination becomes final. An institution may seek review of a BPPE order limiting new student enrollment or revoking registration under this subdivision through an action as specified.

5) Specifies that the BPPE is not prohibited from revoking an institution's registration on any other grounds, as specified.

6) Authorizes any institution whose registration is denied or revoked to reapply for registration after 12 months have elapsed from the date of the denial or revocation of registration.

7) Specifies that a registration with the BPPE pursuant to this section shall be valid for 10 years.

8) Requires the BPPE to develop through emergency regulations effective on and after July 1, 2025, a registration form. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code. These emergency regulations shall become law through the regular rulemaking process on or before January 1, 2026.

9) Requires the BPPE to disclose on its internet website a list of institutions registered pursuant to this section through reasonable means and disclose a designated email address for California residents to send a complaint to the BPPE about an institution registered pursuant to this section. Complaints received through this email address shall be investigated in the same manner as complaints received by the BPPE for institutions approved to operate pursuant to this chapter, but BPPE enforcement in response to such complaints against institutions registered pursuant to this section shall be governed as specified.

10) Specifies that a highly qualified nonprofit institution that has received an approval to operate by means of accreditation before July 1, 2025, may elect to instead register with the BPPE, as specified.

11) Specifies that these provisions will become operative on July 1, 2025.

12) Defines "highly qualified nonprofit institution" to mean an institution that meets all of the following criteria:

    a) The institution is a public institution of higher education, as defined in Section 94858.5, or the institution is exempt from taxation under the Internal Revenue Code and has no insider transactions within the past five years;

    b) For the previous 20 years the institution has not operated as a for-profit institution and has awarded at least 500 degrees each year;

    c) The institution has been accredited by an institutional accrediting agency recognized by the United States Department of Education for at least 10 years that accredits institutions, the majority of which are classified by the United States Department of Education as nonprofit or public; and,

    d) The institution is governed by a board of directors with no directors who hold an equity interest in an institution of higher education.

13) Establishes that a highly qualified nonprofit institution pay a $1,500 registration fee to the bureau.

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by Legislative Counsel.

COMMENTS:

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

> This bill would help high-quality nonprofit universities located in California by reducing burdens on students and colleges. In 2009, the state appropriately set consumer protection rules for vocational schools that enact safeguards for students against fraud. While these rules still make sense for such vocational schools, they now also apply to comprehensive or research schools and graduate schools that merge with California institutions. If we can be assured the schools are high-quality and committed to staying in California, it doesn't make sense to require students to choose a course of study or charge them a fee to ensure these schools don't fraudulently accept their tuition payments. This bill will address these issues while incorporating safeguards to ensure California's students are protected. Some nonprofit colleges and universities in California and nationwide are facing declining enrollment and financial strain. To address this, some have chosen to merge with other partner institutions. With this bill, both California and New York are considering legislative proposals to simplify this process.

Background.

The Bureau for Private Postsecondary Education. The BPPE is responsible for oversight of private postsecondary educational institutions that have a physical presence in California and enforcing the Act, which prohibits false advertising and inappropriate recruiting and requires disclosure of specific information about the educational programs being offered, graduation and job placement rates, and licensing information. Specifically, the Act directs the BPPE to, in part, review and approve private postsecondary educational institutions; establish minimum operating

standards to ensure educational quality; provide an opportunity for student complaints to be resolved; and ensure private postsecondary educational institutions offer accurate information to prospective students about school and student performance. The BPPE also investigates and combats unlicensed activity, conducts research and outreach to students and postsecondary educational institutions, and administers the Student Tuition Recovery Fund.

Student Tuition Recovery Fund and Surety Bonds. The STRF exists to relieve or mitigate economic loss suffered by students enrolled at a non-exempt private postsecondary education institution due to the institution's closure, the institution's failure to pay refunds or reimburse loan proceeds, or the institution's failure to pay students restitution award for a violation of the Act. Students enrolled in institutions that are exempt from, or not covered by the Act are not eligible for STRF.

The STRF is financed by assessments paid by students, collected by institutions, and remitted to the BPPE. Under current law, when the STRF balance exceeds $25 million, the BPPE is required to temporarily reduce the assessment rate to $0.00, effectively stopping collection for STRF. Due to the fund reaching its statutory cap, institutions are currently not required to collect STRF assessment fees from students. Prior to the rate change on April 1, 2024, the assessment rate was $2.50 per $1,000 of institutional charges.[1] For example, a student paying $10,000 dollars in tuition and fees would have paid $25.00 towards the STRF. When the STRF balance drops below $20 million, STRF assessments will resume.

Several states require private postsecondary institutions to post a surety bond as part of their processes for submission of an application for approval to operate. States such as Arizona, Alaska, Florida, Georgia, Maryland, Nebraska, New Mexico, South Carolina, Tennessee, Texas, and Utah all require postsecondary school bonds. During the bureau's prior sunset review, the point was raised that while STRF exists in California to mitigate economic loss suffered by a California students, the statutory limitations on the utilization of STRF funds fail to allow for a broader range of economic relief that may be beneficial to students. For example, STRF does not cover expenses related to the storage, maintenance, and availability of student records or compensation for faculty to remain on a temporary basis to complete instruction through the end of a term or course – expenses that could potentially be covered by an institution's surety bond if required to obtain one. This bill would allow a highly qualified educational institution to fulfill its STRF obligation with a surety bond, which the sponsor says will reduce the financial burden of their students.

Approval to Operate vs. Registration. Private and out-of-state nonprofit institutions with a physical presence in California are currently required to seek an approval to operate, which requires compliance with minimum operating standards and numerous other requirements such as an annual report to the BPPE and the publishing of School Performance Fact Sheets that contain specified information. An approval to operate is valid for five years. Out-of-state public institutions with a physical presence in California are not required to, but may, seek approval to operate from the BPPE so that their students are eligible for federal financial aid.[2] Out-of-state for-profit institutions that want to enroll California students for distance learning (online

[1] STRF Assessment Rate Reduction 2024

[2] Federal law requires for state authorization entitling students to federal financial aid, to have a process for reviewing and action on complaints concerning the institution. With an approval to operate, the BPPE would provide that service for out-of-state public institutions.

programs), are required to register with the bureau. To register, these institutions must pay a fee, provide limited information to the bureau, and pay into STRF. Unlike institutions with an approval to operate, registered institutions are not required to meet minimum operating standards nor adhere to other requirements that come with an approval to operate. Additionally, bureau staff report that while it has the ability to deny or place conditions on a registration, the cost of an appeal is so burdensome that the bureau has yet to do so. Moreover, fear of costly litigation that the bureau cannot afford has also placed the bureau is a difficult position decide between allowing registered institutions to commit minor infractions without consequence or taking more severe measures (e.g. revocation of registration) at the risk of them being overturned through costly litigation.

This bill would establish a nearly identical registration process for "highly qualified nonprofit institutions," as defined. In doing so, this bill would make it easier for highly qualified non-profit institutions such as Northeastern University to operate in California, which the author believes is likely to increase access to higher education programs for first-generation and underrepresented California students.

Prior Related Legislation.

SB 1433 (Roth), Chapter 544, Statutes of 2022, allows, as it pertains specifically to this bill, an out-of-state public institution of higher education, as specified, that maintains a physical presence in this state to apply for an approval to operate from the BPPE.

AB 1344 (Bauer-Kahan), Chapter 520, Statutes of 2019, requires out-of-state institutions to provide information to the BPPE and also authorizes the BPPE to place these out-of-state private postsecondary institutions on a probationary status and revoke authorization to enroll California students.

ARGUMENTS IN SUPPORT:

As the sponsor of this bill, **Northeastern University** writes in support:

> Under current law, high-quality nonprofit institutions with a physical presence in California but which are headquartered outside the state fall into the same regulatory category as private proprietary and vocational schools offering short-term programs. While the CPPEA was established in 2009 to protect students from predatory institutions, it's application today has an outsized effect on high quality non-profit institutions that partner with independent California schools, such as the merger between Northeastern and Mills College. [This bill] would create an alternative registration pathway for institutions such as Northeastern, that meet appropriately high standards, to be considered highly qualified. As the higher education landscape continues to shift amidst a trend toward acquisition, merger, and consolidation, this is an important change to ensure California is not at a competitive disadvantage in attracting high-quality education providers to meet the state's need to develop and retain a highly skilled workforce.

ARGUMENTS IN OPPOSITION:

None on file

POLICY ISSUE(S) FOR CONSIDERATION:

Public Institutions. In 2022, as part of the BPPE's sunset review process, the Legislature required via SB 1433, Chapter 544, Statutes of 2022, out-of-state public universities that have a physical presence in California to obtain an approval to operate from the bureau in order for their students to be eligible to federal financial aid. That requirement was established due to legislative efforts by Arizona State University (ASU), who has a campus in downtown Los Angeles, to be authorized to contract with the bureau for purposes of handling complaints made against ASU—a federal requirement by the U.S. Department of Education for students to be eligible to receive federal financial aid. The Legislature and Administration at that time deemed it most appropriate to require public universities that are operated by another state but have a physical presence in California to seek an approval to operate from the bureau. This bill may unintentionally undo that by allowing public universities that meet the criterion enumerated in this bill to register with the bureau in lieu of seeking an approval to operate. At present, it is uncertain whether ASU would be eligible for registration as provided in this bill. Nonetheless, that policy change appears to be beyond the scope of what the author and sponsor are trying to accomplish in this bill and may warrant its own policy discussion.

IMPLEMENTATION ISSUES:

Inefficiency. Existing law authorizes out-of-state private postsecondary educational institutions who enroll California students for distance learning to register with the bureau. This bill would duplicate that registration process for highly qualified nonprofit institutions, with three key differences. First, the registration process proposed by this bill would allow highly qualified nonprofit institutions to waive STRF requirements by placing an approved surety bond, or other security in lieu of a bond, on file with the bureau. Second, highly qualified nonprofit institutions would be required to re-register with the bureau every 10 years, as opposed to every five years as required of out-of-state private postsecondary educational institutions. Third, as currently defined, "highly qualified nonprofit institutions" captures out-of-state public institutions that meet the same criteria as highly qualified nonprofit institutions. Requiring the bureau to administer duplicative registration processes may not be an efficient use of the bureau's limited resources. Moreover, the bureau reports several challenges with the existing out-of-state registration process that would be replicated in the nearly identical registration process envisioned by this bill.

Cost. Consistent with the existing registration requirements, this bill would require highly qualified nonprofit institutions to pay a $1,500 registration fee. However, highly qualified nonprofit institutions would pay half as much annually as out-of-state private postsecondary educational institutions because they would be required to re-register every 10 years instead of every 5 years. $1,500 over 10 years equates to $150 per year for highly qualified nonprofit institutions to be registered with the bureau. It is unlikely that such a nominal fee would cover the cost of administering a new registration process for highly qualified nonprofit institutions.

AMENDMENTS:

1. To limit the type of institutions that may register with the bureau as provided for by this bill, remove public institutions from the definition of "highly qualified nonprofit institution."

2. For efficiency and cost savings, amend the bill to allow highly qualified nonprofit institutions to register with the bureau via the existing registration process for out-of-state private postsecondary educational institutions, but continue to allow highly qualified nonprofit institutions to fulfill its STRF requirements by placing an approved surety bond, or other security in lieu of a bond, on file with the bureau.

REGISTERED SUPPORT:

Northeastern University (Sponsor)
Association of Independent California Colleges & Universities
The Century Foundation, Inc.

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2164 (Berman) – As Amended April 16, 2024

SUBJECT: Physicians and surgeons: licensure requirements: disclosure.

SUMMARY: Restricts the authority of the Medical Board of California (MBC) to require applicants and licensees to self-disclose conditions or disorders that do not impair their ability to practice medicine safely, including disorders for which they are receiving appropriate treatment.

EXISTING LAW:

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

2) Establishes the MBC, a regulatory board within the Department of Consumer Affairs (DCA) to administer and enforce the Medical Practice Act. (BPC § 2001)

3) Declares that protection of the public shall be the highest priority for the MBC in exercising its licensing, regulatory, and disciplinary functions. (BPC § 2001.1)

4) Provides the MBC with responsibility for various duties and functions, including issuing licenses and certificates under the board's jurisdiction. (BPC § 2004)

5) Requires applicants for licensure under the MBC to submit an application on a form provided by the MBC that contains a legal verification by the applicant certifying under penalty of perjury that the information provided by the applicant is true and correct. (BPC § 2081)

6) Authorizes the MBC to either deny an application for licensure as a physician and surgeon or issue a probationary license, subject to specified conditions and limitations. (BPC § 2221)

7) Authorizes the MBC to establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in their rehabilitation from, their substance use to ensure that the physician and surgeon remains able to practice medicine in a manner that will not endanger the public health and safety and that will maintain the integrity of the medical profession; if established, the MBC must contract for the program's administration with a private third-party independent administering entity pursuant to a request for proposals. (BPC §§ 2340 – 2340.8)

8) Establishes diversion evaluation committees within the Osteopathic Medical Board of California, as a voluntary alternative approach to traditional disciplinary actions, to identify and rehabilitate osteopathic physicians and surgeons whose competency may be impaired due to the use of drugs and alcohol, so that the licensees may be treated and safely returned to the practice of medicine. (BPC §§ 2360 – 2370).

9) Authorizes the MBC's Division of Licensing to prepare and provide electronically or mail to every licensed physician at the time of license renewal a questionnaire containing any questions as are necessary to establish that the physician currently has no disorder that would impair the physician's ability to practice medicine safely. (BPC § 2425)

10) Authorizes, whenever it appears that any person holding a healing arts license, certificate, or permit may be unable to practice their profession safely because the licensee's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. (BPC § 820)

11) Provides that a licensee's failure to comply with an order to undergo an examination shall constitute grounds for the suspension or revocation of the licensee's certificate or license. (BPC § 821)

THIS BILL:

1) Prohibits the MBC from requiring an applicant for a physician's and surgeon's license or a physician's and surgeon's postgraduate training license to disclose either of the following:

   a) A condition or disorder that does not impair the applicant's ability to practice medicine safely.

   b) A condition or disorder for which the applicant is receiving appropriate treatment and which, as a result of the treatment, does not impair the applicant's ability to practice medicine safely.

2) Allows the MBC to require an applicant to disclose participation in a mental health or substance use disorder treatment program, including an impaired practitioner program, resulting from an accusation or disciplinary action brought by a licensing board in or outside of California.

3) Requires the MBC to provide an applicant with information on the availability of a probationary or limited practice license if the applicant discloses that they currently have a condition or disorder that impairs their ability to practice medicine safely.

4) Prohibits the MBC from requiring a licensed physician to disclose any of the information prohibited for applicants for an initial physician's and surgeon's license or postgraduate training license.

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

COMMENTS:

Purpose. This bill is co-sponsored by **Service Employees International Union California (SEIU) State Council** and the **California Medical Association**. According to the author:

> "When our health care providers struggle with substance use disorder and other conditions, we want them to seek out help. During the Medical Board's most recent sunset review, it was brought to my attention that doctors and medical students sometimes feel that they cannot participate in counseling or recovery programs for fear that they would be jeopardizing their license, even if they are confident that they can still practice medicine safely. AB 2164 will make it clear that applicants and licensees only need to disclose disorders or conditions that pose a risk to their patients, and that they will not be punished for getting the assistance they need."

Background.

Medical Board of California. The first Medical Practice Act in California was enacted in 1876. Early iterations of the MBC consisted of members either appointed directly by professional medical societies or who were appointed from lists of names provided by these societies. In 1901, the Act was completely rewritten and a Board of Examinations was established, comprised of nine members; the membership was increased to 11 in 1907. In 1976, significant changes were made to the Act to create MBC much as it exists today, as well as adjustments to MBC's composition. The prior board's 11 members originally included only one non-physician member; the MBC's membership was increased to 19 members, including seven public members. The MBC underwent more structural change in 2008 with the elimination of its Divisions of Licensing and Medical Quality and the creation of a unified board.

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

The MBC is responsible for issuing licenses and certificates to physicians and surgeons. The MBC's licensing program ensures licenses are only issued to applicants who meet legal and regulatory requirements and who are not precluded from licensure based on past incidents or activities. Over the four years preceding its last full sunset review, the MBC received over 29,000 new physician and surgeon applications.

All applicants must obtain fingerprint criminal record background checks from both the Department of Justice and the Federal Bureau of Investigation prior to the issuance of a physician's medical license in California from the MBC. The MBC also queries the National Practitioner Databank, a confidential information clearinghouse created by Congress to improve health care quality, protect the public, and reduce health care fraud and abuse in the United States, which contains a record of disciplinary actions taken by other states and jurisdictions. Over the four years preceding the board's most recent full sunset review, the MBC denied nine applications for licensure as a physician and surgeon based on criminal history that the MBC determined was substantially related to the qualifications, functions, or duties of the profession.

Questions Regarding Practice Impairment. In addition to verifying that an applicant meets the requirements for licensure and is not eligible for disqualification based on a prior criminal conviction or disciplinary action, the MBC includes three yes-or-no questions on its application form relating to practice impairment or limitations. Prior to presenting applicants with those questions, the application form provides applicants with the following information:

> *An affirmative answer to any of the questions below will not automatically disqualify you from licensure. The Board will make an individualized assessment of the nature, the severity and the duration of the risks associated with an ongoing medical condition to determine whether an unrestricted license should be issued, whether conditions should be imposed, or whether you are eligible for licensure. Please note that a limited practice license may be available.*

The three questions asked on the application are then as follows:

- Are you currently enrolled in, or participating in any drug, alcohol, or substance abuse recovery program or impaired practitioner program?

- Do you currently have any condition (including, but not limited to emotional, mental, neurological or other physical, addictive, or behavioral disorder) that impairs your ability to practice medicine safely?

- Do you currently have any other condition that impairs or limits your ability to practice medicine safely?

If the applicant answers "yes" to any of the above questions, the applicant is required to provide a written explanation as part of their application. This written explanation, as with the rest of the application form, must be signed and dated under penalty of perjury. The application form also provides a link to more information about obtaining a limited practice license.

Efforts to Address Physician Wellness and Burnout. For years there has been discussion about the mental and physical well-being of California frontline health workers, including physicians. During the MBC's most recent full sunset review, the background paper published by the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business and Professions highlighted the following under Issue #6: "Under ordinary circumstances, frontline healthcare providers and first responders often face difficult situations that are mentally and emotionally challenging. Are there new issues arising from, or ongoing issues being worsened by, the extreme conditions of the COVID-19 pandemic?"

As discussed by the committees during the MBC's sunset review process, many physicians are susceptible to developing substance use disorders and other behavioral health conditions as a result of their profession. The Legislature has historically attempted to address this issue, including through the enactment of laws allowing the MBC to establish a Physician and Surgeon Health and Wellness Program. However, concerns have been raised that physicians are strongly disincentivized from taking advantage of opportunities for support out of fear that it could impact their ability to continue practicing medicine.

In recognition of these concerns, the MBC's most recent sunset bill made changes to statute authorizing the MBC to provide a questionnaire to physicians as part of the license renewal process. Under prior law, this questionnaire was intended to specifically contain questions "necessary to establish that the physician currently has no mental, physical, emotional, or behavioral disorder that would impair the physician's ability to practice medicine safely." The MBC's sunset bill struck the words "mental, physical, emotional, or behavioral" from the types of disorders, which was intended to clarify the intent of the law. However, stakeholders continued to raise concerns that this was not sufficiently restrictive.

While it appears that the MBC does not currently ask the questions relating to disorders impairing practice as part of the renewal process, as previously discussed, it does ask questions relating to that topic on the application form for initial licensure. This bill would provide the MBC with clear direction about the scope of these questions, with the goal of prohibiting required disclosure of participation in specified recovery programs. The MBC would still be authorized to require applicants to disclose any disorder or condition that impacts their ability to practice safely, as well as any program they have entered into as a result of disciplinary action.

Prior Related Legislation.

SB 815 (Roth) extended the sunset for the MBC and narrowed the scope of the questions that the MBC may ask of physicians as part of the renewal questionnaire.

ARGUMENTS IN SUPPORT:

The **Service Employees International Union California State Council** (SEIU) and the **California Medical Association** (CMA) are co-sponsoring this bill. SEIU and the CMA write in a joint letter: "Physicians, like everyone else, can experience stress, burnout and mental health challenges due to the demanding nature of their work. Resident physicians have twice the rate of suicide then the general population. Seeking mental health services can be crucial for maintaining balance, resilience, and overall well-being, benefiting both physicians and their patients. Removing the requirement to disclose their mental health services on physician and surgeon licensure applications alleviates concerns of repercussions and allows physicians to seek mental health services, to the benefit of both themselves and their patients."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Medical Association *(Co-Sponsor)*
SEIU State Council *(Co-Sponsor)*
California Orthopedic Association
San Francisco Marin Medical Society

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 2688 (Berman) – As Introduced February 14, 2024

SUBJECT: Medical Board of California: appointments: removal.

SUMMARY: Clarifies that any member of the Medical Board of California (MBC) may be removed by the authority that appointed that member for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct.

EXISTING LAW:

1) Provides that for boards under the Department of Consumer Affairs (DCA), the appointing authority has power to remove from office at any time any member of any board appointed by the appointing authority for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. (BPC § 106)

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

3) Establishes the MBC, a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members, including five public members and eight physician members appointed by the Governor, one public member appointed by the Senate Committee on Rules, and one public member appointed by the Speaker of the Assembly. (BPC § 2001)

4) Provides that all members of the MBC must have been residents of California for five years preceding their appointment; requires all non-public members of the MBC to be actively licensed physicians; prohibits any member from owning any interest in any medical school; and requires that four of the physician members hold faculty appointments in a clinical department of an approved medical school in California. (BPC § 2007)

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

6) Establishes four-year terms for members of the MBC and provides that each appointing authority has the power to fill its vacancies for the unexpired term. (BPC § 2010)

7) Provides that the appointing power may remove any member of the MBC for neglect of duty, incompetency, or unprofessional conduct. (BPC § 2011)

THIS BILL:

1) Expressly provides that the appointing powers may only remove members of the MBC that were appointed by that appointing authority.

2) Replaces specific causes for removal with reference to current law allowing for board members to be removed for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct.

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

COMMENTS:

Purpose. This bill is sponsored by the author, who is Chair of the Assembly Committee on Business and Professions. According to the author:

> "Patients and consumers in California rely on active, thoughtful memberships on each of the regulatory boards established to protect the public. Existing law makes it clear that if a board member is not meeting the high expectations of these responsibilities, they may be removed. However, the Medical Practice Act is not clear that each appointing authority may only remove its own appointed members for specified causes. Clarifying this provision will ensure that there is no uncertainty about the rights and autonomy of the separate, coequal branches of government with power to make appointments to this important board."

Background.

Medical Board of California. The first Medical Practice Act in California was enacted in 1876. Early iterations of the MBC consisted of members either appointed directly by professional medical societies or who were appointed from lists of names provided by these societies. In 1901, the Act was completely rewritten and a Board of Examinations was established, comprised of nine members; the membership was increased to 11 in 1907. In 1976, significant changes were made to the Act to create MBC much as it exists today, as well as adjustments to MBC's composition. The prior board's 11 members originally included only one non-physician member; the MBC's membership was increased to 19 members, including seven public members. The MBC underwent more structural change in 2008 with the elimination of its Divisions of Licensing and Medical Quality and the creation of a unified board.

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

Removal of Board Members. Each practice act establishing a licensing board under the Business and Professions Code provides for the composition of that board. This typically includes the appointment of specified members by the Governor, Speaker of the Assembly, and Senate Rules Committee. Allowing for both the executive and legislative branches of government to appoint members to regulatory boards is an important component of board membership compositions, as it improves independence, oversight, and transparency within each body.

However, early iterations of the statutes initially provided that only the Governor had the authority to remove members of boards, even those appointed by legislative leadership. Over the past several years, legislation has been enacted to clarify that each appointing authority has its own authority to remove board members. However, the Medical Practice Act remains somewhat unclear, as statutory language suggests that any appointing authority may remove any member, not just its own.

The Constitution of California provides that "the powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." This is broadly interpreted to prevent each branch of government from inappropriately dictating the actions of another branch outside what is authorized by the Constitution.

This bill would confirm that each appointing authority may only remove its own appointed members from the MBC. This clarification ensures that the Medical Practice Act respects the separation of powers doctrine and the role played by both the executive and legislative branches of government. The bill would also remove specific causes for removal and instead cross-reference existing law that already provides for these conditions.

Prior Related Legislation.

SB 815 (Roth, Chapter 294, Statutes of 2023) was the most recent sunset bill for the MBC.

AB 2060 (Quirk) of 2022 would have changed the membership composition of the MBC so that a majority of the board consists of public members. *This bill died on the Assembly Floor.*

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3054 (Berman) – As Introduced February 16, 2024

SUBJECT: Cannabis: appointees: prohibited activities.

SUMMARY: Extends current prohibitions against state cannabis officials having specified financial interests or relationships within the licensed cannabis industry to additional appointed officials within the Department of Cannabis Control (DCC).

EXISTING LAW:

1) Enacts the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to provide for a comprehensive regulatory framework for the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medicinal and adult-use cannabis. (Business and Professions Code (BPC) §§ 26000 *et seq.*)

2) Establishes the DCC within the Business, Consumer Services, and Housing Agency (BCSH) (previously established as the Bureau of Cannabis Control, the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation), for purposes of administering and enforcing MAUCRSA. (BPC § 26010)

3) Provides the DCC with authority for issuing twenty total types of cannabis licenses including subtypes for cultivation, manufacturing, testing, retail, distribution, and microbusiness; requires each licensee except for testing laboratories to clearly designate whether their license is for adult-use or medicinal cannabis. (BPC § 26050)

4) Requires the Governor to appoint the director of the DCC, subject to confirmation by the Senate and under the direction and supervision of the BCSH Secretary. (BPC § 26010.5(a))

5) Allows for every power granted to or duty imposed upon the director of the DCC to be exercised or performed in the name of the director by a deputy or assistant director or chief, subject to conditions and limitations that the director may prescribe. (BPC § 26010.5(b))

6) Expressly authorizes the Governor to appoint a chief deputy director, a deputy director of equity and inclusion, and either a deputy director of legal affairs or a chief counsel to the DCC. (BPC § 26010.5(c))

7) Establishes the Cannabis Control Appeals Panel (CCAP) within BCSH, which consists of one member appointed by the Senate Committee on Rules, one member appointed by the Speaker of the Assembly, and three members appointed by the Governor; requires the Governor's appointees to each reside in a different county; and specifies that each member of the panel may be removed by their appointing authority. (BPC § 26040)

8) Prohibits either the director of the DCC or any member of CCAP from any of the following:

    a) Receiving any commission or profit whatsoever, directly or indirectly, from any person applying for or receiving any license or permit under MAUCRSA.

b) Engaging or having any interest in the sale or any insurance covering a licensee's business or premises.

c) Engaging or having any interest in the sale of equipment for use upon the premises of a licensee engaged in commercial cannabis activity.

d) Knowingly soliciting any licensee for the purchase of tickets for benefits or contributions for benefits.

e) Knowingly requesting any licensee to donate or receive money, or any other thing of value, for the benefit of any person whatsoever.

(BPC § 26011)

THIS BILL:

1) Extends the existing prohibitions against the director of the DCC or a member of CCAP profiting from having any of the specified financial interests or relationships with the licensed cannabis industry to also apply to other DCC executives appointed by the director under MAUCRSA.

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

COMMENTS:

Purpose. This bill is sponsored by the author, who is Chair of the Assembly Committee on Business and Professions. According to the author:

> "Californians rely on state cannabis officials to fairly and unbiasedly administer and enforce our cannabis laws. This is why existing law prohibits the Director of the Department of Cannabis Control, or any member of the Cannabis Control Appeals Panel, from financially benefiting from the cannabis industry or from accepting gifts from licensees. AB 3054 will strengthen this law by extending those same prohibitions to other influential officials within the Department of Cannabis Control."

Background.

Brief History of Cannabis Regulation in California. Consumption of cannabis was first made lawful in California in 1996 when voters approved Proposition 215, or the Compassionate Use Act. Proposition 215 protected qualified patients and caregivers from prosecution relating to the possession and cultivation of cannabis for medicinal purposes, if recommended by a physician. This regulatory scheme was further refined by SB 420 (Vasconcellos) in 2003, which established the state's Medical Marijuana Program. After several years of lawful cannabis cultivation and consumption under state law, a lack of a uniform regulatory framework led to persistent problems across the state. Cannabis's continued illegality under the federal Controlled Substances Act, which classifies cannabis as a Schedule I drug ineligible for prescription, generated periodic enforcement activities by the United States Department of Justice. Threat of action by the federal government created persistent apprehension within California's cannabis community.

After several prior attempts to improve the state's regulation of cannabis, the Legislature passed the Medical Marijuana Regulation and Safety Act—subsequently retitled the Medical Cannabis Regulation and Safety Act (MCRSA)—in 2015. MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis. While entrusting state agencies to promulgate extensive regulations governing the implementation of the state's cannabis laws, MCRSA fully preserved local control. Under MCRSA, local governments may establish their own ordinances to regulate medicinal cannabis activity. Local jurisdictions could also choose to ban cannabis establishments altogether.

Not long after the Legislature enacted MCRSA, California voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). The passage of the AUMA legalized cannabis for non-medicinal adult use in a private home or licensed business; allowed adults 21 and over to possess and give away up to approximately one ounce of cannabis and up to eight grams of concentrate; and permitted the personal cultivation of up to six plants. The proponents of the AUMA sought to make use of much of the regulatory framework and authorities set out by MCRSA while making a few notable changes to the structure still being implemented.

In the spring of 2017, SB 94 (Committee on Budget and Fiscal Review) was passed to reconcile the distinct systems for the regulation, licensing, and enforcement of legal cannabis that had been established under the respective authorities of MCRSA and the AUMA. The single consolidated system established by the bill—known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)—created a unified series of cannabis laws. On January 16, 2019, the state's three cannabis licensing authorities—the Bureau of Cannabis Control, the California Department of Food and Agriculture, and the California Department of Public Health—officially announced that the Office of Administrative Law had approved final cannabis regulations promulgated by the three agencies respectively.

In early 2021, the Department of Finance released trailer bill language to create a new Department with centralized authority for cannabis licensing and enforcement activities. This new department was created through a consolidation of the three prior licensing authorities' cannabis programs. As of July 1, 2021, the Department has been the single entity responsible for administering and enforcing the majority of MAUCRSA. New regulations went into effect on January 1, 2023 to effectuate the organizational consolidation and make other changes to cannabis regulation.

Cannabis Control Appeals Panel. CCAP is a quasi-judicial entity charged with reviewing licensing decisions issued by the DCC. CCAP currently consists of five members: three appointed by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly. Each member appointed by the Governor is required to be a resident of a different county from the other two at the time of their initial appointment. Each member of CCAP may be removed by their appointing authority.

Ensuring Disinterested Cannabis Authorities. Per MAUCRSA, the DCC is overseen by a director appointed by the Governor, subject to confirmation by the Senate. Both the director of the DCC and any of the appointed members of CCAP are prohibited by law from engaging in specified activities to ensure that they are not financially motivated in the execution of their responsibilities as overseers of the state's licensed cannabis industry. Specifically, MAUCRSA provides that neither the director not a CCAP member may do any of the following:

a) Receive any commission or profit whatsoever, directly or indirectly, from any person applying for or receiving any license or permit under MAUCRSA.

b) Engage or have any interest in the sale or any insurance covering a licensee's business or premises.

c) Engage or have any interest in the sale of equipment for use upon the premises of a licensee engaged in commercial cannabis activity.

d) Knowingly solicit any licensee for the purchase of tickets for benefits or contributions for benefits.

e) Knowingly request any licensee to donate or receive money, or any other thing of value, for the benefit of any person whatsoever.

The director of the DCC is authorized to employ and appoint employees and to delegate their powers and duties to a deputy director, assistant director, or chief. MAUCRSA then expressly authorizes the Governor to appoint a chief deputy director, a deputy director of equity and inclusion, and either a deputy director of legal affairs or a chief counsel to the DCC. These additional appointed officials arguably exercise significant influence over the DCC's activities and are similarly trusted to oversee the cannabis industry. This bill intends to recognize this influence by extending the same conflict of interest provisions that apply to the director of DCC and members of CCAP to these additional appointees.

Prior Related Legislation.

SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) combined AUMA and MCRSA into a unified system for the regulation of cannabis, MAUCRSA.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3251 (Committee on Business and Professions) – As Introduced February 16, 2024

SUBJECT: Accountancy.

SUMMARY: Deletes an obsolete provision that allowed, until January 1, 2011, a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state to temporarily practice in California, subject to certain conditions and limitations.

EXISTING LAW:

1) Establishes the California Board of Accountancy (CBA or board) within the Department of Consumer Affairs (DCA) to implement and enforce the California Accountancy Act until January 1, 2025. (Business and Professions Code (BPC) § 5000 et seq.)

2) Authorized the CBA to designate an executive officer until January 1, 2025. (BPC § 5015.6)

3) Authorizes the board to by regulation, prescribe, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession. A copy of the rules shall be mailed to every holder of a license under this chapter at least 30 days prior to a date named for a public hearing held for the purpose of receiving and considering objections to any of the proposed provisions. (BPC § 5018)

4) Provides that a person shall be deemed to be engaged in the practice of public accountancy if he or she performs certain acts, makes certain representations, and renders accounting services to the public and clients for compensation. (BPC § 5051)

5) Authorizes the board to establish, by regulation, a system for the placement of a license into a retired status, upon application, for certified public accountants and public accountants who are not actively engaged in the practice of public accountancy or any activity that requires them to be licensed by the board. (BPC § 5070.1(a))

6) Requires the board to deny an applicant's application to place a license in a retired status if the permit is subject to an outstanding order of the board, is suspended, revoked, or otherwise punitively restricted by the board, or is subject to disciplinary action under the Act. (BPC § 5070.1(c))

7) Specifies that in order to renew its registration in an active status or convert to an active status, an accounting firm must have a peer review report of its accounting and auditing practice accepted by a board-recognized peer review program no less frequently than every three years. (BPC § 5076(a))

8) Requires an applicant for admission to the certified public accountant examination to present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a degree-granting university, college, or other institution. The total educational

program shall include a minimum of 24 semester units in accounting subjects and 24 semester units in business-related subjects. An applicant enrolled in a program at an institution that grants conferral of a baccalaureate degree upon completion of the 150 semester units may satisfy this requirement if the applicant's institution mails the applicant's official transcript or its equivalent together or separately with a letter with specified contents signed by the institution's registrar, or its equivalent, directly to the board. (BPC § 5093(b))

9) Requires, at a minimum, an applicant's education to be from a degree-granting university, college, or other institution of learning accredited by a regional or national accrediting agency, as specified. (BPC § 5094)

10) Specifies that to be authorized to sign reports on attest engagements, a licensee shall complete a minimum of 500 hours of experience, satisfactory to the board, in attest services. (BPC § 5095(a))

11) Authorizes an individual whose principal place of business is not in California and who has a valid and current license, certificate, or permit to practice public accountancy from another state to, subject to conditions and limitations, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license if the individual satisfies specified criteria. (BPC § 5096(a))

12) Requires, on or before July 1, 2014, the board to convene a stakeholder group consisting of members of the board, board enforcement staff, and representatives of the accounting profession and consumer representatives to consider whether the practice privilege provisions are consistent with the board's duty to protect the public, and whether the practice privilege provisions satisfy the objectives of stakeholders of the accounting profession in this state, including consumers. (BPC § 5096.21(c))

THIS BILL:

1) Deletes an obsolete provision that allowed, until January 1, 2011, a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state to temporarily practice in California, subject to certain conditions and limitations.

2) Makes technical and nonsubstantive changes.

FISCAL EFFECT: Unknown. This bill has been keyed non-fiscal by Legislative Counsel.

COMMENTS:

Purpose. This bill is the sunset review vehicle for the CBA, authored by the Assembly Business and Professions Committee. This bill is intended to extend 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.

Sunset review. Each year, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development hold joint sunset review

oversight hearings to review the licensing boards under the DCA. The DCA boards are responsible for protecting consumers and the public and regulating the professionals they license. The sunset review process provides an opportunity for the Legislature, DCA, boards, and stakeholders to discuss the performance of the boards and make recommendations for improvements.

Each board subject to review has an enacting statute that has a repeal date, which means each board requires an extension before the repeal date. This bill is one of the "sunset" bills that are intended to extend the repeal date of the boards undergoing sunset review, as well as include the recommendations from the sunset review oversight hearings. There are five sunset review bills authored by the Assembly Committee on Business and Professions and five sunset review bills authored by the Chair of the Senate Business, Professions and Economic Development Committee.

History and Function of the California Board of Accountancy.

The CBA has regulated the profession of public accounting in California for over 120 years. Its mission is "to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with applicable professional standards."[1] The Board achieves this mission primarily through its ability to issue licenses. There are collectively more than 115,000 certified public accountants (CPAs), public accountants (PAs), and accounting firms (i.e. partnerships, corporations, and out-of-state registered firms) licensed or registered in California.

Pursuant to the California Accountancy Act, the Board is responsible for the following:

- Qualifying California candidates for the Uniform CPA Examination
- Certifying, licensing, and renewing the licenses of individual CPAs.
- Licensing in-state accounting firms, registering out-of-state accounting firm, and issuing fictitious name permits.
- Receiving and investing complaints about licensees and registrants.
- Enforcing California laws and regulations by taking enforcement action against licensees and registrants for a violation.
- Ensuring compliance with continuing education (CE) requirements.
- Monitoring the work product of CPAs, PAs, and accounting firms to ensure adherence to professional standards.

The Board's consumer protection mission extends to numerous stakeholders, including:

- Consumers of accounting services who require audits, reviews, and compilations of financial statements, tax preparation, financial planning, business advice and management consultation, and a wide variety of related tasks.
- Lenders, shareholders, investors, and small and large companies who rely on the integrity of audited financial information.
- Governmental bodies, donors, and trustees of not-for-profit agencies, which require audited financial information or assistance with internal accounting controls.

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[1] California Board of Accountancy History & Functions

- Regulatory bodies such as the Securities and Exchange Commission, the Public Company Accounting Oversight Board, the Public Utilities Commission, Department of Insurance, Department of Labor, the Government Accountability Office, federal and state banking regulators, and local, state, and federal taxing authorities.
- Retirement systems, pension plans, capital markets and stock exchanges.
- Other state boards of accountancy.

In its 2022-2024 Strategic Plan, the Board identified the following goals:

- Enforcement: Maintain an active, effective, and efficient program to maximize consumer protection.
- Licensing: Regulate entry and continuing practice in the profession by ensuring that only those who are qualified are licensed to practice public accountancy.
- Customer Service: Deliver the highest level of customer service.
- Outreach: Provide outreach to reach a wide audience, grow audience diversity, and increase consumer protection.
- Laws and Regulations: Maintain an active presence and leadership role that efficiently leverages the CBA's position of legislative influence.
- Emerging Technologies: Improve efficiency and information security through the use of existing and emerging technologies.
- Organizational Effectiveness: Maintain an efficient and effective team of leaders and professionals.

Current Related Legislation.

AB 3252 (Committee on Business and Professions) is the sunset bill for the Court Reporters Board. *This bill is pending in this committee.*

AB 3253 (Committee on Business and Professions) is the sunset bill for the Board for Professional Engineers, Land Surveyors, and Geologists. *This bill is pending in this committee.*

AB 3254 (Committee on Business and Professions) is the sunset bill for the Cemetery and Funeral Bureau. *This bill is pending in this committee.*

AB 3255 (Committee on Business and Professions) is the sunset bill for the Board of Vocational Nursing and Psychiatric Technicians of the State of California. *This bill is pending in this committee.*

SB 1452 (Ashby) is the sunset bill for the California Architects Board and the Landscape Architects Technical Committee. *This bill is pending in the Senate Committee on Judiciary.*

SB 1453 (Ashby) is the sunset bill for the Dental Board of California. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

SB 1454 (Ashby) is the sunset bill for the Bureau of Security and Investigative Services. *This bill is pending in the Senate Committee on Judiciary.*

SB 1455 (Ashby) is the sunset bill for the Contractors' State License Board. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

SB 1443 (Roth) Chapter 625, Statutes of 2022, extended the sunset date for the CBA by one year to January 1, 2025.

AB 1521 (Low), Chapter 359, Statutes of 2019, extended the sunset date the CBA by four years; and made additional changes to the California Accountancy Act stemming from the board's sunset review.

ARGUMENTS IN SUPPORT:

The **California Board of Accountancy** writes in support of this bill: "The CBA is looking forward to working with your committee and the Senate Business, Professions and Economic Development Committee on future amendments to this measure which will extend the CBA's sunset date and enhance the CBA's consumer protection mission."

ARGUMENTS IN OPPOSITION:

None on file

SUNSET ISSUES FOR CONSIDERATION:

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

1) *Issue #1: Legislatively Established Committees.* Prior to July 1, 2013, licensed CPAs from other states were required to notify the Board and pay a fee before providing public accounting services in California. Senate Bill 1405, Chapter 411, Statutes of 2012 established California's "mobility law," allowing any CPA whose principal place of business is located outside California and who holds a valid and current license, certificate, or permit to practice public accountancy from another state, to practice public accountancy in California under a practice privilege (commonly referred to as mobility), without giving notice or paying a fee, provided one of the following conditions is met:

    a. They have continually practiced public accountancy as a CPA under a valid license issued by any state for at least four of the last 10 years.

    b. They hold a valid license, certificate, or permit to practice public accountancy from a state determined by the Board to be substantially equivalent to the licensure qualifications in California under BPC § 5093.

c. They possess education, examination, and experience qualifications which have been determined by the Board to be substantially equivalent to the licensure qualifications in California.

That bill also required the Board to convene a stakeholder group to determine whether licensees' practice privilege adequately protects the public. In its 2017 Mobility Stakeholder Group (MSG) Annual Report, the MSG expressed support for and confidence in the state's practice privilege provisions, having determined that NASBA's Guiding Principles of Enforcement, which are the foundation for other state board's enforcement programs, are equivalent to those in California. Additionally, the MSG ensured that the licensing entities in other states had to make each of their licensee's disciplinary history publicly available online. The MSG held its final meeting on November 2019 and the Board now proposes to eliminate the MSG entirely. The Board has indicated that any further evaluation of the state's mobility requirements can be performed by the Board or one of its committees (e.g. Committee on Professional Conduct).

Staff Recommendation: Considering that this state has no control over laws and regulations passed in other states and countries, the Board should identify how it currently verifies, and will continue to verify, that the requirements for CPA licensure in other states and countries are at least as stringent as those in this state.

Board Response: When the Legislature established the present practice privilege provisions, commonly referred to as mobility, it took proactive steps to:

a. Ensure out-of-state licensees met minimum requirements for entry.

b. Established protocols for important consumer protection disclosures on the CBA website.

c. Mandated that the CBA, through the Mobility Stakeholder Group (MSG), consider whether the practice privilege provisions are consistent with the CBA's duty to protect the public in accordance with Business and Professions Code section 5000.1, and whether the mobility law satisfies the objectives of stakeholders of the accounting profession, including consumers. Additionally, the MSG made determinations whether National Association of State Boards of Accountancy's (NASBA) Guiding Principles of Enforcement, which are the foundation for other state board's enforcement programs, were equivalent to those in California.

The MSG completed its legislative mandates and reported on its findings to the CBA. The MSG has not met since 2019.

While the MSG did evaluate the overarching provisions of the mobility program, the evaluation of the licensure requirements of the other states and their substantial equivalency to those found in California was handled by the CBA.

Following the substantial equivalency concept developed by the NASBA to simplify practice across states (which is the foundation of mobility), the CBA looked to the

NASBA-developed lists of states deemed to have licensure requirements that were substantially equivalent to those of California – 150-semester units of education, passage of the Uniform CPA Examination, and a minimum one year of accounting experience.

While it is accurate that California has no control over how other states may modify their licensure laws going forward, if a state is considering possible changes, these are shared by NASBA to all state boards of accountancy. This allows the CBA to maintain a pulse on the topic and the potential issues that may affect a particular state's licensee's ability to practice via mobility.

The CBA believes it is well positioned to examine issues related to mobility going forward either itself, or through its Committee on Professional Conduct or an ad hoc taskforce, and requests the Legislature remove from statute the requirement of the CBA to have an established Mobility Stakeholder Group.

Sunset Recommendation: Based on CBA's response, committee amendments repeal the statutory requirement for the MSG.

2) *Issue #2: Transition to Digital Communications and Documentation Acceptance.* Existing law requires the Board to mail any proposed regulatory changes pertaining to professional conduct to every licensee at least 30 days before conducting a public hearing on the proposed changes. The Board is seeking authorization to email the proposed regulatory changes, in lieu of mailing them.

   Additionally, existing law requires any CPA license applicant who is completing a dual-degree program and is seeking to take the Uniform CPA Exam after completing the requirements for a bachelor's degree to have their school mail a copy of the student's transcript to the Board accompanied by a letter from the school registrar with specific information. However, students who are not enrolled in a dual degree program have the following options to submit their academic transcripts:

   a. Request official, paper transcripts to be sent directly from the applicant's school to the Board.

   b. Obtain official, sealed transcripts and submit them with the Uniform CPA Exam Application or CPA Licensing Application.

   c. Order an electronic transcript to be sent to the Board by an approved provider.

   The Board is seeking less specificity in how educational evidence (i.e. official transcripts or its equivalent and a letter from an institution's registrar) for students enrolled in dual-degree programs are submitted to the Board.

   Staff Recommendation: The Board should consider whether it may be necessary to continue to mail proposed regulatory changes to licensees, upon request. The Board should identify its preferred method of receiving educational evidence for students enrolled in dual-degree programs.

Board Response: The CBA believes that it is important for licensees and all CBA stakeholders to be aware of the laws and regulations that govern the practice of public accountancy in California. Presently, any individual can request to receive a hard copy notification of proposed regulatory changes. The CBA also posts proposed regulatory changes on its website and has a list serve where individuals can register to receive an email notification when the CBA has proposed regulatory changes. The current process to mail a notice to all licensees costs approximately $70,000 and involves significant staff time to coordinate with the Office of State Publishing to both print and mail the information. Further, the overall timeframe to complete the mailing can take up to two months.

The CBA is open to receiving educational evidence for students enrolled in dual-degree programs in hard copy or electronic format. The proposed amendment would allow flexibility in how the information is provided to the CBA. Dual-degree programs often confer both the bachelor's degree and master's degree at the conclusion of the entire program. That means the official transcript would not show that they were conferred a bachelor's degree until they have earned their master's degree, thus the reason for also requesting a letter from the institution.

Sunset Recommendation: Based on the CBA's response, committee amendments create additional flexibility for the board to notify licensees of rule changes related to professional conduct via email and to receive an applicant's transcripts from a dual-degree program electronically.

3) *Issue #6. Retired Status Licenses.* Typically when a licensee successfully completes probation, their license is fully restored. However, in limited cases, the Board may permanently restrict the licensee's practice (e.g. no longer allow the licensee to perform audits), thus making them ineligible for a retired status license. When individuals have placed their license in retired status they are prohibited from practicing public accountancy. If a licensee wishes to practice public accountancy again, they must restore their license to active status. The Board is seeking authorization to approve a licensee with a permanent restricted practice order's request for a retired status license.

Staff Recommendation: The Board should identify how many licensees would benefit from this change and explain to the Committees the significance of a having a retired status license (in lieu of the letting the license lapse).

Board Response: Presently, this is a small population of approximately 170 licensees that could benefit from this change. The statute outlines reasons the CBA must deny an individual's application for retired status, one of which includes: "an outstanding order of the board."

There are instances as part of the disciplinary process where the board creates a permanent restriction of a practice area or areas for an individual. This, in essence, creates an outstanding order even if the individual completes their probation period and is otherwise in good standing. If a licensee within this population wishes to retire and no longer pay for a license renewal, they have two options, allow their license to expire and eventually cancel, or voluntarily surrender their license.

Prior to the CBA implementing regulations to allow for a retired status license, feedback was received from stakeholders regarding the negative connotation associated with "cancelled" and "surrendered." A retired status license option available to these licensees would benefit consumers and licensees in that the description would accurately reflect the status of the licensee to the public and provide another option to the licensee besides "cancelled," "surrendered," or having to pay a biennial renewal fee.

This statutory change the CBA is proposing would allow for it to approve the application for a retired status license, and should the individual seek to reinstate their license to practice, the permanent restricted practice order would be reinstated.

Sunset Recommendation: Based on the CBA's response, committee amendments will authorize the board to place in a retired status a license that is subject to a permanent restricted practice order.

4) *Issue #7: Accounting Firm Peer Review.* State law requires accounting firms to be peer reviewed every three years as a condition of license renewal. The AICPA Peer Review Program is the only peer review program provider recognized by the Board. However, the Board reports that it does not have access to peer review documentation collected by AICPA for which the Board already has the authority to request. Accounting firms may elect to share this information with a state board of accountancy such as the Board via the AICPA's web tool, but doing so is not required in California.

   Without permission from the accounting firm, the Board can only access a firm's peer review report ratings on the AICPA web tool. The Board wishes for statutory authorization to compel accounting firms to opt in to the sharing of their data on the AICPA web tool so that it can better monitor the peer review program. The Board reports that California firms' participation would increase CBA access to objective peer review information but would not provide access to the entire catalog of peer review documents. The CBA could view certain documents (e.g., enrollment letters, peer review reports, letters of acceptance, letters of response, completion letters) and data (e.g., scheduling information, extension information, peer review acceptance dates, peer review report ratings). Moreover, the data could be used by the CBA to independently verify if a firm has completed mandated peer review or if a specific firm has received an extension of their peer review. Also, the Board asserts that the information could be used to create summary reports over time that look at the number of accepted peer reviews as a means of identifying peer review trends.

   Staff Recommendation: The Board should determine whether it has capacity to review peer review documentation and data collected by AICPA or explain what it otherwise intends to do with those materials and information.

   Board Response: The statutory change being sought would improve CBA access to information to assist in our oversight responsibilities of the Peer Review Program and to aid in licensing-related functions.

   The recommended legislative change would require the CBA-approved peer review program provider to provide a state board of accountancy web tool. The American

Institute of CPAs (AICPA), presently the only CBA-approved peer review program provider, already maintains such a web tool (i.e., Facilitated State Board Access).

The CBA-recommended legislative change would also require firms to participate in the provider's web tool. California firms' participation in such a web tool would increase CBA access to objective peer review information but would not provide access to the entire catalog of peer review documents. With this access, the CBA could view certain documents (e.g., enrollment letters, peer review reports, letters of acceptance, letters of response, completion letters) and data (e.g., scheduling information, extension information, peer review acceptance dates, peer review report ratings).

The data could be used by the CBA to independently verify if a firm has completed mandated peer review or if a specific firm has received an extension of their peer review, both useful information when renewing a firm's license. Also, the information on the web tool could be used to create summary reports over time that would be beneficial to the CBA and its Peer Review Oversight Committee (PROC). For example, the CBA might look at the number of completed peer reviews as a means of monitoring if the number of firms subject to peer review is on the decline.

Currently, the CBA pre-identifies a set list of summary reports and requests the AICPA to produce them. This greatly limits the ability to run ad hoc reports based on national trends or topics of CBA interest. The CBA, in conjunction with its PROC, has the capacity to use the web tool, as described.

Sunset Recommendation: The CBA has said that it will have proposed language after its next board meeting in May. The Committees should review the proposed language at that time and determine the appropriateness of including the language in a future set of amendments.

5) *Issue #10: Accounting Firm Owners.* In addition to the minimum requirements for licensure, applicants seeking a license with the ability to sign reports on attest engagements must also demonstrate completion of a minimum of 500 hours in attest experience. In some instances, the owner(s) of an accounting firm may not have the ability to sign attest engagement reports and instead hire a licensed CPA with that ability. However, the Board reports that even if the owner of an accounting firm is involved in the provision of attest engagements, they cannot be held liable in the same manner at the licensee who signed the report. In the event that none of the owners of an accounting firm are authorized to sign reports on attest engagements, the Board is seeking to hold accounting firms accountable in the same manner as any licensee whom they to perform attest engagements. Furthermore, should the licensee no longer be employed by the accounting firm, the Board seeks to require the firm to make all working papers available to the licensee who signed the attest engagement report for purposes of conducting an investigation at the request of the Board. Because work papers contain confidential and sometime proprietary information, Board executive staff foresee a situation in which an accounting firm could become a barrier to an investigation by withholding the work papers of a licensee who used to work for their firm.

Staff Recommendation: The Board should explain why the status quo is undesirable from an enforcement perspective and identify how many accounting firms these changes would impact.

Board Response: Accounting firm licenses issued by the CBA do not have limitations as to the services that the firm can perform. When an accounting firm engages with a client to perform certain services, in this case attest services, someone at the firm must have a CPA license that allows them to sign reports on attest engagements. In some cases, the ownership makeup of the accounting firm is such that none of the owners have the authority to sign reports on attest engagements.

The statutory changes being proposed by the CBA are enforcement solutions to increase consumer protection and ensure investigations can be conducted effectively. This change would ensure that ownership is liable to the same degree as the accounting firm, as well as any signer the owners authorize to do the work. Additionally, the proposed legislation would ensure that if the signer of the attest report was no longer with the accounting firm, there are no unnecessary barriers to the CBA's investigation by requiring the firm to provide the individual with the work papers necessary to allow the individual the ability to effectively answer questions and defend their work.

The number of individuals receiving a license without the authority to sign reports on attest engagement is outpacing those receiving a license with the authority to sign reports on attest engagements. Due to this trend, the scenarios described above will likely increase. The statutory changes will apply to all accounting firms, although it is unknown the specific number of firms this may impact because data regarding firm ownership makeup is not collected by the CBA.

Sunset Recommendation: Based on the CBA's response, committee amendments will ensure accounting firm owners have the same responsibilities as licensees they employ(ed) who are authorized to sign attest engagements. Additionally, the committee amendments will ensure the board, for purposes of conducting an investigation, has access to the working papers of the licensee who signed the report on the attest engagement.

6) *Issue #12: Technical Cleanup.* To determine whether an applicant has met the educational requirements for licensure, the Board relies on a list of institutions with accreditation recognized by the United States Department of Education. The Board reports that statutory cleanup is necessary to delete references to accreditation "by a regional or national accrediting agency," since federal regulations no longer distinguish between the two.

Staff Recommendation: The Board should continue to advise the committees of necessary code cleanup.

Board Response: The proposed technical cleanup amendment to Business and Professions Code sections 5093 and 5094 would change "a regional or national accrediting agency" to "an accrediting agency." This would bring California statutes into alignment with the revised provisions of 34 Code of Federal Regulations 602.

The CBA appreciates the Legislature's assistance in revising statutes to ensure it contains accurate and clear information.

Sunset Recommendation: Committee amendments contain the CBA's recommended technical changes.

7) *Issue #13: Continued Regulation.* The Board's oversight of public accountants in California is integral to the financial security of millions of California. As stated on the Board's website, the Board's responsibility is "to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards" and ensure that "all consumers are well-informed and receive quality accounting services from licensees they can trust."

Staff Recommendation: The Board's oversight of the accounting profession should be continued, with potential reforms, to be reviewed again on a future date to be determined to ensure that the issues and recommendations in this Background Paper have been addressed.

Board Response: The CBA plays a vital role in protecting consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards. Certified public accountants and accounting firms provide a wide variety of critical financial services to individuals, private and publicly held companies, financial institutions, non-profit organizations, and governmental entities.

The services they provide include accounting, auditing, tax preparation and planning, investment advice, and retirement and estate planning. It is vital for the CBA to continue regulating the practice of public accountancy, which includes both licensing and enforcement functions of its more than 115,000 licensees.

The CBA respectfully requests that the Legislature extend its sunset date so it may continue its mission to protect consumers.

Sunset Recommendation: Committee amendments will extend the CBA by four years.

AMENDMENTS:

To address Sunset Issues #1, 2, 6, 10, 12, and 13, amend the bill as follows:

On page 1, before line 1, insert:

SECTION 1. Section 5000 of the Business and Professions Code is amended to read:

5000. (a) There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, seven of whom shall be licensees, and eight of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

(b) The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Committee on Rules and the Speaker of

the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint individuals representing a cross section of the accounting profession.

(c) This section shall remain in effect only until January 1, ~~2025,~~ *2029,* and as of that date is repealed.

(d) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature. However, the review of the board shall be limited to reports or studies specified in this chapter and those issues identified by the appropriate policy committees of the Legislature and the board regarding the implementation of new licensing requirements.

SEC. 2. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in the executive officer by this chapter.
This section shall remain in effect only until January 1, ~~2025,~~ *2029,* and as of that date is repealed.

SEC. 3. Section 5018 of the Business and Professions Code is amended to read:

5018. The board may by regulation, prescribe, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession. In addition to the requirements contained in Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code, a copy of the rules shall be ~~mailed~~ *provided* to every holder of a license under this chapter at least 30 days prior to a date named for a public hearing held for the purpose of receiving and considering objections to any of the proposed provisions. Every licensee of the California Board of Accountancy in this state shall be governed and controlled by the rules and standards adopted by the board.

~~SECTION 1.~~
SEC. 4. Section 5050 of the Business and Professions Code is amended to read:

On page 3, after line 2, insert:

SEC. 5. Section 5062.3 is added to the Business and Professions Code, to read:

5062.3. For purposes of an enforcement action taken by the board, an accounting firm providing attestation services where none of the licensee owners of the firm have authority to sign reports on attest engagements, the licensee owners shall be held to the same level of responsibility as the licensee or licensees who performed the engagement.

SEC. 6. Section 5062.4 is added to the Business and Professions Code, to read:

5062.4. If a licensee is no longer employed with an accounting firm, the accounting firm shall make all working papers available to a licensee who signed a report on an attest

engagement upon request by the board for purposes of conducting an investigation. The licensee shall return the working papers upon direction by the board and shall keep no copies.

SEC. 7. Section 5070.1 of the Business and Professions Code is amended to read:

5070.1. (a) The board may establish, by regulation, a system for the placement of a license into a retired status, upon application, for certified public accountants and public accountants who are not actively engaged in the practice of public accountancy or any activity that requires them to be licensed by the board.

(b) No licensee with a license in a retired status shall engage in any activity for which a permit is required.

(c) The board shall deny an applicant's application to place a license in a retired status if the permit is subject to an outstanding order of the board, is suspended, revoked, ~~or otherwise punitively restricted by the board,~~ or is subject to disciplinary action under this chapter.

(1) For purposes of this subdivision, a permanent restricted practice order shall not be considered an outstanding order of the board provided the licensee has completed probation as part of any original discipline order.

(2) If a license is subject to a permanent restricted practice order at the time the board approves the license to be placed in a retired status, the permanent restricted practice order shall be reinstated if the license is restored from retired status to an active status and shall remain in effect until the board modifies or terminates the permanent restricted practice order.

(d)(1) The holder of a license that was canceled pursuant to Section 5070.7 may apply for the placement of that license in a retired status pursuant to subdivision (a).

(2) Upon approval of an application made pursuant to paragraph (1), the board shall reissue that license in a retired status.

(3) The holder of a canceled license that was placed in retired status between January 1, 1994, and January 1, 1999, inclusive, shall not be required to meet the qualifications established pursuant to subdivision (e), but shall be subject to all other requirements of this section.

(e) The board shall establish minimum qualifications to place a license in retired status.

(f) The board may exempt the holder of a license in a retired status from the renewal requirements described in Section 5070.5.

(g) The board shall establish minimum qualifications for the restoration of a license in a retired status to an active status. These minimum qualifications shall include, but are not limited to, continuing education and payment of a fee as provided in subdivision (h) of Section 5134.

(h) The board shall not restore to active or inactive status a license that was canceled by operation of law, pursuant to subdivision (a) of Section 5070.7, and then placed into retired status pursuant to subdivision (d). The individual shall instead apply for a new license, as described in subdivision (c) of Section 5070.7, in order to restore the individual's license.

(i) At the time of application, if the applicant has a valid email address, the applicant shall provide that email address to the board.

SEC. 8. Section 5093 of the Business and Professions Code is amended to read:

5093. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for admission to the certified public accountant examination under this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a degree-granting university, college, or other institution of learning accredited by ~~a regional or national~~ *an* accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the federal Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 et seq.), or meeting, at a minimum, the standards described in ~~subdivision (c) of~~ Section 5094. The total educational program shall include a minimum of 24 semester units in accounting subjects and 24 semester units in business-related subjects. This evidence shall be provided at the time of application for admission to the examination, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(A) An applicant enrolled in a program at an institution as described in this paragraph that grants conferral of a baccalaureate degree upon completion of the 150 semester units required by paragraph (2) of this subdivision may satisfy the requirements of this paragraph if the applicant's institution ~~mails~~ *sends electronically or delivers* the applicant's official transcript or its equivalent together or separately with a letter signed by the institution's registrar, or its equivalent, directly to the board pursuant to subdivision (c) of Section 5094. The letter shall include all of the following:

(i) A statement that the applicant is enrolled and in good standing in a program that will result in the conferral of a baccalaureate degree upon completion of either a master's degree or the 150 semester units required by paragraph (2) of this subdivision.

(ii) A statement that the applicant has completed all requirements, including general education and elective requirements, for a baccalaureate degree and the only reason the college or university has yet to confer the degree is because the applicant is enrolled in a program that confers a baccalaureate degree upon completion of either a master's degree or the 150 semester units required by paragraph (2) of this subdivision.

(iii) The date on which the applicant met all of the college's or university's requirements for conferral of a baccalaureate degree.

(B) The total educational program for an applicant described in subparagraph (A) shall include a minimum of 24 semester units in accounting subjects and 24 semester units in business-related subjects. This evidence shall be provided at the time of application for admission to the examination, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(2) An applicant for issuance of the certified public accountant license under this section shall present satisfactory evidence that the applicant has completed at least 150 semester units of college education, including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects, 24 semester units in business-related subjects, and, after December 31, 2013, shall also include a minimum of 10 units of ethics study consistent with the requirements set forth in Section 5094.3 and 20 units of accounting study consistent with the regulations promulgated under subdivision (c) of Section 5094.6. This evidence shall be presented at the time of application for the certified public accountant license. Nothing in this paragraph shall be deemed inconsistent with Section 5094 or 5094.6. Nothing in this paragraph shall be construed to be inconsistent with prevailing academic practice regarding the completion of units.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board.

(d) (1) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills.

(2) To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

(3) Notwithstanding paragraph (2), the board may, by regulation, allow experience in academia to be qualifying under this section.

(e) Applicants completing education at a college or university located outside of this state, meeting, at a minimum, the standards described in Section 5094, shall be deemed to meet the educational requirements of this section if the board determines that the education is substantially equivalent to the standards of education specified under this chapter.

(f) An applicant who has successfully passed the examination requirement specified under Section 5082 on or before December 31, 2013, may qualify for the certified public accountant license without satisfying the 10 semester units of study set forth in Section 5094.3 or 20 semester units of accounting study consistent with the regulations promulgated under Section 5094.6, if the applicant completes all other requirements for the issuance of a license on or before December 31, 2015.

SEC. 9. Section 5094 of the Business and Professions Code is amended to read:

5094. (a) In order for education to be qualifying, it shall meet the standards described in subdivision (b) or (c) of this section.

(b) At a minimum, education shall be from a degree-granting university, college, or other institution of learning accredited by ~~a regional or national~~ *an* accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 et seq.).

(c) Education from a college, university, or other institution of learning located outside the United States may be qualifying provided it is deemed by the board to be equivalent to education obtained under subdivision (b). The board may require an applicant to submit documentation of their education to a credential evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board in order to assess educational equivalency.

(d) The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (1) furnish evaluations directly to the board, (2) furnish evaluations written in English, (3) be a member of the American Association of Collegiate Registrars and Admissions Officers, NAFSA: Association of International Educators, or the National Association of Credential Evaluation Services, (4) be used by accredited colleges and universities, (5) be reevaluated by the board every five years, (6) maintain a complete set of reference materials as specified by the board, (7) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts, (8) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses, (9) have an appeal procedure for applicants, and (10) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of references from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this subdivision and in any regulations adopted by the board.

SEC. 10. Section 5096.21 of the Business and Professions Code is amended to read:

5096.21. (a) (1) On and after January 1, 2016, if the board determines, through a majority vote of the board at a regularly scheduled meeting, that allowing individuals from a particular state to practice in this state pursuant to a practice privilege as described in Section 5096, violates the board's duty to protect the public, pursuant to Section 5000.1, the board shall require out-of-state individuals licensed from that state, as a condition to exercising a practice privilege in this state, to file the notification form and pay the applicable fees as required by Section 5096.22.

(2) A state for which the board has made a determination pursuant to paragraph (1) to require individuals licensed from that state to file a notification form and pay the applicable fees may subsequently be redetermined by the board, by majority vote of the board at a regularly scheduled meeting, to allow individuals from that state to practice in this state pursuant to a practice privilege as described in Section 5096.

(b) The board shall, at minimum, consider the following factors when making a determination or redetermination pursuant to subdivision (a):

(1) Whether the state timely and adequately addresses enforcement referrals made by the board to the accountancy regulatory board of that state, or otherwise fails to respond to requests the board deems necessary to meet its obligations under this article.

(2) Whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the board to adequately link consumers to an internet website to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.

(3) Whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

(4) Whether the state has in place and is operating pursuant to enforcement practices substantially equivalent to the current best practices guidelines adopted by the National Association of State Boards of Accountancy provided those guidelines have been determined by the board to meet or exceed the board's own enforcement practices.

~~(c) On or before July 1, 2014, the board shall convene a stakeholder group consisting of members of the board, board enforcement staff, and representatives of the accounting profession and consumer representatives to consider whether the provisions of this article are consistent with the board's duty to protect the public consistent with Section 5000.1, and whether the provisions of this article satisfy the objectives of stakeholders of the accounting profession in this state, including consumers. The group, at its first meeting, shall adopt policies and procedures relative to how it will conduct its business, including, but not limited to, policies and procedures addressing periodic reporting of its findings to the board. The group shall provide recommendations to the board on any matter upon which it is authorized to act.~~

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or

infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

REGISTERED SUPPORT:

California Board of Accountancy

REGISTERED OPPOSITION:

None on file

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3252 (Committee on Business and Professions) – As Amended April 17, 2024

SUBJECT: Shorthand court reporters: sunset: certification.

SUMMARY: Extends the sunset date for the Court Reporters Board (CRB) until January 1, 2029 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the CRB's sunset review oversight process.

EXISTING LAW:

1) Establishes the CRB within the Department of Consumer Affairs (DCA), subject to repeal on January 1, 2025. (Business and Professions Code (BPC) § 8000)

2) Authorizes the CRB to appoint an executive officer and employ other employees as necessary, subject to repeal on January 1, 2025. (BPC § 8005)

3) Provides the CRB with responsibility for determining the qualifications of persons applying for certificates, making rules for the examination of applicants and the issuing of certificates, granting certificates to applicants who are qualified in professional shorthand reporting, adopting rules and regulations which are reasonably necessary to carry out the provisions of the state's court reporting laws. (BPC § 8007)

4) Defines the practice of shorthand reporting as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner. (BPC § 8017)

5) Defines voice writing as a verbatim record or a proceeding using a closed microphone voice dictation silencer, steno mask, or similar device using oral shorthand and voice notes made by a certified shorthand reporter. (BPC § 8017.5)

6) Reserves use of the title "certified shorthand reporter," and the abbreviation "C.S.R." for licensees of the CRB, and prohibits the use by nonlicensees of the words "stenographer," or "reporter," or of the phrases "court reporter," "deposition reporter," or "digital reporter," in combination with words or phrases related to the practice of shorthand. (BPC § 8018)

7) Defines a shorthand reporting corporation as a corporation which is authorized to render professional services, as long as that corporation and all of its shareholders, officers, directors, and employees rendering professional services who are certified shorthand reporters are in compliance with California law. (BPC § 8040)

8) Establishes the Transcript Reimbursement Fund (TRF), paid for through certificate and registration fees collected by the CRB, to provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, including pro bono and pro per litigants, subject to repeal on January 1, 2025. (BPC § 8030.2)

9) Provides for various definitions for purposes of the TRF program, subject to repeal on January 1, 2025. (BPC § 8030.4)

10) Establishes the process through which the CRB disburses funds from the TRF to reimburse eligible applicants for the cost of receiving transcripts from official reporters, subject to repeal on January 1, 2025. (BPC § 8030.6)

11) Provides for a process through which an applicant for transcript reimbursement through funds from the TRF can establish their eligibility for the program, subject to repeal on January 1, 2025. (BPC § 8030.8)

12) Allows for firms offering shorthand reporting services that are not California-certified shorthand reporters or shorthand reporting corporations to engage in shorthand reporting services by registering with the CRB and establishing a reporter-in-charge, subject to repeal on January 1, 2025. (BPC § 8051)

THIS BILL:

1) Extends the sunset date for the CRB and its authority to appoint an executive officer and other employees until January 1, 2029.

2) Extends provisions establishing and implementing the TRF until January 1, 2029.

3) Extends the CRB's firm registration program until January 1, 2029.

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

COMMENTS:

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

Background.

Sunset review. In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "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 approximately three dozen different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacy and efficiency 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.

The CRB is the entity responsible for licensing and regulating shorthand reporting professionals in the state. The practice of shorthand reporting consists of making a verbatim record of a court hearing, deposition, or other litigation-related proceeding where an accurate transcript is essential. Traditional stenographic shorthand reporting is performed by composing written symbols or abbreviations in shorthand or machine writing; however, the practice has recently been expanded to include voice writing, wherein the verbatim record is created through use of a closed microphone voice dictation silencer, steno mask, or similar device using oral shorthand and voice notes. The CRB also approves court reporting schools and oversees the TRF.

Licensees of the CRB are referred to as "certified shorthand reporters," or CSRs. As of December 2023, approximately 4,752 CSRs hold an active certificate from the Board. This number has steadily decreased in recent years; the number of active CSRs has dropped more than 19 percent since the CRB's last sunset review. Meanwhile the number of CSRs identified as practicing outside of California has steadily grown, with an increase of more than 22 percent over the past four years. This shift has coincided with a debate over the role of out-of-state corporations that offer reporting services in California, with 213 firms registered with the CRB since its registration program was implemented in mid-2023.

While statistics indicate that the shorthand reporting profession is declining in terms of the number of certificate holders, its importance remains vital. The creation and preservation of an accurate record is considered essential to the principles of justice and fairness in the judicial system. Shorthand reporters working as official reporters in a courtroom are officers of the court and the transcripts they are trusted to impartially and accurately produce are foundational to the right of appeal. Freelance reporters, who typically provide services in other litigation-related proceedings such as depositions, are equally important, particularly when recording statements given under penalty of perjury.

Issues Raised during Sunset Review. The background paper for the CRB's sunset review oversight hearing[1] contained a total of 17 issues and recommendations, each of which is eligible to result in statutory changes enacted through the CRB's sunset bill.

Transcript Reimbursement Fund. Issue #3 in the CRB's sunset background paper discussed the CRB's administration of the TRF, a special fund fully financed by a portion of the revenue from fees charged to CSRs and registered firms. Per statute, fee revenue in excess of funds needed to support the Board's operating budget for the fiscal year is transferred to the TRF to reimburse indigent and low-income persons, as well as pro se litigants, for shorthand reporter transcript costs. When there is sufficient revenue to sustain the CRB's operations for at least six months of its operating budget, statute provides that $300,000 be transferred to the TRF each year in $100,000 increments.

The TRF consists of a Pro Bono program (used to reimburse costs incurred by attorneys representing litigants at no cost to the litigant) and a Pro Per Program (used to reimburse costs for pro se litigants representing themselves), both of which ensure all litigants have access to court reporting transcripts for civil cases. Historically, the TRF was underutilized by indigent and low-income litigants represented by pro bono attorneys or qualified non-profit entities. The Pro Per Program was subsequently created in order to maximize the benefits of the TRF and expand access to justice for those most in need.

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[1] https://abp.assembly.ca.gov/media/1180

In 2021, language enacted in the Budget increased the maximum amount of funding allowable per case from $1,500 to $2,500 for pro se applicants and from $20,000 to $30,000 for pro bono applicants, and the annual limit of $75,000 for pro per cases was eliminated. That Budget Act also allowed for funding from sources other than licensing fees, without impacting the $300,000 annual transfer limit from the Court Reporters' Fund to the TRF. Another budget vehicle subsequently made a one-time appropriation of $500,000 from the General Fund to the TRF.

The CRB's sunset bill in 2019 included language that required the CRB to report information to the Legislature for purposes of determining the feasibility of funding the TRF through a distinct assessment collected separately from certificate fees. The CRB subsequently submitted a report in July of 2022 that provided data about the number of reimbursement requests it had received, approved, and denied, as well as data relating to the amount of funds disbursed. While the CRB's report provided valuable information about the status of the TRF program, it did not include any specific recommendations about how its funding mechanism could be transitioned to a separate fee assessment. While discussions about the feasibility of providing for this type of assessment are ongoing, this bill would extend the TRF and its implementing statutes by an additional four years.

Court Reporting Firms. Issue #11 in the CRB's sunset background paper discussed recently enacted registration requirements on court reporting corporations. During the CRB's 2015 sunset review, it was noted that there was a substantial amount of unlicensed activity relating to foreign corporations who offered court reporting services in California without authorization from the CRB. A task force determined that a legislative fix was necessary to address this issue, which led to several years of attempted legislation to provide for meaningful oversight of unlicensed out-of-state firms by the CRB.

During the CRB's 2019 sunset review, the background paper analyzed the issue of out-of-state firms and concluded: "Given the recent court ruling, the Committees may wish to consider whether it would be appropriate to revisit the issue of requiring out-of-state firms to register with the Board if they are engaged in arranging for shorthand reporting services." Legislation to create a regulatory framework for out-of-state firms to provide shorthand reporting services within California by registering with the CRB was ultimately enacted as part of Senate Bill 241 (Umberg) in 2021. The provisions in the bill, which were substantially similar to language proposed during the CRB's 2019 sunset review, give the CRB clear statutory oversight over firms outside of California by requiring all court reporting firms to designate a licensed representative who is accountable to the CRB. This is accomplished through a concept referred to as the "reporter-in-charge" mechanism.

Under the CRB's new registration program, every firm owned by a nonlicensee seeking to provide services within California must register with the CRB and designate one professional who holds a certificate issued by the CRB who is responsible for ensuring compliance with California law. This enables the CRB to utilize its existing authority to regulate firms that would otherwise be considered outside its jurisdiction. While not every employee of the firm must be certificated, an accountable representative of the firm would be entirely subject to existing CRB regulation. Every registered firm, through its reporter-in-charge, is therefore responsible for complying with all laws and regulations relating to shorthand reporting in California, and firm registrations may be revoked, suspended, denied, restricted, or subjected to other disciplinary action as the CRB deems fit for violations of law.

Registration of court reporting firms began in July of 2022, and as of July 1, 2023, there were 213 firms registered with the CRB. In its report to the Committees, the CRB refers to the registration program as "a huge benefit to the consumers of California" and states that the Board is now able to investigate and act when there are violations of California law. This bill would extend the CRB's registration program by an additional four years.

Additional Title Protection. Issue #12 in the CRB's sunset background paper posed the question as to whether the term "voice writer" should be reserved for use only by individuals in possession of an applicable certificate from the CRB. Statute has long prohibited any person other than a CSR from using the title "certified shorthand reporter," or the abbreviation "C.S.R.," or any other words or symbols indicating or tending to indicate that they are certified by the CRB. In 2022, Assembly Bill 156 (Committee on Budget) expanded this list of protected titles and terms to additionally protect the phrases "stenographer," "reporter," "court reporter," "deposition reporter," or "digital reporter," in combination with words or phrases related to the practice of shorthand reporting that indicate certification. However, while that bill also expanded the practice of a CSR to include voice writing, it did not reserve the term "voice writer" for use by CSRs. This bill would add the term "voice writer" to the list of protected titles.

Workforce Shortages. Issue #15 in the CRB's sunset background paper discussed persistent concerns about the need to address increasing challenges in sustaining and growing the supply of shorthand reporters. Any proposals to allow courts to employ lesser-trained professionals, or to utilize technologies that undermine the role of a licensed reporter, have been subjected to cogent arguments about the compelling need to ensure the complete, accurate, and impartial production of a record for all court proceedings as an essential element of equal access to justice. However, the inadequate availability of CSRs in California is a problem that is both widely recognized and arguably growing. In FY 2014-15, there were 6,848 active CSRs in California; by FY 2017-18 this number had fallen to 5,886 active CSRs; this year, there was a reported 4,752 active CSRs in the state.

This consistent downward trend over the past decade reflects a more than 30 percent decrease in the CSR population, with no immediate evidence of impending reversal. The diminishing population of licensed reporters has been blamed by various parties on various factors, including an alleged "aging out" of the profession, low passage rates for the CSR examination, and the closure of court reporting schools. Regardless of whether there is any clear cause for the decreasing workforce, what remains undeniable are both the present and potential impacts on the rights and responsibilities of all parties in the judicial process.

In the Judicial Council's September 6, 2023 letter to the CRB, it highlighted a belief that "the declining number of court reporters threatens access to justice for court users, especially Californians who cannot afford to pay for their own reporter in cases where a court reporter is not required." As part of its request for support from the CRB, the Judicial Council asked that the Board administer a workforce survey of California's CSR population. The letter pointed out that prior surveys have been conducted by the University of California, San Francisco in collaboration with the Board of Registered Nursing and that a similar survey could allow the CRB and CSR employers, including the courts, "to access the necessary data for addressing reporter recruitment and retention need."

The Judicial Council has also suggested that the CRB "consider leveraging its expertise to improve pass rates," pointing to its own success with increasing pass rates for the Bilingual Interpreting Examination by contracting with a vendor to provide a free instructor-led education program for individuals who it identified as "near passers" who only narrowly failed the exam. The CRB may consider instituting a program similar to the Judicial Council's as a way of improving passage rates and making further effort to address persistent workforce issues.

This bill does not currently include any language specifically addressing workforce issues within the shorthand reporting profession. However, these challenges remain urgently in need of attention. As discussions regarding the appropriate role that the CRB could play in addressing shorthand reporter shortages in the state continue, this bill may be subsequently amended to incorporate any identified solutions.

Continued Regulation. Issue #17 in the CRB's sunset background paper evaluated whether the licensing of shorthand reporters be continued and be regulated by the CRB. The background paper concluded that while debate will persist regarding how California should move into the future with regards to the shorthand reporting profession and how new technologies should be incorporated into the judicial system, the ongoing need for strong regulation and oversight of shorthand reporters is clear. The background paper recommended that the CRB should be continued so that its important work may continue as the Legislature engages in further discussions regarding how to balance the interests of all stakeholders in pursuit of the universally shared goals of promoting the profession and preserving access to a fair and accurate record of all court proceedings. This bill would extend the CRB's sunset dates by four years.

Current Related Legislation.

AB 3251 (Committee on Business and Professions) is the sunset bill for the California Board of Accountancy. *This bill is pending in this committee.*

AB 3253 (Committee on Business and Professions) is the sunset bill for the Board for Professional Engineers, Land Surveyors, and Geologists. *This bill is pending in this committee.*

AB 3254 (Committee on Business and Professions) is the sunset bill for the Cemetery and Funeral Bureau. *This bill is pending in this committee.*

AB 3255 (Committee on Business and Professions) is the sunset bill for the Board of Vocational Nursing and Psychiatric Technicians of the State of California. *This bill is pending in this committee.*

SB 1452 (Ashby) is the sunset bill for the California Architects Board and the Landscape Architects Technical Committee. *This bill is pending in the Senate Committee on Judiciary.*

SB 1453 (Ashby) is the sunset bill for the Dental Board of California. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

SB 1454 (Ashby) is the sunset bill for the Bureau of Security and Investigative Services. *This bill is pending in the Senate Committee on Judiciary.*

SB 1455 (Ashby) is the sunset bill for the Contractors' State License Board. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

AB 1520 (Low, Chapter 463, Statutes of 2019) extended the sunset date for the CRB and made additional reforms identified through the sunset review process.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3253 Committee on Business and Professions – As Amended April 18, 2024

SUBJECT: Board for Professional Engineers, Land Surveyors, and Geologists: licensees.

SUMMARY: This bill is the sunset review vehicle for the Board of Professional Engineers, Land Surveyors, and Geologists (BPELSG), which among other things, extends the BPELSG's authority to license and regulate the professions of engineering, land surveying, and geology until January 1, 2029, expands the BPELSG's authority to enforce against certain unlicensed activities, and makes various technical changes.

EXISTING LAW:

1) Provides for the regulation of professional engineering in California under the Professional Engineers Act, and prohibits the practice of unlicensed engineering. (Business and Professions Code (BPC) § 6700 *et seq.*)

2) Provides for the regulation of professional geologists and geophysicists in California under the Geologist and Geophysicist Act, and prohibits the practice of unlicensed geology or geophysics. (BPC § 7800 *et seq.*)

3) Provides for the regulation of licensed land surveyors in California under the Professional Land Surveyors' Act, and prohibits the practice of unlicensed land surveying. (BPC § 8700 *et seq.*)

4) Establishes the Board of Professional Engineers, Land Surveyors and Geologists under the Department of Consumer Affairs (DCA) to license and regulate engineers, land surveyors and geologists and administer the provisions under their respective practice acts until January 1, 2025. (BPC §§ 6710, 8710 *et seq.*)

5) Requires the BPELSG to appoint an executive officer at a salary to be fixed by the Board and approved by the Director of Finance, until January 1, 2025. (BPC § 6713)

6) Establishes that, notwithstanding any other law, the terms of office for specified boards and committees under the DCA, including the BPELSG, shall be four years expiring on June 1. (BPC § 130)

7) Establishes terms of four years, expiring on June 30 of the fourth year following the year in which the previous term expired, for each member appointed to the BPELSG. (BPC § 6712(a))

8) Requires an applicant for certification as an engineer-in-training to, among other requirements, successfully pass the first division of the examination administered by the BPELSG. (BPC § 6751(a)(2))

9) Requires an applicant for certification as a licensed engineer to, among other requirements, successfully pass the second division of the examination administered by the BPELSG. (BPC § 6751(c)(4))

10) Mandates that the examination duration and composition be designed to conform as follows:

    a) The first division of the examination shall test the applicant's knowledge of appropriate fundamental engineering subjects, including mathematics and the basic sciences, and;

    b) the second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of the branch of engineering in which the applicant is being examined.

    (BPC § 6755(a))

11) Provides that the BPELSG may by rule provide for a waiver of the second division of the examination for persons eminently qualified for licensure by virtue of their standing in the engineering community, their years of experience, and other qualifications as the board deems appropriate. (BPC § 6755(a))

12) Specifies what types of questions shall be included in the second division of the examination for registration as a professional engineer, and methodology by which the BPELSG must administer the examination. (BPC § 6755.1(a))

13) For civil engineers, specifies that the second division of the examination shall also include questions to test the applicant's knowledge of seismic principles and engineering surveying principles, and that such questions shall be administered as a separate part of the examination. (BPC § 6755.1(b))

14) Authorizes BPELSG to refund one-half of the amount of the application fee to applicants for licensure as a professional engineer or land surveyor, or certification as an engineer-in-training or land surveyor-in-training, who are found to lack qualifications required for admission to the examination for such licensure or certification. (BPC §§ 6763.5; 8748.5)

15) Makes it a misdemeanor to, among other things:

    a) Present or attempt to file as one's own the certificate of licensure of a licensed professional engineer unless they are the person named on the certificate of licensure;

    b) Give false evidence of any kind to the board, or to any board member, in obtaining a certificate of licensure as an engineer;

    c) Impersonate or use the seal, signature, or license number of a licensed professional engineer or uses a false license number; or

    d) Use an expired, suspended, surrendered, or revoked license.

    (BPC § 6787)

16) Makes it a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment not to exceed three months, or by both fine and imprisonment, to, among other things:

    a) Present or attempt to file as one's own the certificate of registration of a geologist or geophysicist unless they are the person named on the certificate;

b) Give false evidence of any kind to the board, or to any board member, in obtaining a certificate of registration as a geologist or geophysicist;

c) Impersonate or use the seal, signature, or license number of any professional geologist, certified specialty geologist, professional geophysicist, or certified specialty geophysicist or who uses a false license number; or

d) Use an expired, suspended, surrendered, or revoked license.

(BPC § 6787)

17) Makes it a misdemeanor to, among other things:

a) Present or attempt to file as one's own the certificate of licensure of a licensed land surveyor unless they are the person named on the certificate of licensure;

b) Give false evidence of any kind to the board, or to any board member, in obtaining a certificate of licensure as a land surveyor;

c) Impersonate or use the seal, signature, or license number of a licensed professional land surveyor or uses a false license number; or

d) Use an expired, suspended, surrendered, or revoked license.

(BPC § 8792)

THIS BILL:

1) Extends the authority for the BPELSG to license and regulate professions established under the Professional Engineers Act, the Professional Land Surveyors' Act, and the Geologist and Geophysicist Act, respectively, to January 1, 2029.

2) Extends the power for the BPELSG to appoint an executive officer until January 1, 2029.

3) Eliminates conflicting statute related to appointment terms for members of the board.

4) Authorizes each appointing authority to remove a board member from office at any time for continued neglect of duties required by law, incompetence, or unprofessional or dishonorable conduct, so long as they are the authority that initially appointed that member.

5) Authorizes the BPELSG to waive any part of the second division examination that is required prior to licensure for certain eminently qualified persons.

6) Requires the BPELSG, as part of the second division examination, to administer questions to test an applicant's knowledge of seismic principle and engineering surveying principles as separate parts.

7) Authorizes the BPELSG to issue an examination fee refund to specified applicants.

8) Expands prohibitions related to unlawfully impersonating a licensed engineer, or unlawfully using an engineer's name or certificate number, to also apply to such cases involving the use of "engineer-in-training".

9) Removes provisions that establish maximum fines and imprisonment for a misdemeanor related to false use of a geologist or geophysicist license.

10) Expands prohibitions related to unlawfully impersonating a licensed geologist or geophysicist, or unlawfully using a geologist's or geophysicist's name or certificate number, to also apply to such cases involving the use of "geologist-in-training" or "geophysicist-in-training".

11) Expands prohibitions related to unlawfully impersonating a licensed land surveyor, or unlawfully using a land surveyor's name or certificate number, to also apply to such cases involving the use of "land surveyor-in-training".

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

COMMENTS:

Purpose. This bill is the sunset review vehicle for the Board of Professional Engineers, Land Surveyors, and Geologists, 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.

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

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

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

The Board of Professional Engineers, Land Surveyors and Geologists. The Board of Professional Engineers, Land Surveyors, and Geologists is charged with safeguarding life, health, property, and public welfare by providing for the licensure and regulation of engineers, land surveyors, and geologists operating in the state of California. According to the Board in their 2023-24 Sunset Review Report:

> The highways, bridges, dams, waterways, buildings, and electrical and mechanical systems in buildings are all products of engineering. Consequences of poorly designed bridges or buildings include deaths and injuries as well as financial hardship to the property owner ultimately responsible for damages and reconstruction. Land surveyors help to define property boundaries. A miscalculation of property boundaries in a residential or commercial neighborhood could cause a property owner financial loss if the property is sold or improvements were constructed based on reliance upon an incorrect boundary. A structure could be located on another individual's property, with concomitant major financial losses and inability to convey title. Geologists and geophysicists analyze the rock, soil, and groundwater resources in California and help to determine if active landslides, earthquake faults, or underground water supplies impact orderly and safe development or if they impact the health, safety or welfare of the public.

The BPELSG has a wide and varied scope, enforcing licensing requirements for the following professions: engineers, electrical engineers, land surveyors, mechanical engineers, professional geologists, and professional geophysicists, ensuring such professionals have the adequate training and competency necessary to perform their duties. Additionally, it enforces the title protection of licensed engineers operating in sub-specialty classifications. The Board has operated in its current form since January 1, 2011. Prior to 2011, these distinct licensing professions operated under different and separate regulatory boards. The BPELSG's mission statement, as stated in their 2023-24 Sunset Review Report, is:

> We protect the public's safety and property by promoting standards for competence and integrity through licensing and regulating the Board's professions.

SUNSET ISSUES FOR CONSIDERATION:

As part of the BPELSG's sunset review, a number of issues and priorities were raised by the board's staff, stakeholders, and legislative committees. These issues were first outlined in the BPELSG's "2023-24 Sunset Review Report" submitted to the Legislature on January 4, 2024. Subsequently, as part of the Joint Sunset hearings conducted by the Assembly Committee on Business and Professions and the Senate Business, Professions and Economic Development Committee, committees issued "background papers" highlighting recommendations to the BPELSG regarding issues raised in their report. The background paper is available on the Committee's website: https://abp.assembly.ca.gov/jointsunsethearings. On April 11, the BPELSG responded to these recommendations and presented committee staff with potential reforms and statutory language to address various issues. This bill addresses certain issues discussed in these reports and responses.

While all of the issues identified in the background paper remain available for discussion, the following are currently being addressed the current language of this bill or are otherwise under active deliberation:

1) *Issue #2 – UK License Reciprocity.* The Board reports that as a result of the singing of the Atlantic Declaration for Twenty-First Century U.S.-U.K. Economic Partnership[1], the NCEES and the Engineering Council in the United Kingdom (ECUK) are currently developing a mutual recognition agreement to more easily enable U.S.- based licensed engineers to

[1]The Atlantic Declaration: A Framework for a Twenty-First Century U.S.-UK Economic Partnership

practice in the UK and vice versa. In February 2024, representatives of the Board traveled to the UK to meet with ECUK and UK governmental officials to learn more about their licensing requirements and the industry more broadly. The Board reports that at this time its goal it to ensure that the licensing requirements established in the mutual recognition agreement sufficiently protect consumers. Existing law authorizes the Board to establish relationships with comparable licensing entities in other countries "for the purposes of working toward uniformly high professional standards and mutual recognition of registration and licensure," but the Board acknowledges that should they decide to accept the agreement as an alternate pathway to licensure for professional engineers, it is anticipated that legislative authorization and a subsequent rulemaking would be required for the Board to implement the alternate pathways established by the mutual recognition agreement.

Staff Recommendation in the Background Paper: The Board should continue to keep the committees comprised of the status of the mutual recognition agreement and established license requirements therein.

Board Response to the Background Paper:

> The National Council of Examiners for Engineering and Surveying (NCEES) and the Engineering Council of U.K. (EngC) finalized the Mutual Recognition Agreement (MRA) on March 28, 2024. The Board took action at their March 7, 2024, meeting, agreeing to pursue recognition of the MRA as an alternate pathway to engineering licensure in California for any U.K. Chartered Engineer that has additionally obtained registration under the International Engineering Alliance (IEA) registry. While the MRA recognizes many similarities between California engineer license requirements and those of the EngC, the MRA has identified that Chartered Engineers from U.K. use a form of assessment which differs from the traditional examination form which is common in U.S. jurisdictions. The Board is currently evaluating any revisions to laws and regulations to prepare for applicants seeking to use this pathway in the future and has identified some minor revisions to statutes which will enable to the Board to fully consider all available options during the rulemaking process to implement this pathway. These minor revisions would amend Business and Professions Code sections 6755 and 6755.1 relating to the term "second division examination." The proposed amendments would clarify that the Board could enact rules to waive any part of the second division examination and what the parts of the "second division examination" for the civil engineer license are. The proposed language is included with the response to Issue 10, along with other proposed legislative changes.

Sunset Recommendation: This bill amends statute consistent with recommendations outlined in the BPELSG's response. Specifically, the bill strikes certain language in BPC sections 6755 and 6755.1 in reference to the "second division examination" that is utilized to test an applicant's applied knowledge and experience in the practice of engineering. The amendment to section 6755 clarifies that the Board has the authority to, by rule, waive any part of the second division examination when approving an applicant who is otherwise eminently qualified for licensure in the state. The amendment to section 6755.1 clarifies that, as part of the second division examination, the Board may administer questions as separate parts. Together, these clarifying amendments will allow the Board to waive certain parts of the second division examination as necessary to license UK Charted Engineers in the state pursuant to the MRA.

2) *Issue #8 – Unlicensed Activity.* In 2019, the Board reported that it had witnessed a spike in unlicensed activity, largely stemming from the advancement and democratization of technologies (I.e. Global Positioning System (GPS) and Ground Penetrating Radar (GPR) used to render land surveying and geophysical services. At the time, the Board reported that the concern was not so much that these tools were being utilized by laypersons, but that unlicensed individuals were interpreting resulting data and making subsequent recommendations, which constitute the practice of land surveying and geophysics in California. The Board reported that it had conducted outreach at industry events and formed a relationship with the California Facilities Safe Excavation Board. However, the Board continues to receive complaints about unlicensed activity and encounter businesses with no knowledge of the state's licensing requirements.

   In its 2023-24 Sunset Review Report, the Board stated that it is currently seeking ways to enhance the effectiveness of its Enforcement Unit in addressing complaints related to unlicensed practice. While administrative citations are useful for public disclosure, they are often not effective in motivating violators to actually cease activity. The internet is increasingly used for advertising these unlicensed services, complicating enforcement. While the Board has authority, through administrative citation, to order individuals advertising in phone directories to disconnect telephone services regulated by the Public Utilities Commission (PUC), many unlicensed individuals operate through mobile telephone services, which are not regulated by the PUC. The Board states they are exploring new strategies, such as collaborating with online platforms to educate users about licensure requirements and remove illegal listings.

   Additionally, the Board noted concerns about unlicensed individuals running engineering and land surveying businesses without licensed professionals in charge. According to the Board:

   > During the 2022 legislative session, the Board sponsored legislation (Ch. 302, Stats.2022) that repealed a subdivision in B&P Code § 6738 and 8729 that was widely misinterpreted as allowing non-engineering and non-land surveying businesses to offer professional engineering or land surveying services as long as the business then contracted with a licensee to be in responsible charge of the work. Although this was not at all what the subdivision stated, the Board determined that the best course of action was to repeal it to prevent any future misunderstandings or misuse of the law. This change became effective January 1, 2023. Currently, there is not a requirement for geological and geophysical companies to file an OR form, although the Geologist and Geophysicist Act does require a professional geologist or geophysicist, as appropriate, to be an owner, partner, or officer of the business and in responsible charge of the professional services offered and performed. The Board has been exploring a means to integrate certain data elements into the BPELSG Connect system that will better enable the tracking of licensees' association with engineering, land surveying, geology, and geophysics businesses offering services in California.

   Moreover, the Board reports that it has met with concerned professional associations to discuss way in which they can collaborate to address unlicensed activity. Earlier this year, the California Land Surveyors Association (CLSA) submitted a letter enumerating several recommendations to combat illegal land surveying. Those recommendations include the Board hiring more enforcement staff; increasing civil penalties; requiring land surveyors to

carry professional errors and omissions liability insurance; holding unlicensed land surveyors and the entities that employ them to be held jointly and severally liable for unlicensed practice; and enhanced education and outreach for consumers. Moreover, the CLSA has indicated that licensed land surveyors would be willing to pay slightly higher fees to improve enforcement.

Staff Recommendation in the Background Paper: The Board should consider the merit of CLSA's recommendations and report to the Committees which, if any, it considers feasible. Moreover, the Board should identify any statutory or budgetary changes needed to enable more effective enforcement against unlicensed activity.

Board Response to the Background Paper: In its response to the March background paper, the Board acknowledged some shared concerns with stakeholders such as CLSA—as well as the American Council of Engineering Companies – California (ACEC-CA) and the California and Nevada Civil Engineers and Land Surveyors Association (CELSA)—and notes that while it is already exploring certain recommendations through working groups, it has reservations about others. These include suggestions to increase staff dedicated to investigating unlicensed activity, raise license renewal fees, and augment administrative fines. The Board questions the feasibility and impact of such measures, citing limitations in statutory authority and concerns about consumer costs and effectiveness. Additionally, the Board addresses recommendations regarding disclosure requirements for professional errors and omissions liability insurance, continuing education mandates, and codification of survey control data release practices, expressing skepticism and citing existing statutes and regulations that address related issues. The BPELSG stated in its response:

> In summary… the Board takes the issue of unlicensed activity of all of its regulated professions very seriously. The Board's Enforcement Unit diligently investigates complaints relating to unlicensed activity and takes appropriate steps to educate individuals on the laws and what activities require a license. The Board's current laws already provide effective means for enforcement relating to many of the issues raised the letters. With regards to other recommendations, the Board has concerns with the appropriateness of them and the effect and impact they would have on consumers and the Board's ability to effectively and efficiently investigate complaints. As such, the Board does not believe any statutory changes should be made in response to the recommendations.

Nevertheless, in its response to "Issue 10 – Technical Cleanup" from the March background paper, the BPELSG highlighted a minor statutory revision that will aid in their efforts to combat unlicensed activity. Specifically, the BPELSG noted the increased phenomenon of individuals falsifying Engineer-in-Training (EIT), Geologist-in-Training (GIT), or Land Surveyor-in-Training (LSIT) certificates [collectively, "IT certificates"]. While existing law does grant the BPELSG authority over unlicensed individuals who use the EIT, GIT, or LSIT title, this authority does not extend to instances where unlicensed individuals have created false IT certificates or used false IT certificate numbers. The Board notes this is usually in an effort to mislead consumers regarding their competency, or to obtain employment where the employer seeks someone with an IT certificate or provides a salary increase to individuals with an IT certificate.

Sunset Recommendation: Based on the BPELSG's response, this bill expands existing prohibitions regarding the impersonation of a licensed engineer, land surveyor or geologist to also include the false use of the title, name, or certificate number of a certified EIT, LSIT or GIT. As this bill progresses and Board working groups explore potential fee adjustments or further regulations around unlicensed activity, the BPELSG should continue to contemplate further statutory revisions to strengthen their enforcement authority that can be addressed by the Legislature during sunset review.

3) *Issue #10 – Technical Cleanup.* According to the Board, legislation enacted since the Board's prior sunset review has made various technical changes, thus limiting the amount of technical clean-up needed at present. Nonetheless, the Board has identified a handful of sections within the Business and Professions Code that should be amended.

Staff Recommendation in the Background Paper: The Board should continue to advise the Committees of necessary code cleanup.

Board Response to the Background Paper: Outside of recommended amendments further described above, related to license reciprocity with UK-based Chartered Engineers and increased enforcement authority, the BPELSG offered committees two additional recommendations pertaining to statutory cleanup:

Business and Professions Code section 130:
Section 130 needs to be amended to remove the Board from the list of boards whose members' term of office expired on June 1. In 2006, Business and Professions Code section ISSUE #10: Technical Cleanup. Is there a need for technical cleanup? 18 6712 was amended to change the expiration date of the appointment terms for the Board from June 1 to June 30. However, at that time, Section 130 was overlooked and not included in the legislation. Consequently, the statutes are in conflict. The appointing authorities (the Governor, the Senate Rules Committee, and the Speaker of the Assembly) are aware that the term expiration date for the members of this Board is June 30. This would be a non-substantive amendment to eliminate conflicting statutes.

Business and Professions Code sections 6763.5 and 8748.5:
Many years ago, the Board used to charge applicants one fee, at the time of application submittal, to cover both the application review and the examination(s) necessary for licensure. This fee was collectively referred to as the "application fee." Subsequently, the Board separated the fees to charge one fee for the application review and another fee for the examination(s), the latter which is only paid subsequent to application approval and only for those license types which required a state examination. At the time, the Board made conforming changes to its statutes to reflect this change. However, it has recently come to the Board's attention that Sections 6763.5 and 8748.5 were overlooked and still refer to the "application fee" when they should refer to the "examination fee." These sections address what monies are to be refunded to an applicant who is deemed to lack the qualifications for licensure before they take the examinations. They specify that the Board may refund "one-half of the amount of [the] application fee"; the one-half reference reflected the theory that half of the fee was used to cover the costs of the application review, and the other half for the examination(s). Since the fees are now separated, the entire application fee is used to cover the costs of reviewing the application, and the full amount of the examination fee, if required by application type,

should be refunded if the applicant is subsequently deemed unqualified. These amendments are non-substantive, clarifying changes to align with the Board's current business process and to reflect the fees actually paid and which ones will be refunded

Committee Recommendation: This bill makes technical changes to statute consistent with the recommendations outlined by the BPELSG in their response to the March background paper.

4) *Issue #11 – Continued Regulation of Licensees by the BPELSG.* The practices of engineering, land surveying, geology, and geophysics have significant health, safety, legal, and financial consequences for Californians. Indeed, the regulation of engineering and geology began after catastrophic events ruinous to human life and property. Uniform enforcement of land surveying laws became paramount following years of local jurisdictions interpreting the laws differently and legal disputes costing both the state and public millions of dollars.

   The Board's licensing and enforcement responsibilities are no less important today as the state endures regular extreme weather events and continues to invest significant resources in its infrastructure.

   Staff Recommendation in the Background Paper: The Board's oversight of the Professional Engineers, Land Surveyors, Geologists, and Geophysicists should be continued, with potential reforms, and reviewed again on a future date (to be determined) to ensure that issues identified in this background paper are adequately addressed.

   Board Response to the Background Paper: The Board greatly appreciates the Committees' recognition of its efforts to improve its operations and the continued support for its future endeavors. The Board members and staff look forward to working with the Committees and their staff to accomplish the recommendations outlined in the Background Paper.

   Sunset Recommendation: This bill extends the BPELSG's oversight of professional engineers, land surveyors, geologists, and geophysicists by four years, to January 1, 2029.

Current Related Legislation.

AB 3176 (Hoover) would require licensed land surveyors to restore or rehabilitate any monument that is used as part of a survey to a permanent condition so that it may be referenced and used in the future. *This bill passed this committee with a vote of 18-0-0, and is pending on the Assembly Floor.*

AB 3251 (Committee on Business and Professions) is the sunset bill for the California Board of Accountancy. *This bill is pending in this committee.*

AB 3252 (Committee on Business and Professions) is the sunset bill for the Court Reporters Board. *This bill is pending in this committee.*

AB 3254 (Committee on Business and Professions) is the sunset bill for the Cemetery and Funeral Bureau. *This bill is pending in this committee.*

AB 3255 (Committee on Business and Professions) is the sunset bill for the Board of Vocational Nursing and Psychiatric Technicians of the State of California. *This bill is pending in this committee.*

SB 1452 (Ashby) is the sunset bill for the California Architects Board and the Landscape Architects Technical Committee. *This bill is pending in the Senate Committee on Judiciary.*

SB 1453 (Ashby) is the sunset bill for the Dental Board of California. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

SB 1454 (Ashby) is the sunset bill for the Bureau of Security and Investigative Services. *This bill is pending in the Senate Committee on Judiciary.*

SB 1455 (Ashby) is the sunset bill for the Contractors' State License Board. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

SB 1120 (Jones), Chapter 302, Statutes of 2022, required applicants, licensees, and certificate holders to provide the BPELSG with a valid email address, if available, and notify the BPELSG of any email address changes; clarified that unlicensed individuals cannot offer professional engineering and land surveying services; and updated certain land survey requirements.

AB 1522 (Low), Chapter 630, Statutes of 2019, extended the sunset date for the BPELSG and its authority to appoint an executive officer until January 1, 2024; authorized the BPELSG to take enforcement actions against a geologist-in-training certificate; continued disciplinary authority; and made other technical and clarifying changes.

SB 920 (Cannella), Chapter 150, Statutes of 2018, extended the authorization for licensed engineers, land surveyors, and architects to form limited liability partnerships until January 1, 2026.

ARGUMENTS IN SUPPORT:

In a joint support letter by the **American Council of Engineering Companies, California** and the **California and Nevada Civil Engineers and Land Surveying Association, Inc.**, these organizations write: "Land surveying has a long and proud history in the United States and the State of California. The work performed by land surveyors includes the setting of legal property boundaries and locating with high precision the geospatial location of fixed works in the context of construction and engineering design and is therefore critical to the integrity of engineering design and the construction or modification of any building or infrastructure in the state."

REGISTERED SUPPORT:

American Council of Engineering Companies, California
California & Nevada Civil Engineers and Land Surveyors Association, Inc.

REGISTERED OPPOSITION:

None on file

Analysis Prepared by: Edward Franco / B. & P. / (916) 319-3301

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3254 (Committee on Business and Professions) – As Amended April 16, 2024

SUBJECT: Endowment care cemeteries: reporting.

SUMMARY: Extends the sunset date for the Cemetery and Funeral (Bureau) until January 1, 2029 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the Bureau's sunset review oversight process.

EXISTING LAW:

1) Establishes the Cemetery and Funeral Act, which provides for the licensing and oversight of 14 professional categories within the death care industry. (Business and Professions Code (BPC) §§ 7600 *et seq.*)

2) Establishes the Bureau within the Department of Consumer Affairs to administer and enforce the Cemetery and Funeral Act, subject to review by the Legislature as though it were scheduled to be repealed on January 1, 2025. (BPC § 7602)

3) Exempts religiously-affiliated cemeteries, public cemeteries, and private or fraternal burial parks not exceeding 10 acres in area and established prior to September 19, 1939 from the Bureau's licensing requirements. (BPC § 7612.2)

4) Requires the Bureau to conduct a study to obtain information to determine if the endowment care fund levels of each licensee's cemetery are sufficient to cover the cost of future maintenance. (BPC § 7612.11)

5) Declares that upon finding by a court that a cemetery manager of a private cemetery has ceased to perform their duties due to a lapse, suspension, surrender, abandonment or revocation of their license, the court shall appoint a temporary manager to manage the cemetery property. (BPC § 7653.9)

6) Authorizes a cemetery authority to place its cemetery under endowment care and establish, maintain, and operate an endowment care fund. (Health and Safety Code (HSC) § 8725)

7) Requires the principal of all funds for endowment care to be invested and the income only to be used for the care, maintenance, and embellishment of the cemetery in accordance with the provisions of law and the resolutions, bylaws, rules, and regulations or other actions or instruments of the cemetery authority and for no other purpose. (HSC § 8726)

8) Establishes minimum amounts which an endowment care cemetery must deposit into its endowment care fund at the time of, or not later than, completion of the initial sale of internment space in the cemetery. (HSC § 8738)

9) Authorizes a city or county that determines an abandoned cemetery threatens or endangers the health, safety, comfort, or welfare of the public to dedicate such abandoned cemetery as a pioneer memorial park and take over maintenance of the cemetery. (HSC §§ 8825 – 8829)

THIS BILL:

1) Extends the sunset date for the Bureau until January 1, 2029.

2) Requires licensed cemeteries to provide specified information to the Bureau as part of the Bureau's endowment care sufficiency study.

3) Requires the Bureau to convene a workgroup comprised of representatives from the cemetery industry, county government, and other interested stakeholders to discuss options for ensuring continued care, maintenance, and embellishment of abandoned cemeteries, including the possibility of requiring counties to assume responsibility for cemeteries located within their boundaries that become abandoned.

4) Requires the workgroup to convene on or before July 1, 2027, and requires the Bureau to submit a report to the Legislature summarizing the discussions of the workgroup, along with any recommendations, no later than January 1, 2028.

5) Provides that 90 days following the cancellation, surrender, or revocation of a certificate of authority, the Bureau shall take title of any endowment care funds of that cemetery authority; shall take possession of all necessary books, records, property, real and personal, and assets; and shall act as conservator over the management of the endowment care funds.

6) Makes additional technical and clarifying changes to the Cemetery and Funeral Act.

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

COMMENTS:

Purpose. This bill is the sunset review vehicle for the Cemetery and Funeral Bureau, authored by the Assembly Committee on Business and Professions. The bill extends the sunset date for the Bureau and enacts technical changes, statutory improvements, and policy reforms in response to issues raised during the Bureau's sunset review oversight process.

Background.

Sunset review. In order to ensure that California's myriad professional boards and bureaus are meeting the state's public protection priorities, authorizing statutes for these regulatory bodies are subject to statutory dates of repeal, at which point the entity "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 approximately three dozen different boards and bureaus under the Department of Consumer Affairs, as well as the Department of Real Estate and three nongovernmental nonprofit councils.

On a schedule averaging every four years, each entity is required to present a report to the Legislature's policy committees, which in return prepare a comprehensive background paper on the efficacy and efficiency 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.

Cemetery and Funeral Bureau. The Bureau was established in 1995 when the previously distinct Cemetery Board and Board of Funeral Directors and Embalmers were merged into a consolidated program under the Department of Consumer Affairs (DCA). As a bureau under the DCA, the Bureau is charged with administering and enforcing the Cemetery and Funeral Act. A voluntarily established Advisory Committee, comprised of representatives of both the industry and the public, assists the Bureau in engaging consumers and licensees in its regulatory activities.

The Bureau oversees 14 different professional categories within the so-called "death care" industry, with approximately 11,315 licensees currently active with the Bureau. The Bureau's licensing program includes funeral establishments and directors; embalmers and apprentice embalmers; cremated remains disposers, crematories, crematory managers, and hydrolysis facilities; cemetery managers, brokers, branches, and salespersons; and certain private, nonreligious cemeteries. Beginning in 2027, the Bureau will also license reduction facilities. The Bureau is additionally tasked with the fiduciary responsibility of overseeing more than three billion dollars in funds held and invested by funeral establishments and cemeteries, including endowment care funds and preneed trust funds.

The Bureau plays a vital role in protecting consumers from fraud, negligence, and other misconduct in the course of obtaining cemetery and funeral services, a time when consumers are frequently grieving and vulnerable to dishonest dealings. In its enforcement of the Cemetery and Funeral Act, the Bureau is authorized to inspect any premises in which the business of a funeral establishment, reduction facility, cemetery, or crematory is conducted; where embalming is practiced; or where human remains are stored. The Bureau is then empowered to take disciplinary action against a licensee for violations of the law. The Cemetery and Funeral Act declares that protection of the public shall be the Bureau's highest priority.

Not every aspect of the cemetery industry is overseen by the Bureau. For example, the Bureau does not have jurisdiction over cemeteries operated by religious institutions, nor does the Cemetery and Funeral Act apply to public cemeteries. Private cemeteries under ten acres that were established prior to 1939 also do not need to comply with the Act unless they collect an endowment care fund. For all other cemeteries, the Bureau is entrusted with ensuring that the remains of loved ones are treated with dignity and respect in perpetuity.

Issues Raised during Sunset Review. The background paper for the Bureau's sunset review oversight hearing[1] contained a total of 12 issues and recommendations, each of which is eligible to result in statutory changes enacted through the Bureau's sunset bill.

Abandoned Cemeteries. Issue #8 in the sunset background paper discussed growing concerns regarding abandoned cemeteries and posed the question as to what steps could be taken to ensure that older cemeteries are appropriately and respectfully maintained by another entity after they have been abandoned. This topic had been discussed during prior sunset reviews, when the Committees cited the specific example of a cemetery in Southern California where grave markers were allowed to become overgrown with dirt and grass and minimum maintenance standards were not met. There continue to be concerns that issues regarding perpetual maintenance will grow more severe and prevalent.

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[1] https://abp.assembly.ca.gov/media/1172

There are two distinct drivers of the problem: older cemeteries have limited spaces remaining to sell and endowment funds are inadequate to perpetually maintain cemeteries that have since sold all available plots. As explained by the Bureau in its report to the Committees, the less income a licensed cemetery business produces through new sales, the more it has to rely on its endowment care fund for the care, maintenance, and embellishment of the cemetery grounds. Meanwhile, an Endowment Care Sufficiency Study published in 2017 found that at least 43 licensed cemeteries have an underfunded endowment care fund with limited spaces to sell. Because these cemeteries are private businesses, properties that no longer generate revenue become abandoned if they cannot be sold, or they are abandoned following disciplinary measures by the Bureau, including revocation of a license. The result is an unlicensed, abandoned cemetery where the resting places of the dead are not treated with dignity.

A recent example of the devastation this situation can cause is the cancelation of the license and subsequent abandonment of Lincoln Memorial Park Cemetery in Carson, California. In August 2023, the Bureau began receiving information from the public that the cemetery had closed its gates. Upon investigation, the Bureau confirmed that the cemetery was no longer being maintained by the cemetery manager and cemetery authority, who requested cancelation of their licenses. The community was devastated as public access for family members had been limited and there was no local entity to oversee new internments of loved ones who had passed away who had previously purchased a plot in the cemetery. Neither the City of Carson nor Los Angeles County were able to assist in providing ongoing care to the abandoned cemetery.

Currently, when a private cemetery that has not interred more than 10 human bodies in the preceding five years threatens or endangers the health, safety, comfort, or welfare of the public, statute allows (but does not require) a city or county to declare that cemetery abandoned. The abandoned cemetery is then declared a pioneer memorial park and is maintained by the city or county. This statute, however, only applied to abandoned cemeteries that never collected endowment care funds—in other words, cemeteries established prior to 1939.

The Act only provides for two options for maintenance by a private cemetery by an entity other than the licensee. One statute authorizes a court to appoint a temporary licensed cemetery manager to manage the property and serve prepaid internments, or the county if there is no appointed temporary manager. The Bureau states that typically when a cemetery is within city limits, a county will not utilize this section and defer to the city (as occurred with Lincoln Memorial Park Cemetery). Statute additionally allows a city or county to perform maintenance within a cemetery when its license has been revoked, suspended, or not renewed. This law only applies to maintenance necessary to protect the health and safety of the public. In other words, while dry weeds creating a fire hazard would be addressed, the law does not provide for cosmetic upkeep to grounds and embellishments, which while not a matter of safety are important for communities whose families are interred in the cemetery.

In all of the above cases, local governments are not *required* to take action following the abandonment of a cemetery, but are merely permitted to under certain circumstances. The Bureau points out that when a cemetery is proposed to be created, the local government in which it will be situated has to authorize and zone a parcel of land as cemetery property with approval to intern decedents. Local authorities are responsible for determining whether a piece of property within their communities will be dedicated as cemetery property, and local governments know that there is no guarantee a private cemetery business will remain active forever.

In its sunset report, the Bureau suggested that the Legislature consider amending current statute to vest the responsibility of perpetual care with the jurisdiction that authorized the underlying use upon abandonment of a cemetery. Such a mandate may create challenges with local governments who may argue that a lack of resources would not allow them to successfully assume responsibility for all private cemeteries within their boundaries. However, the importance of this issue necessitates a thorough discussion of all potential options. This bill would require the Bureau to convene a workgroup comprised of representatives from the cemetery industry, county government, and other interested stakeholders to discuss options for ensuring continued care, maintenance, and embellishment of abandoned cemeteries, including the possibility of requiring counties to assume responsibility for cemeteries located within their boundaries that become abandoned. The Bureau would report on the workgroup's discussions and recommendations no later than January 1, 2028 in advance of its next sunset review.

Endowment Care Sufficiency Study. Issue #9 in the Bureau's sunset background paper questioned whether private cemeteries be required to respond to the Bureau's requests for data relating to endowment care funds. Statute requires the Bureau to conduct a study to determine if the endowment care fund levels of each licensed cemetery are sufficient to cover the cost of future maintenance and to review the levels of endowment care funds. The Bureau is then required to submit its report to the Legislature by January 1, 2029.

The data collected by the Bureau includes the total size of each property including any undeveloped land, how many spaces (by type) have been sold, how many spaces are left to sell, and details about the history of the endowment care fund. This data is needed to make informed policy recommendations to the Legislature. The Bureau has raised concerns that without a mandate to require all licensed cemeteries to respond to the study, the Bureau's report will solely be based on the data received and may not accurately account for the proper level of endowment care funds. The Bureau requested the Legislature consider amending current statute to mandate reporting from all licensed cemeteries. This bill would grant the Bureau's request.

Conservatorship of Endowment Care Funds. Issue #10 in the Bureau's sunset background paper examined whether statute should expressly authorize the Bureau to conserve the endowment care fund of a cemetery authority that has voluntarily surrendered the fund to the Bureau, along with other clarifications. A licensed cemetery's endowment care fund is comprised of consumer deposits for each space sold within the cemetery, and the accumulated income generated on those deposits from investments. Investment decisions must be conservative and are limited under the Cemetery and Funeral Act. Only the accumulated income portion of the fund may be spent on the care, maintenance, and embellishment of the cemetery.

According to the Bureau, some cemeteries have voluntarily surrendered their endowment care funds to the Bureau to avoid the annual audit costs as they transition to fewer employees and limited public access hours. The Cemetery and Funeral Act authorizes Bureau oversight of an endowment care fund, including requirements regarding the number of days deposits must be made into the fund, proper and allowable investments, mandated annual independent audits of funds, and annual reporting to the Bureau. The Act also allows the Bureau to take possession of the fund and act as the conservator under certain conditions. However, the Act does not clearly identify that the Bureau shall conserve, and thus protect, the endowment care fund upon revocation or cancellation of a cemetery license or abandonment of a cemetery property.

The Bureau argued in its sunset report that a private cemetery that is no longer licensed due to the surrender or revocation of a license poses additional risks to the endowment care fund, ranging from it being used for items that are not related to the care and maintenance of the unlicensed cemetery to the fund being liquidated entirely leaving nothing for the care and maintenance of the cemetery for years to come. Once there is no longer a licensee, the cemetery is no longer subject to the Act; however, endowment care funds remain under the authority of the Bureau. The Bureau believes that without clarifying language within the Act, an unlicensed entity outside the Bureau's jurisdiction may take over the fund.

Specifically, the Bureau recommended that the Cemetery and Funeral Act be amended to 1) identify the entities allowed to hold endowment care funds (licensed cemetery authorities, the Bureau, and with Bureau approval, the city or county in which the cemetery is situated if it is transitioned to a public district cemetery or a pioneer cemetery); 2) provide that when a previously licensed cemetery becomes unlicensed due to abandonment, cancellation, surrender, or revocation of the license the Bureau shall conserve the fund; and 3) authorize the Bureau to conserve the endowment care fund when a cemetery authority voluntarily surrenders the fund to the Bureau. This bill would enact these provisions.

Continued Regulation. Issue #12 in the Bureau's sunset background paper discussed whether the licensing of the cemetery and funeral professions be continued and be regulated by the Bureau. The staff recommendation in the background paper concluded that the Bureau should be continued, to be reviewed again on a future date to be determined. This bill would extend the Bureau's sunset date by an additional four years.

Current Related Legislation.

AB 3251 (Committee on Business and Professions) is the sunset bill for the California Board of Accountancy. *This bill is pending in this committee.*

AB 3252 (Committee on Business and Professions) is the sunset bill for the Court Reporters Board. *This bill is pending in this committee.*

AB 3253 (Committee on Business and Professions) is the sunset bill for the Board for Professional Engineers, Land Surveyors, and Geologists. *This bill is pending in this committee.*

AB 3255 (Committee on Business and Professions) is the sunset bill for the Board of Vocational Nursing and Psychiatric Technicians of the State of California. *This bill is pending in this committee.*

SB 1452 (Ashby) is the sunset bill for the California Architects Board and the Landscape Architects Technical Committee. *This bill is pending in the Senate Committee on Judiciary.*

SB 1453 (Ashby) is the sunset bill for the Dental Board of California. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

SB 1454 (Ashby) is the sunset bill for the Bureau of Security and Investigative Services. *This bill is pending in the Senate Committee on Judiciary.*

SB 1455 (Ashby) is the sunset bill for the Contractors' State License Board. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation.

SB 606 (Glazer, Chapter 375, Statutes of 2019) extended the sunset date for the Bureau and made additional reforms identified through the sunset review process.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

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

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 3255 (Committee on Business and Professions) – As Introduced February 16, 2024

SUBJECT: Vocational nursing.

SUMMARY: Requires the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) to elect from its members a president, vice president, and other officers biennially instead of annually.

EXISTING LAW:

1) Establishes the BVNPT within the Department of Consumer Affairs (DCA) until January 1, 2025, 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)

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

COMMENTS:

Purpose. This bill is the sunset review bill for the BVNPT, authored by the Assembly Business and Professions Committee. This bill is intended to extend the sunset date for the BVNPT and enact technical changes, statutory improvements, and policy reforms in response to issues raised during the BVNPT's sunset review oversight process.

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

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

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

BVNPT. The BVNPT is the licensing entity within the DCA 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.

The BVNPT reported a total of 117,576 active, in-state licensees at the end of Fiscal Year (FY) 2022-23, including 108,905 LVNs and 8,671 PTs. It also reported 168 approved LVN and PT educational programs in California, including 157 LVN programs and 11 PT programs.

The BVNPT's mission statement, as stated in its *2020-2025 Strategic Plan*, is:

> The Board serves and protects the public by licensing qualified and competent vocational nurses and psychiatric technicians through ongoing educational oversight, regulation, and enforcement.

Current Related Legislation. AB 3251 (Committee on Business and Professions) is the sunset bill for the California Board of Accountancy. *This bill is pending in this committee.*

AB 3252 (Committee on Business and Professions) is the sunset bill for the Court Reporters Board. *This bill is pending in this committee.*

AB 3253 (Committee on Business and Professions) is the sunset bill for the Board for Professional Engineers, Land Surveyors, and Geologists. *This bill is pending in this committee.*

AB 3254 (Committee on Business and Professions) is the sunset bill for the Cemetery and Funeral Bureau. *This bill is pending in this committee.*

SB 1452 (Ashby) is the sunset bill for the California Architects Board and the Landscape Architects Technical Committee. *This bill is pending in the Senate Committee on Judiciary.*

SB 1453 (Ashby) is the sunset bill for the Dental Board of California. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

SB 1454 (Ashby) is the sunset bill for the Bureau of Security and Investigative Services. *This bill is pending in the Senate Committee on Judiciary.*

SB 1455 (Ashby) is the sunset bill for the Contractors' State License Board. *This bill is pending in the Senate Committee on Business, Professions, and Economic Development.*

Prior Related Legislation. AB 1536 (Committee on Business and Professions), Chapter 632, Statutes of 2021, extended the BVNPT by three years, delegated the authority to issue default decisions and stipulated surrenders of licenses to its executive officer, required the BVNPT follow a timeline for approving schools, established fees for schools seeking approval, and made other non-substantive and technical changes.

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:

None on file

ARGUMENTS IN OPPOSITION:

None on file

SUNSET ISSUES FOR CONSIDERATION:

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

1) *Issue #4: Alternate Pathways to Licensure*. The BVNPT is one of the few boards that offer pathways to licensure through education or experience outside of a typical educational program. Applicants who do not graduate from California-approved pre-licensure training programs have the option of requesting an evaluation of their alternate education and experience (known as "Method 3") or their experience only ("Method 5"), although both

Method 3 and Method 5 applicants must complete a 54-hour pharmacology course. This has resulted in significant processing timelines for these applications.

The BVNPT reports the following equivalency application timelines in days:

	LVNs	PTs
FY 2019-20	232	25
FY 2020-21	209	493
FY 2021-22	87	342
FY 2022-23	79	187

To accommodate as many applicants as possible, the requirements to qualify are relatively open-ended. However, the open-endedness also results in a lack of clarity for applicants as to what might qualify, resulting in larger and more detailed applications. This generates more work for board staff, who may have to go through a significant amount of back-and-forth with the applicant or third parties regarding requirements and application deficiencies.

One stakeholder has complained that the significant timelines and lack of clarity are unfair to applicants. Specifically, they complain that applicants have been unable to qualify because of the following:

- Work experience with a specific employer that may have qualified in the past no longer qualifies.
- In the BVNPT's regulations (CCR, tit. 16, § 2516(b)(3)) regarding verification of work experience, it is unclear that the "R.N." (registered nurse) in "R.N. director or supervisor" applies to both directors and supervisors.
- The BVNPT has been sending follow-up verification emails to supervisors who have already signed the application form.
- The BVNPT does not accept employment verification forms that are not in sealed business envelopes, even if the employer does not have letterhead or business envelopes.
- The verification of work form requires "diabetic urine testing," but the regulations (CCR, tit. 16, § 2516(b)(3)(A)5.) specify "diabetic testing" generally.
- The BVNPT has required work experience to be in a "general acute care facility approved by the Board," when the regulations (CCR, tit. 16, § 2516(b)(1)) say "clinical facility)."

BVNPT staff acknowledge that the lack of clarity often leads to the need for additional information. However, staff also note that the need for additional information verification does not mean an application is rejected. As noted above, there will continue to be back and forth with the applicant and additional opportunities to correct any deficiencies. Still, BVNPT staff agrees that additional clarifications may be beneficial to both the BVNPT and future applicants.

Staff Recommendation: The BVNPT should update the Committees on its plans to clarify its regulations and work with committee staff on any potential statutory changes.

Board Response: The BVNPT is strongly committed to ensuring alternate pathways to licensure, but must be vigilant to prevent fraud, and to ensure that only qualified individuals

advance in the processes. In addition to clarifying code and regulations, the BVNPT suggests consideration of statutory and regulatory changes to expand authority to review, approve and regulate teaching and educational materials at programs that offer assistance to prospective Method 3 and Method 5 applicants. This expanded authority would, however, create a significantly increased workload in Education, Licensing and Enforcement.

Sunset Recommendation: None at this time—BVNPT staff have requested additional time to review the proposal.

2) *Issue #5: Program Hours of Instruction*. In the October 31, 2023, Federal Register, the U.S. Department of Education promulgated regulations that impact the eligibility requirements for gainful employment programs that receive federal funding under Title IV of the Higher Education Act. The regulations go into effect July 1, 2024.

   Stakeholders are specifically concerned about program participation agreement language under § 668.14(b)(26)(ii), which seeks to ensure that gainful employment programs do not engage in "course stretching," a practice where the program adds education requirements that exceed the state's minimum requirement for admission into an occupation or profession. While the rule is not intended to include degree programs, many licenses require education that may not confer a degree, including LVN and PT programs.

   133 of the 168 BVNPT-approved programs exceed the state minimum requirements of 1,530 hours and would therefore need to obtain approval to change their programs by July 1, 2024, if the effective date is not amended or if the minimum hours are not changed in statute. Stakeholders are concerned that if the programs are not able to obtain approval to change their programs in time, they will lose their Title IV funding.

   Staff Recommendation: The BVNPT should update the Committees on any plans to address this issue, including any recommended alternatives to the minimum number of program hours requirement.

   Board Response: At this writing, the BVNPT has requested that the US Department of Education (USDOE) delay implementation of the regulatory change for 18-months and is awaiting a response to its request. The Board has also been working to communicate with schools, stakeholders, the National Council for State Boards of Nursing (NCSBN), other states similarly impacted, other DCA Boards similarly impacted and elected officials.

   Several programs whose curriculum hours are only slightly in excess of 1530 hours have already begun to work on changes and reductions with their assigned NECs.

   The BVNPT hopes for some direction from the USDOE soon and appreciates the support from the DCA and the Committees in discussions for statutory and regulatory changes.

   Sunset Recommendation: None at this time—it is not clear that this problem can be resolved via the sunset review process.

3) *Issue #6: Examination Retake Limit*. Currently there is no limit on the number of times a student may retake the NCLEX- PN. According to the BVNPT, "an applicant's skills and knowledge decrease sharply after they complete the training programs, and their possible success taking the NCLEX decreases similarly. Schools and programs are held accountable

for the rate of NCLEX passage for their graduates. Many provide assistance but are not always able to contact individuals who graduated more than a few years ago, especially if the program has changed ownership and/or management. Establishing a reasonable time limit for an individual to test before being required to enroll in remedial courses would save the Board staff time and resources."

Therefore, the BVNPT has suggested requiring applicants who would like to retake the NCLEX- PN five years after their first authorization to complete a remedial course from a board-approved program or CE course provider.

Staff Recommendation: The BVNPT should provide the Committees with the number of individuals who have applied to retake the NCLEX five years after their first authorization and provide a description of available remedial courses or, if none exist, what the BVNPT would require in a remedial course.

Board Response: The BVNPT will gather and analyze repeat test-taker information for California and other comparable states and will provide the Committees with findings and recommendations. In addition, staff will research existing assessment and remedial resources in use and recommend best practices to the Board.

Sunset Recommendation: None at this time—BVNPT staff will provide additional information.

4) *Issue #7: Education Cite and Fine*. This is a continuation of Issue # 15 from the BVNPT's 2021 sunset review. Currently, the BVNPT does not have the authority to issue citations or fines to approved educational programs. Instead, it is authorized to place programs that do not meet the required standards on provisional approval. If a program fails to meet the requirements at the end of the provisional program's approval period, the BVNPT may either extend the provisional approval period or revoke the provisional approval.

   BVNPT staff notes that there may still be benefits and cost savings associated with a cite and fine program, particularly for minor violations that can be fixed with an order of abatement. Staff also notes that, while it works closely with the BPPE, there are situations where it is unclear where the jurisdictional lines end, such as when there are substantive issues with a program's curriculum. In addition, the BPPE only oversees private programs.

   Staff Recommendation: The BVNPT should continue to work with the Committees and the BPPE to determine whether cite and fine authority for educational programs is necessary and whether there are alternatives to cite and fine, such as a provisional approval fee.

   Board Response: The BVNPT believes that cite and fine authority would provide a critical tool to work with programs in resolving serious health and safety issues and other regulatory noncompliance. Most programs cooperate quickly and fully with the notices of violation issued as part of program reviews but there are exceptions. Cite and fine authority would help ensure timely, complete, and costeffective remediation of violations not warranting programs being placed on provisional approval.

   Sunset Recommendation: None at this time—discussions with the BVNPT and schools are ongoing.

5) *Issue #9: Audits of CE Providers*. All licensees are required to complete 30 hours of continuing education (CE) every two years to renew their license with an active status. The purpose of CE is to ensure that licensees maintain ongoing competence as healthcare evolves to ensure patient safety. As a result, the competency requirements for courses must be related to the scientific knowledge or technical, manual skills required for VN or PT practice; related to direct or indirect client care; and provide learning experiences expected to enhance the knowledge of the VN or PT at a level above that required for initial licensure.

   While the BVNPT approves providers and their continuing education courses for VNs and PTs, it reports that it does not currently have the staff or resources to audit CE providers. As an alternative, it may be more cost-effective to include some additional review of approved CE providers at the time of renewal.

   Staff Recommendation: The BVNPT should continue to work with the Committees to discuss the possibility of auditing or reviewing CE providers going forward.

   Board Response: The need for this regulatory authority, plus cite and fine authority is similar to the need for cite and fine authority over the schools and programs. While BVNPT has some authority over CE providers, these would be critical tools to work with programs in resolving serious regulatory noncompliance, before taking action to remove approval.

   BVNPT also regulates providers of the IV and Blood Withdrawal post licensure certification programs. Auditing these providers would protect consumers by ensuring that programs were thorough, applicable, and legitimate, and that the certificated VNs and PTs were safe practitioners.

   This expanded authority (audit and cite and fine) would require additional staff

   Sunset Recommendation: None at this time—discussions are still ongoing with BVNPT staff.

6) *Issue #13: Technical Edits*. There may be technical changes to the BVNPT Practice Act that are necessary to enhance or clarify the Practice Act or assist with consumer protection. For example, the BVNPT has requested technical changes relating to the timing of board member per diem payments, clarification of requirements for inactive education programs, and retired licenses.

   Staff Recommendation: The BVNPT should continue to work with the Committees on potential changes.

   Board Response: The BVNPT appreciates the Committees' consideration of the changes suggested in the Report, including those already mentioned in this document. The Board will provide updated proposed bill language to the Committees.

   Sunset Recommendation: Include uncontroversial technical issues, including clarifications around the school approval process and retiree licenses, but continue to discuss the remainder of the requests with BVNPT staff and interested stakeholders. For the retired licensees, amend the request to match the relevant aspects of the authority of the Board of Registered Nursing for consistency.

7) *Issue #14: Sunset Extension*. The BVNPT and its staff continue to work well with the Legislature in implementing its consumer protection mission. This is demonstrated by its implementation of prior committee recommendations, including the educational program approval changes, and its proactive efforts to address ongoing issues. While the outstanding issues noted in this background paper still need to be addressed, the BVNPT and its staff are aware and communicating with the Committees and their staff on next steps.

   Staff Recommendation: The BVNPT's current regulation of LVNs and PTs should be continued and reviewed again on a future date to be determined.

   Board Response: BVNPT thanks the Committees and their staff and looks forward to continuing to work together in the coming years.

   Sunset Recommendation: Extend the BVNPT by four years.

AMENDMENTS:

1) *Issue #14: Sunset Extension*. To extend the BVNPT by four years, amend the bill as follows:

   On page 1, before line one insert:

   2841. (a) There is in the Department of Consumer Affairs a Board of Vocational Nursing and Psychiatric Technicians of the State of California, which consists of 11 members.

   (b) As used in this chapter, "board" means the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

   (c) This section shall remain in effect only until January 1, ~~2025,~~ *2029,* and as of that date is repealed.

2) *Issue # 13: Technical Edits*. To incorporate the technical edits described above, amend the bill as follows:

   On page 2, after line 2, insert:

   SEC. X. *Section 2881.2 of the Business and Professions Code is amended to read:*

   2881.2. (a) The approval process for a school or program shall be consistent with the following timelines:

   (1) (A) Upon receipt of a *complete* letter of intent to submit an application for approval as a school or program of licensed vocational nursing, the board shall notify the proposed school or program of the steps in the approval process and provide an estimated wait time until active assignment to a nursing education consultant.

   (B) Upon active assignment of a nursing education consultant, the school or program shall submit an initial application for approval within 60 days.

(2) (A) Within 30 days of the date the board receives an initial application for approval, the board shall notify the school or program whether the application is complete.

(B) A notice that an initial application is not complete shall specify what additional documents or payment of fees the school or program is required to submit to the board to make the application complete.

(3) Within 60 days from the date the board notifies the school or program that the initial application is not complete, the school or program shall provide the missing information. If a school or program fails to submit the required information, the board shall take the application out of consideration consistent with subdivision (c) of Section 2881.3. The board may provide a school or program with an additional 30 days to complete its application.

SEC. X. *Section 2881.3 of the Business and Professions Code is amended to read:*

2881.3. (a) The board shall maintain a list of inactive vocational nursing schools and

programs seeking board approval.

(b) A vocational nursing school or program seeking board approval shall respond to the board within two weeks of each inquiry or request during all phases *of the application process*. A school or program that does not respond within two weeks, or fails to pay the required fees, shall be designated as inactive.

(c) A vocational nursing school or program seeking board approval that remains on the inactive list for 90 days shall be taken out of consideration for a new program and may only reapply after six months.

SEC. X. *Section 2892.8 is added to the Business and Professions Code, to read:*

2892.8*. (a) The board, upon application and payment of the fee established pursuant to subdivision (h), shall issue a retired license to a licensee, if the licensee holds an unrestricted license on the date of application.*

(b) An applicant may elect to retire upon renewal or upon submission of an application to the board as required.

(c) A retired licensee shall be exempt from continuing education requirements.

(d) A retired licensee shall utilize their professional title only with the unabbreviated word "retired" directly preceding or directly following the professional title.

(e) A retired licensee shall not be entitled to practice vocational nursing.

(f) The board may investigate potential violations or take action against a retired license for a violation of this chapter.

(g) The board may reinstate a retired license to active status if the retired licensee fulfills the requirements for renewal of a license, including furnishing fingerprints, paying renewal fees, and providing evidence of the following, as applicable:

(1) For a retired licensee who has been retired for four years or less, the amount of continuing education required for the renewal of an active license.

(2) For a retired licensee who has been retired for more than four years, either a current valid active and clear registered nurse license in another state, a United States territory, or Canada, or passing the current examination for licensure.

(h) The fee to be paid upon filing the application for a retired license shall be fifty dollars ($50.00) unless a higher fee, not to exceed one hundred dollars ($100) is established by the board

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

None on file

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