STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

NOTICE OF ACUPUNCTURE BOARD EXECUTIVE COMMITTEE MEETING

Friday, May 29, 2015, 10:30 am

Department of Consumer Affairs
1747 North Market Blvd.
HQ2 First Floor Hearing Room
Sacramento, CA 95834

Teleconference Meeting Location:
Hildy Aguinaldo, Vice Chair, Public Member
Jamie Zamora, Public Member
Junipero Sera State Building
320 West Fourth Street, 8B Conference Room, 8th Floor
Los Angeles, CA 90013

Executive Committee Members

Michael Shi, L.Ac, Chair, Licensed Member
Hildy Aguinaldo, Vice Chair, Public Member
Kitman Chan, Public Member
Francisco Hsieh, Public Member
Jamie Zamora, Public Member

AGENDA

EXECUTIVE COMMITTEE MEETING - 10:30 or Upon adjournment of the Education Committee

1. **Call to Order, Roll Call, and Establishment of a Quorum**

2. **Opening Remarks**

3. **Public Comment for Items Not on the Agenda**

4. **Approval of Minutes: April 18, 2014, Committee Meeting**

5. **E.O Report: Budget**
   - **Additional Staffing**
   - **Facilities Expansion Needs,**
   - **Need for Future Fee Increases**

6. **Review and Consideration of Proposed Legislation; Committee Recommendations to Board:**
   - **AB 12 (Cooley) State Government: administrative regulations: review**
   - **AB 19 (Chang) GO Biz: administrative regulations: review**
   - **AB 41 (Chau) Healing Arts Provider Discrimination**
   - **AB 85 (Wilk) Open Meetings Law: two member committees become public**

- **AB 483 (Patterson) Healing Arts Initial Licensure proration licensing fees**
- **AB 758 (Chau) Acupuncture and Training**
- **AB 333 (Melendez) Healing Arts: continuing education credit for CPR instructors**
- **SB 800 (Committee on Business, Professions & Economic Development)**
- **AB 1351 (Eggman) Deferred Entry of Judgment: Pre-trial Diversion**
- **AB 1352 (Eggman) Deferred Entry of Judgment: Withdrawal of Plea**

7. Future Agenda Items

8. Adjournment

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THE AGENDA, AS WELL AS COMMITTEE MEETING MINUTES, CAN BE FOUND ON THE ACUPUNCTURE BOARD'S WEBSITE AT
www.acupuncture.ca.gov

Please Note: Committee meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you need additional reasonable accommodations, please make your request no later than five (5) business days before this meeting. Please direct any questions regarding this meeting to the Board Liaison, Tammy Graver at (916) 515-5204; FAX (916) 928-2204

Draft

April 18, 2014 Executive Committee minutes

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Executive Committee April 18, 2014 Minutes

Department of Consumer Affairs
1747 North Market Blvd.
Old Location: Ruby Room
New Location: HQ2 Hearing Room
Sacramento, CA 95834

Teleconference Meeting Location:
Jeannie Kang, L.Ac. Licensed Member
Jamie Zamora, Public Member
Junipero Sera State Building
320 West Fourth Street, 7th Floor Conference Room
Los Angeles, CA 95834

Executive Committee Members

Michael Shi, L.Ac, Chair, Licensed Member
Kitman Chan, Vice Chair, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora, Public Member

Attending Committee Members: Michael Shi, Kitman Chan, Jeannie Kang, Jamie Zamora
Attending staff: Terri Thorfinnson, Katie Le, Ben Bodea, Tammy Graver
Legal Counsel: Spencer Walker

EXECUTIVE COMMITTEE MEETING - Upon adjournment of the Enforcement Committee

1. Quorum Established

2. Opening Remarks

3. Additional Staffing and Facilities Expansion Needs

The Board needs additional staffing and facility expansion to accommodate the additional staff. The process for requesting staff is a Budget Change Proposal (BCP), which is a confidential process, so the actual BCP cannot be share with you. The focus of this agenda item is to provide you background information regarding the Board's staff and facility needs. The Board has been understaffed for over a decade. In 2000, the Board had 11 PYs and had one third of the licensees. Throughout the decade, the licensee population has tripled while the staffing has decreased from 11 PYs to 8 PYs. That is the staffing need in a nutshell. The Board is understaffed for all functions: administration, enforcement, education, exams, licensing, regulatory and policy. To address the overwhelming workload I have done the following:

- Reclassified a support position to create a regulatory position to deal with the backlog in regulatory implementation

- Created 2 part time support staff: one to support the Board and EO and the other to support the entire office.
- Submitted 4 BCPs in the past year to obtain additional staff
- Successfully obtained approval for 3 full time staff: CE Coordinator, Enforcement Analyst, Licensing OT.

Overview
What the Board still needs is additional support staff to support the Enforcement Unit, Education Enforcement, full time support staff to support EO and office, a manager, and additional enforcement staff including a special investigator. Those additional staff would exceed the board's current facility space. Preliminary conversations with DCA facility management staff indicated that the Board could expand upstairs in the same building. The process for securing expansion of facility space is a two-year process that requires approval from the Administration and Legislature.

Staffing Needs
Enforcement has two analyst level staff for the first time in the Board's history. However, even with the additional staff, the Board still lacks staff to conduct pro-active investigations of internet advertising, unlicensed activity and conduct unannounced investigation visits to suspected unlicensed sites. For this, the Board needs to utilize the Special Investigator position that it received in 2010 through the DCA Consumer Protection Enforcement Initiative (CPEI) BCP. In 2012, as a result of a budget cut, this position was reduced to a .5 PY. I have been working with DCA to receive authorization to hire this position. So far efforts have been unsuccessful. Based on workload metrics, we need 2 support staff and at least 2 analyst level staff.

Education has two analysts: Education Coordinator and Continuing Education Coordinator. The additional analyst has made it possible to conduct school site visits and keep up with CE approvals. However, what is missing is auditing CE providers and courses. The workload metrics indicate at least an additional full time analyst level staff. Workload also metrics indicate a workload that requires 2 support staff.

Support staff needs: In 2000, the Board had 4 OTs: one to support enforcement, one to support education, two to support the office. Both Enforcement and Education units each need their own support staff, as does the office. Currently, the analysts and EO perform all of their own support level duties, which is not efficient use of high-level staff. Support staff would increase the productivity in all functions.

The office needs a manager to assist the EO with supervision, daily operations oversight and decision-making, regulatory implementation and curriculum compliance.

Facility Needs
The ideal size of the office is between 18-22 staff. We now have 11 full time and 3 part time staff. We also need more space for files, so that will have to be included in the space estimates. The facilities expansion would add one-time build-out costs for new space, the one-time cost to move and then an increase in ongoing rent. The increased cost for facilities expansion could run $50,000 to $100,000. The cost of additional staff, depending on the number and classifications, range from $350,000 to $500,000. Financially, we can afford the increase staff and facilities expansion, but we would need to increase fees to fix our current structural deficit. For now, the upstairs in our building is available to us, but it may not be in the future.
The process is that approval for staff comes first before facilities expansion approval. There is no need for Board action; this is an update. The committee requested an update of costs and staffing and facility options.

4. How Should the Board Expand its Outreach to Address Sunset Review Committee Concerns?

The Sunset Review Committee recommended that the Board join other professional associations. The purpose of this agenda item is to discuss this recommendation. Legal counsel has advised that it would be inappropriate for a regulatory Board to be a member of a professional association like NCCAOM or ACAOM. If there were a government agency of acupuncture boards that would be appropriate, but there is no such organization. However, individual board members can be members of professional organizations in their capacity as individuals, not representing the Board. There used to be a national regulatory association for acupuncture boards but due to lack of interest it was disbanded in 2009. The Board used to be a part of the association but with travel restrictions, was unable to attend. Since there are currently no regulatory associations for the Board to join, no further action is required.

5. Board Training Needs

The issue of Board training was included in the strategic plan. There was a desire for public Board members to learn more about acupuncture, more general board member training. The purpose of this agenda item is to identify topics or specific training the Board members would like. One of the ideas was to organize a staff in-service on acupuncture. One of the topics identified was explaining the BCP process, the regulatory process. There was interest in understanding how acupuncture is practiced. There was a suggestion to learn more about accreditation and curriculum development and the higher education process.

6. Future Agenda Items

Update on staff and facility expansion

7. Public Comment

The Sunset Review Committee staff questioned why the Board did not address the three priority issues in the background paper. The hearing is set for April 28th.The three priority issues from the Sunset Review Committee

8. Adjournment

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

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Executive Officer Report

Revenue Trends FY 12-15

	FY 12-13		FY 13-14		FY 14-15	
Revenue	$2,678,821		$2,580,984		$2,304,159*	
Expenditures	$1,977,428		$2,538,252		$2,789,807*	
Budget	$2,773,251		$2,777,171		$3,336,231*	

*As of 4/30/15

Our current appropriations and expenditure level is $3.3 million. Our revenues have been between $2.5 million and $2.7 million over the past three years. We have a $5 million reserve. Until this point, the Board has been unable to entertain fee increases because we had no structural deficit and a $5 million reserve. Over the past two years, the Board has increased its staff, increased its enforcement activity, accelerated its school oversight and enforcement and as a result, we are for the first time exceeding our revenues.

In light of the fact that the Board has been understaffed for over a decade, it is normal to have growth in staff, and in turn, growth in expenditures as the Board builds its infrastructure. The goal is not to simply cut expenditures, the goal is to fund infrastructure. The growth in expenditures represents an increase in the Board's productivity and effectiveness in achieving its mission to protect public safety. The goal is to evaluate our new infrastructure and workload and assess what new fees and what fees need to be increased to support the Board's increased workload.

One of the crucial changes on the horizon is the implementation of Senate Bill (SB) 1246. The way that SB 1246 was structured will actually create more workload, not less workload for the Board. SB 1246 opens the floodgates for non-board approved schools and graduates from those schools to apply to take the exam and to apply to have school curriculum approved by the Board. The loss of the school approval structure will cause a dramatic increase in the Board's compliance evaluation workload requiring at least four full time staff. Without these staff, the Board will be unable to implement SB 1246.

SB 1246 may also impact the Board's revenue by significantly increasing it. We anticipate that all schools and their graduates will now apply for California licensure. The increase in revenue may offset the increase expenditure of added staff. It is unknown how much our revenues will increase as a result of SB 1246.

The Board's budget is currently set at $3.3 million. With four additional staff that would increase beyond the $3.3 million. In planning for the future, savings and fee increases must be considered. A major savings would be to go to computer testing for the CALE, which would save us $350,000 or more per year. With a $350,000 savings, our expenditures would drop to $2.95 million. A combination of moving to computer testing and raising fees would address the Board's expansion needs and balance the budget.

Staffing

Current staffing levels are 11 PYs and three part-time for a total of 14. Ideally, the Board needs between 18-22 staff to perform its daily operations. What the Board desperately needs is full time support staff for each unit: enforcement, education, exam, administration. We also desperately need a manager to assist the Executive Officer (EO) in supervising staff and overseeing daily operations. It is unmanageable for the EO to supervise 14 staff and oversee all daily operations and staff the board for its policy and legislative work. I am requesting four staff for the SB 1246 BCP. That would increase the total staff to 15 full time and 3 part time staff. The cost of the additional 4 full time staff is around $380,000. The facilities expansion cost would be a one-time $80,000 moving and build-out cost and then an ongoing $13,000 increase in rent over what we are paying now. The first year cost would be approximately $550,000 but the next year's cost would be minus the one-time expansion costs of $100,000. This additional expense would increase the appropriation level to $3.5 million -$3.7 million. This creates a structural deficit of $1.0 million -$1.2million (based on $2.5 million revenue estimate). Keep in mind that we have a $5 million reserve.

Fees

Here is a look at how much revenue we would need:

- Renewal fees $325 X 12,000 = $4,200,000/2 = $2.1 million/ year revenue
- Renewal fee $500 X 12,000 = $6,000,000/2 = $3,000,000 / year revenue
- Renewal fee $550 X 12,000 = $6,600,000/2 = $3,300,000/ year revenue
- Renewal fee $600 X 12,000 = $7,200,000/2= $3,600,000/ year revenue

A fee increase would solve the structural deficit and stabilize the Board's budget long term. The Board has **never** raised its fees, so it is reasonable to raise its fees now. Generally, the majority of the Board's revenue comes from the licensure renewal fee. If that is the only fee we consider, it would have to be raised significantly. However, it we consider a wide range of new fees and increasing existing fees, we may be able to strike the right balance in revenue. Diversifying the fee structure should be a major component of the Board's future fiscal planning. For example, if continuing education could generate $500,000 to $1 million that would take pressure off raising the renewal fee.

We are at a critical juncture in the Board's infrastructure and fiscal situation. Over the next six months, we will need to study our daily operations and current fee structure to identify potential new revenue. This is intended to be the beginning of this discussion.

Acupuncture Board Budget Trends Fiscal Years 2012-2015

FY	12-13 Budget	12-13 Expend	13-14 Budget	13-14 Expend	14-15 Budget	14-15 Expend**
Personal Services	$602,810	$460,532	$671,846	$643,855	$942,975	$860,416**
General Services	$70,400	$15,776	$55,757	$48,614	$67,671	$84,000**
Printing	$19,331	$4,207	$15,331	$9,771	$17,331	$34,000**
Communications	$16,958	$1,702	$16,212	$2,347	$16,958	$4500**
Postage	$32,773	$25,015	$28,773	$24,411	$26,773	$46,000**
Travel	$40,652	$30,300	$30,141	$42,908	$32,141	$45,000**
Facilities	$65,195	$115,660	$65,195	$120,750	$65,195	$120,500**
Dept. Services*	$198,177	$182,667	$204,170	$200,998	$338,083	$389,08388
Data Services	$6,098	$8,883	$6,098	$14,275	$150,422	$147,089**
Admin Pro Rata	$114,637	$114,637	$108,549	$108,549	$145,867	$145,867**
Exam OPES	$333,119	$210,824	$333,119	$303,906	$333,119	$422,935**
Exam CPS	$370,741	$337,991	$370,741	$413,667	$370,716	$394,491**
Enforcement	$839,507	$454,990	$806,936	$561,058	$902,301	$711,613**
Total OE& E	$2,170,441	$653,545	2,105,325	$1,894,397	$2,393,256	$2,425,746
Total Budget	$2,773,251	$1,977,428	$2,777,171	$2,538,252	$3,336,231	$3,286,162
Total Revenues	$2,678,821	$2,678,821	$2,580,984	$2,580,984	$2,304,159	$2,304,159

*Removed Office of Professional Examination Services (OPES) Interagency Agreement (IA) in order to aggregate exam expenditures.

** Projection

Areas of Potential Savings

- 2/3 of exam development costs related to adaptation into Chinese and Korean—savings of $180,000. The politics would not allow a shift to an English-based exam.
- Computerized testing is projected to cost $50,000/ year –a savings of $350,000 but DCA has rejected our request twice.

Budget Increases

- Increasing staff
- Enforcement continues to increase as we increase our overall enforcement activities.
- Department of Consumer Affairs overhead continues to increase
- Breeze costs will increase our budget
- SB 1246 implementation will require 4 Personnel Years, foreign Standards
- School oversight has increased costs of travel and Subject Matter Experts costs

Legislation

ACUPUNCTURE BOARD - LEGISLATION
updated 5/20/2015

bill	author	subject	info	status	notes
AB 12	Cooley	State government: administrative regulations : review	This bill would require every state agency, department, board, bureau or other entity to review and revise regulations to eliminate inconsistent, overlapping, duplicative, and outdated provisions and adopt the revisions as emergency regulations by January 1, 2018. Additionally, this bill would require the Business, Consumer Services, and Housing Agency to submit a report to the Governor and Legislature affirming compliance with these provisions. Finally, this bill would require each Agency to compile and submit to the Legislature an overview of statutory law the Agency administers by January 1, 2017. These provisions would be repealed by January 1, 2019.	In Asm Appr. Referred to suspense file	
AB 19	Chang	Governor's Office of Business and Economic Development: small business: regulations.	This bill would require the Governor's Office of Business and Economic Development, under the direction of the advocate, to review all regulations affecting small businesses adopted prior to January 1, 2016, in order to determine whether the regulations need to be amended in order to become more effective, less burdensome, or to decrease the cost impact to affected sectors.	in Asm Appr. Set for hearing 5/20	
AB 41	Chau	Healing arts - provider discrimination	Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits certain discriminatory acts by health care service plans and health insurers. Existing federal law, beginning January 1, 2014, prohibits a group health plan and a health insurance issuer offering group or individual health insurance coverage from discriminating with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable state law. Beginning January 1, 2016, this bill would prohibit a health care service plan or health insurer from discriminating against any health care provider who is acting within the scope of that provider's license or certification, as specified.	In Asm Appr. Referred to suspense file.	
AB 85	Wilk	Open Meetings	This urgency bill would require two-member advisory committees or panels of a "state body" (as defined in the Bagley-Keene Open Meeting Act) to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body and the advisory committee is supported, in whole or in part, by state funds.	In Asm Appr. Referred to suspense file	Board of Accountancy opposes

ACUPUNCTURE BOARD - LEGISLATION
updated 5/20/2015

AB 333	bonilla	Healing Arts: Continuing Education	This bill would allow specified healing arts licensees to apply one unit, as defined, of continuing education credit once per renewal cycle towards any required continuing education units for attending a course certain courses that results result in the licensee becoming a certified instructor of cardiopulmonary resuscitation (CPR) or the proper use of an automated external defibrillator (`AED), (AED), and would allow specified healing arts licensees to apply up to 2 units of continuing education credit once per renewal cycle towards any required continuing education units for conducting board-approved CPR or AED training sessions for employees of school districts and community college districts in the state. The bill would specify that these provisions would not apply if a licensing board's laws or regulations establishing continuing education requirements exclude the courses or activities mentioned above.	in Asm Appr, hearing set for 5/13	
AB 351	Jones-Sawyer)	Public contracts: small business participation	This bill would require all state agencies, departments, boards, and commissions to establish and achieve an annual goal of 25% small business participation in state procurements and contracts, to ensure that the state's procurement and contract processes are administered in order to meet or exceed the goal, and to report to the director statistics regarding small business participation in the agency's procurements and contracts. This bill contains other related provisions.	in Asm Appr. Referred to suspense file	
AB 483	Patterson	Healing arts - initial license fees - proration	*As amended 4/9:* This bill would require specified healing arts programs within the Department of Consumer Affairs to prorate initial license fees on a monthly basis. This bill would impact the Acupuncture Board, Architects Board, Dental Board, Dental Hygiene Committee, Medical Board, Occupational Therapy Board, Physical Therapy Board, Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board, and Veterinary Medical Board.	in Asm Appr. Referred to suspense file	
AB 611	Dahle	Controlled substances: prescriptions: reporting	As amended 4/15: This bill would also authorize an individual designated to investigate a holder of a professional license to apply to the Department of Justice to obtain approval to access information contained in the CURES PDMP regarding the controlled substance history of an applicant or a licensee for the purpose of investigating the alleged substance abuse of a licensee. The bill would, upon approval of an application, require the department to provide to the approved individual the history of controlled substances dispensed to the licensee. The bill would clarify that only a subscriber who is a health care practitioner or a pharmacist may have an application denied or be suspended for accessing subscriber information for any reason other than caring for his or her patients. The bill would also specify that an application may be denied, or a subscriber may be suspended, if a subscriber who has been designated to investigate the holder of a professional license accesses information for any reason other than investigating the holder of a professional license	In Asm B&P, set for hearing 4/21. Hearing cancelled at request of author.	

ACUPUNCTURE BOARD - LEGISLATION
updated 5/20/2015

AB 728	Hadley	State Government: financial reporting	This bill would require all state agencies to post biennial reviews of internal accounting, administrative control, and monitoring practices on the Department website within five days of finalization. This report is already subject to Public Records Act requests as the report is currently submitted to the Governor, Legislature, State Controller, Treasurer, and others, for inspection by the public.	In Senate rules cmte for assignment	
AB 750	Low	Business and Professions: license	*As Amended 4/6:* This bill would allow the Department to establish by regulation a system for a retired category of license for persons who are not actively engaged in the practice of their profession or vocation, and would prohibit the holder of a retired license from engaging in any activity for which a license is required, unless regulation specifies the criteria for a retired licensee to practice his or her profession. The bill would authorize a board upon its own determination, and would require a board upon receipt of a complaint from any person, to investigate the actions of any licensee, including, among others, a person with a license that is retired or inactive.	in Asm Appr. Referred to suspense file	
AB 758	Chau	Acupuncture and Training programs	This bill would allow accreditation agencies, recognized by the United States Department of Education, other than the Accreditation Commission for Acupuncture and Oriental Medicine to approve schools of acupuncture. The bill would also require the board to conduct site visits to each site of a school or college of acupuncture to inspect or reinspect the school or college for purposes of approval or continued approval of its training program, and to impose a fee for the site visits in an amount to recover direct reasonable regulatory costs incurred by the board in conducting the inspection and evaluation of the school or college.	In Asm B&P, set for hearing 4/28. hearing cancelled at request of author.	2 YEAR BILL
AB 797	Steinorth	Regulations: effective dates and Leg review	*As Amended 4/6/15* -- This bill would require the office to submit to the appropriate policy committees ofend insert each house of the Legislature for review a copy of each major regulation that it submits to the Secretary of State. The bill would add another exception to those currently provided that specifies that a regulation does not become effective if the Legislature passes a statute to override the regulation.	In Senate rules cmte for assignment	
AB 1060	Bonilla	Professions and Vocations: Licensure	This bill clarifies that a board or bureau under the Department of Consumer Affairs (DCA) must provide specified information, when a license is suspended or revoked, to an ex-licensee by both first-class mail and by email if a board or bureau has an email address on file for the ex-licensee.	In Senate Rules cmte for assignment	

ACUPUNCTURE BOARD - LEGISLATION
updated 5/20/2015

AB 1351	Eggman	Deferred entry of judgement: pretrial diversion	This bill changes the existing deferred entry of judgment (DEJ) program, for specified offenses involving personal use or possession of controlled substances, into a pretrial drug diversion program. To be eligible for diversion: a) the defendant must not have a prior conviction for any offense involving a controlled substance other than the offenses that may be diverted as specified; b) the offense charged must not have involved a crime of violence or threatened violence; c) there must be no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of an offense that may be diverted; and d) the defendant must not have any prior convictions for a serious or violent felony, as defined, within five years prior to the alleged commission of the charged offense.	In Asm Appr. Referred to suspense file	
AB 1352	Eggman	deferred entry of judgement: withdrawl of plea	This bill will, in certain circumstances, expunge the record of an individual who has completed deferred entry of judgment (DEJ) requirements. Companion bill to AB 1351.	In Senate Rules cmte for assignment	
SB 137	Hernandez	Health Care coverage: provider directory	As amended 3/26/15: This bill would require health care service plans and insurers subject to regulation by the commissioner for services at alternative rates to make a provider directory available on its Internet Web site and to update the directory weekly. The bill would require the Department of Managed Health Care and the Department of Insurance to develop provider directory standards. By placing additional requirements on health care service plans, the violation of which is a crime, the bill would impose a state-mandated local program.	In Sen. Appr cmte. Referred to suspense file.	
SB 149	Stone	Investigational drugs: biological products or devices: right to try	This bill would allow a patient to be administered drugs that are still undergoing clinical trials and have not been approved for general use by the federal Food and Drug Adminitration. This bill would also allow manufacturers of such drugs to provide them to the patient, authorize health benefit plans to cover the cost of the drugs, and would prohibit state agencies from taking action against a health facility's license for participating in their use. finally, it would prohibit the Medical board and the OMD board from disciplining physician for providing these drugs to qualified patients. Substantially similar to AB 159 (Calderon, 2015) and SB 715 (Anderson, 2015).	In Asm B&P	

ACUPUNCTURE BOARD - LEGISLATION
updated 5/20/2015

SB 467	Hill	Professions and Vocations	Requires the Department of Consumer Affairs to receive approval of the Legislature to levy any pro rata charges against any of the boards, bureaus, or commission for administrative expenses of the Department; requires the Attorney General's Office to submit specified reports and information to the Legislature annually; provides that the Director or the Department, through its Division of Investigation, shall work with the health care boards to standardize referral of complaints; extends until January 1, 2020 the provisions establishing the California Accountancy Board and the term of the executive officer; and allows the Board to provide for certain practice restrictions on the license of an accountant for disciplinary reasons.	In Sen. Appr cmte. Referred to suspense file.	
SB 799	Sen B&P	Business and professions	Omnibus Bill covering various DCA Boards and Bureaus. No sections specific to Acupuncture Board are listed.	On Assembly Floor. Read first time. Held at desk.	
SB 800	Sen B&P	Healing Arts: Omnibus bill	Specific to Acupuncture Board: Amends BPC 4938 to remove Canada as domestic equivalent to the United States for purposes of establishing standards for the approval of educational training and clinical experience, eligibility for the CALE and licensure.	On Assembly Floor. Read first time. Held at desk.	

Table of Bills

1. AB 12 (Cooley)
2. AB 19 (Chang)
3. AB 41 (Chau)
4. AB 85 (Wilk)
5. AB 483 (Patterson)
6. AB 758 (Chau)
7. AB 333 (Melendez)
8. SB 800 (BPED)
9. AB 1351 (Eggman)
10. AB 1352 (Eggman)

AB 12 (Cooley)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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CALIFORNIA ACUPUNCTURE BOARD
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DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 12 (Cooley) State Government administrative regulations: review – version as amended April 22, 2015.

Issue: AB 12 (Cooley), introduced December 1, 2014 in the Legislature and amended April 22, 2015, is a bill which would, until January 1, 2019, require each state agency to, on or before January 1, 2018, review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified. The bill would sunset on January 1, 2019.

Current Status: Currently in the Assembly Appropriations Committee on the suspense file.

Background: Under the Administrative Procedures Act (APA), state agencies which wish to promulgate a regulation must first have it reviewed by the Office of Administrative Law (OAL) and have public notice and input. Despite these reviews, agencies may have outdated and duplicative or overlapping regulations that are not automatically purged or updated upon the passage of new regulations. In October of 2011, the Little Hoover Commission (LHC) published a report titled, Better Regulation: Improving California's Rulemaking Process. The LHC included several recommendations for improving the state's rulemaking process, including that the state should establish a look-back mechanism to determine if regulations are still needed and whether or not they work.

Discussion and Implementation: This bill, following the recommendations of the LHC's report, creates a two-year window within which agencies, and the departments, boards and other units within them must review all regulations that pertain to the mission and programs under their statutory authority. Upon completion of this review, the identified regulations that are deemed to be duplicative, overlapping, inconsistent or out of date may be repealed using the existing processes already provided in the Administrative Procedures Act (APA). As part of this process, state agencies and departments must hold at least one noticed public hearing, and accept public comment

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on proposed revisions, notify the appropriate policy and fiscal committees of the Legislature of the proposed revisions, and report to the Governor and the Legislature. The bill, if enacted, would be creating a one-time review process of all Department regulations currently in place, since the bill would then sunset in 2019.

According to the author:

> "California's regulatory system needs careful review and accountability. To that end, AB 12 requires that each state agency initiate a top-to-bottom review of current and new regulations looking for duplicative, inconsistent, overlapping, or outdated regulations. Agencies will have two years to complete this review so that it can be completed in a comprehensive and timely manner."

This bill would impact the Board because it would increase the workload for the Board that is time specific. The Board already has a backlog of approved regulatory packages to be prepared and implemented. This would add to that backlog because any duplicative or outdated regulations would require staff to prepare regulatory packages to address each outdated regulation. While this policy makes sense, it would add to the Board's regulatory backlog. This bill increases the Board's workload without providing any additional staffing provisions to accomplish it.

The bill has support from a wide variety of business and industry sources, including the CA Chamber of Commerce, the California Asian Pacific Chamber of Commerce, American Federation of State, County and Municipal Employees and California Building Industry Association. No opposition is on file as of this writing.

AMENDED IN ASSEMBLY APRIL 22, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 12

Introduced by Assembly Member Cooley
(Coauthors: Assembly Members Chang, Daly, and Wilk)

December 1, 2014

An act ~~to amend Section 11349.1.5 of, and~~ to add and repeal Chapter 3.6 (commencing with Section 11366) of Part 1 of Division 3 of Title 2 ~~of,~~ *of* the Government Code, relating to state agency regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as amended, Cooley. State government: administrative regulations: review.

~~(1) Existing~~

Existing law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations.

This bill would, until January 1, 2019, require each state agency to, on or before January 1, 2018, ~~and after a noticed public hearing, review and revise that agency's regulations to eliminate any inconsistencies, overlaps, or outdated provisions in the regulations, adopt the revisions as emergency regulations,~~ *review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided,* and report to the Legislature and Governor, as specified. ~~The bill would further~~

require each agency to, on or before January 1, 2017, compile an overview of the statutory law that agency administers.

(2) The act requires a state agency proposing to adopt, amend, or repeal a major regulation, as defined, to prepare a standardized regulatory impact analysis of the proposed change. The act requires the office and the Department of Finance to, from time to time, review the analyses for compliance with specific department regulations. The act further requires the office to, on or before November 1, 2015, submit a report on the analyses to the Senate and Assembly Committees on Governmental Organization, as specified.

This bill would instead require the office and department to annually review the analyses. The bill would also require the office to annually submit a report on the analyses to the Senate Committee on Governmental Organization and the Assembly Committee on Accountability and Administrative Review.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11349.1.5 of the Government Code is amended to read:

11349.1.5. (a) The Department of Finance and the office shall annually review the standardized regulatory impact analyses required by subdivision (c) of Section 11346.3 and submitted to the office pursuant to Section 11347.3, for adherence to the regulations adopted by the department pursuant to Section 11346.36.

(b) (1) On or before November 1, 2015, and annually thereafter, the office shall submit to the Senate Committee on Governmental Organization and the Assembly Committee on Accountability and Administrative Review a report describing the extent to which submitted standardized regulatory impact analyses for proposed major regulations for the fiscal year ending in June 30, of that year adhere to the regulations adopted pursuant to Section 11346.36. The report shall include a discussion of agency adherence to the regulations as well as a comparison between various state agencies on the question of adherence. The report shall also include any recommendations from the office for actions the Legislature might consider for improving state agency performance and compliance

~~in the creation of the standardized regulatory impact analyses as described in Section 11346.3.~~

~~(2) The report shall be submitted in compliance with Section 9795 of the Government Code.~~

~~(c) In addition to the annual report required by subdivision (b), the office shall notify the Legislature of noncompliance by a state agency with the regulations adopted pursuant to Section 11346.36, in any manner or form determined by the office and shall post the report and notice of noncompliance on the office's Internet Web site.~~

~~SEC. 2.~~

SECTION 1. Chapter 3.6 (commencing with Section 11366) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3.6. REGULATORY REFORM

Article 1. Findings and Declarations

11366. The Legislature finds and declares all of the following:

(a) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)) requires agencies and the Office of Administrative Law to review regulations to ensure their consistency with law and to consider impacts on the state's economy and businesses, including small businesses.

(b) However, the act does not require agencies to individually review their regulations to identify overlapping, inconsistent, duplicative, or out-of-date regulations that may exist.

(c) At a time when the state's economy is slowly recovering, unemployment and underemployment continue to affect all Californians, especially older workers and younger workers who received college degrees in the last seven years but are still awaiting their first great job, and with state government improving but in need of continued fiscal discipline, it is important that state agencies systematically undertake to identify, publicly review, and eliminate overlapping, inconsistent, duplicative, or out-of-date regulations, both to ensure they more efficiently implement and

enforce laws and to reduce unnecessary and outdated rules and regulations.

~~(d) The purpose of this chapter is to require each agency to compile an overview of the statutory law that agency oversees or administers in its regulatory activity that includes a synopsis of key programs, when each key program was authorized or instituted, and any emerging challenges the agency is encountering with respect to those programs.~~

Article 2. Definitions

11366.1. For the ~~purpose~~ *purposes* of this chapter, the following definitions shall apply:

(a) "State agency" means a state agency, as defined in Section 11000, except those state agencies or activities described in Section 11340.9.

(b) "Regulation" has the same meaning as provided in Section 11342.600.

Article 3. State Agency Duties

11366.2. On or before January 1, 2018, each state agency shall do all of the following:

(a) Review all provisions of the California Code of Regulations applicable to, or adopted by, that state agency.

(b) Identify any regulations that are duplicative, overlapping, inconsistent, or out of date.

(c) Adopt, amend, or repeal regulations to reconcile or eliminate any duplication, overlap, inconsistencies, or out-of-date ~~provisions.~~ *provisions, and shall comply with the process specified in Article 5 (commencing with Section 11346) of Chapter 3.5, unless the addition, revision, or deletion is without regulatory effect and may be done pursuant to Section 100 of Title 1 of the California Code of Regulations.*

(d) Hold at least one noticed public hearing, that shall be noticed on the Internet Web site of the state agency, for the purposes of accepting public comment on proposed revisions to its regulations.

(e) Notify the appropriate policy and fiscal committees of each house of the Legislature of the revisions to regulations that the state agency proposes to make at ~~least 90 days prior to a noticed~~

~~public hearing pursuant to subdivision (d) and at least 90 days prior to the proposed adoption, amendment, or repeal of the regulations pursuant to subdivision (f), for the purpose of allowing those committees to review, and hold hearings on, the proposed revisions to the regulations.~~

~~(f) Adopt as emergency regulations, consistent with Section 11346.1, those changes, as provided for in subdivision (c), to a regulation identified by the state agency as duplicative, overlapping, inconsistent, or out of date.~~ *least 30 days prior to initiating the process under Article 5 (commencing with Section 11346) of Chapter 3.5 or Section 100 of Title 1 of the California Code of Regulations.*

(g) (1) Report to the Governor and the Legislature on the state agency's compliance with this chapter, including the number and content of regulations the state agency identifies as duplicative, overlapping, inconsistent, or out of date, and the state agency's actions to address those regulations.

(2) The report shall be submitted in compliance with Section 9795 of the Government Code.

11366.3. (a) On or before January 1, 2018, each agency listed in Section 12800 shall notify a department, board, or other unit within that agency of any existing regulations adopted by that department, board, or other unit that the agency has determined may be duplicative, overlapping, or inconsistent with a regulation adopted by another department, board, or other unit within that agency.

(b) A department, board, or other unit within an agency shall notify that agency of revisions to regulations that it proposes to make at least 90 days prior to a noticed public hearing pursuant to subdivision (d) of Section 11366.2 and at least 90 days prior to adoption, amendment, or repeal of the regulations pursuant to ~~subdivision (f) of~~ *subdivision (c) of* Section 11366.2. The agency shall review the proposed regulations and make recommendations to the department, board, or other unit within 30 days of receiving the notification regarding any duplicative, overlapping, or inconsistent regulation of another department, board, or other unit within the agency.

11366.4. An agency listed in Section 12800 shall notify a state agency of any existing regulations adopted by that agency that

may duplicate, overlap, or be inconsistent with the state agency's regulations.

~~11366.43. On or before January 1, 2017, each state agency shall compile an overview of the statutory law that state agency oversees or administers. The overview shall include a synopsis of the state agency's key programs, when each program was authorized or instituted, when any statute authorizing a program was significantly revised to alter, redirect, or extend the original program and the reason for the revision, if known, and an identification of any emerging challenges the state agency is encountering with respect to the programs.~~

11366.45. This chapter shall not be construed to weaken or undermine in any manner any human health, public or worker rights, public welfare, environmental, or other protection established under statute. This chapter shall not be construed to affect the authority or requirement for an agency to adopt regulations as provided by statute. Rather, it is the intent of the Legislature to ensure that state agencies focus more efficiently and directly on their duties as prescribed by law so as to use scarce public dollars more efficiently to implement the law, while achieving equal or improved economic and public benefits.

Article 4. Chapter Repeal

11366.5. This chapter shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

O

AB 12 (Cooley)

Regulatory Review and Major Regulation Economic Impact Reporting

Bill Summary

AB 12 strengthens the accountability and transparency of the regulatory process by requiring that state agencies complete a top-to-bottom review by January 1, 2018, of all current and new regulations to ensure that they are not duplicative, overlapping, inconsistent, or outdated. Secondly, this bill provides more transparency in the major regulatory adoption process by requiring agencies provide a standardized economic impact evaluation for major regulations.

Problem

Numerous economists and business leaders agree that one of the greatest obstacles to California job growth is the "thicket" of government regulations that constrain business owners. Duplicative and inconsistent regulations leave business owners confused and often times out of compliance despite their best efforts. In addition, the burdensome regulatory scheme often discourages innovation and new business ventures.

Additionally, current law (SB 617 of 2011) requires the Department of Finance (DOF) and the Office of Administrative Law (OAL) to set guidelines and review the economic impact analysis reports issued by state agencies to ensure they are being properly created and compiled. There is no specific reporting timeframe, however, and no public notification requirements if a state agency fails to meet the guidelines when issuing the report. This results in non-regularized review by DOF and little to no accountability by state agencies for failure to properly report on the economic impact of these major regulations.

Solution

California's regulatory system needs careful review and accountability. To that end, AB 12 requires that each state agency initiate a top-to-bottom review of current and new regulations looking for duplicative, inconsistent, overlapping, or outdated regulations. Agencies will have two years to complete this review so that it can be completed in a comprehensive and timely manner.

AB 12 also increases accountability and legislative oversight in the regulatory adoption process by requiring DOF to review major regulatory impact analysis reports and issue its findings annually to the Legislature on state agencies' compliance in creating the reports. It further increases government transparency by instructing the OAL to make public on its website any state agency failing to issue a standardized regulatory impact report or failing to comply with the guidelines set out by DOF in creating the report.

Background

Under the Administrative Procedures Act (APA), state agencies which wish to promulgate a regulation must first have it reviewed by the OAL and have public notice and input. Despite these reviews, agencies often have outdated and duplicative or overlapping regulations that are not automatically purged or updated upon the passage of new regulations. Additionally, state agencies are required to issue an economic impact report for each regulation promulgated. These economic impact reports were generally seen as "ineffective", "perfunctory", and "symbolic" according to testimony given by the then-acting director of the Office of Administrative Law.

In 2011, SB 617 (Calderon, Pavley, and Alquist, 2011) was enacted to strengthen the economic impact reports required under the APA. SB 617 requires all state agencies that create, modify, or repeal a major regulation with an economic impact of $50 million dollars or more to issue a standardized economic impact report that addresses: the creation or elimination of jobs; the creation or elimination of new business; the competitive advantages or disadvantages to California business; the increase or decrease in investment in the state; the incentives for innovation in products, materials or processes; and the benefits to the health, safety and welfare of Californians.

Support

California Chamber of Commerce
California Manufacturer's and Technology Association
California Association of Independent Business
AFSCME
California Asian Pacific Chamber of Commerce
California Association of Bed and Breakfast Inns
California Building Industry Association
California Construction and Industrial Materials Association
California Business Roundtable
California Hotel and Lodging Association
California League of Food Processors
California Retailers Association
Consumer Specialty Products Association
Industrial Environmental Association
National Federation of Independent Businesses-California
Small Business California
USANA Health Sciences, Inc.
Western States Petroleum Association

For More Information

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Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Rudy Salas, Chair

AB 12
(Cooley) - As Amended April 22, 2015

SUBJECT: State government: administrative regulations: review

SUMMARY: Requires state agencies and departments to review, adopt, amend or repeal any applicable regulations that are duplicative, overlapping, inconsistent, or out of date.

Specifically, this bill:

1) Requires state agencies, on or before January 1, 2018, to adopt, amend or repeal, using procedures provided in current law, those regulations identified as duplicative, overlapping, inconsistent or out of date.

2) Requires state agencies to hold public hearings, notice on the Internet and accept public comment, as specified.

3) Requires state agencies to notify the appropriate policy and fiscal committees of the Legislature of the proposed revisions to regulations.

4) Requires state agencies to report to the Governor and the Legislature the number and content of the regulations identified as duplicative, overlapping, inconsistent or out of date.

5) Requires specified agencies to identify any existing regulations of a department, board, or other unit within that agency that are duplicative, overlapping or inconsistent with regulations of other departments, boards or units within that agency.

6) Requires the provisions of this bill remain in effect only until January 1, 2019, unless later statute is enacted that

deletes or extends that date.

EXISTING LAW:

1)Establishes, under the Administrative Procedure Act (APA), basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations.

2)Permits an agency, subject to the approval of the Office of Administrative Law (OAL), to add to, revise or delete text published in the California Code of Regulations (CCR) without complying with the rulemaking procedures specified in the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

FISCAL EFFECT: Unknown

COMMENTS: In October of 2011, the Little Hoover Commission (LHC) published a report titled, Better Regulation: Improving California's Rulemaking Process. The LHC included several recommendations for improving the state's rulemaking process, including that the state should establish a look-back mechanism to determine if regulations are still needed and whether or not they work.

The author's approach to this "look-back mechanism" is to create a two-year window within which agencies, and the departments, boards and other units within them, must review all regulations that pertain to the mission and programs under their statutory authority. Upon completion of this review, the identified regulations that are deemed to be duplicative, overlapping, inconsistent or out of date may be repealed using the existing processes already provided in the APA. This bill also allows for public hearings and comment and requires regulatory changes be reported to the Legislature and the Governor.

The provisions of this bill sunset on January 1, 2019, making the regulatory review, as outlined in this bill, a one-time application. Under current law, any state agency may review, adopt, amend or repeal any regulation within its statutory authority at any time. The OAL reports that as of December 26, 2014, (Register 2014, No. 52) the number of regulations adopted totaled 67,176. Of those, state agencies had repealed 14,319, leaving 52,857 regulations still active. This represents a repeal rate of just over 21%.

Whether this 21% regulatory repeal rate is robust enough remains a question. Both the LHC and the author believe more needs to be done. The author states, "?numerous economists and business leaders agree that one of the greatest obstacles to California job growth is the 'thicket' of government regulations that constrain business owners." The author's bill recognizes that state agencies "may" review their regulatory framework at any time, but specifies that state agencies "shall" review their regulatory framework within the two-year timeframe as provided. Finally, this bill contains language stating it is not meant to

weaken or undermine established statute, or to affect the authority state agencies have to promulgate regulations. A January 1, 2019, sunset date will ensure no long-term changes to current APA requirements.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees

Associated Builders and Contractors of California

Building Owners and Managers Association of California

California Apartment Association

California Asian Pacific Chamber of Commerce

California Association of Bed and Breakfast Inns

California Building Industry Association

California Business Properties Association

California Business Roundtable

California Chamber of Commerce

California Construction and Industrial Materials Association

California Hotel and Lodging Association

California League of Food Processors

California Manufacturers & Technology Association

California Retailers Association

Central Coast Forest Association

Commercial Real Estate Development Association, NAIOP of Calif.

Consumer Specialty Products Association

Industrial Environmental Association

International Council of Shopping Centers

National Federation of Independent Business/California

Simi Valley Chamber of Commerce

Small Business California

USANA Health Sciences, Inc.

Western States Petroleum Association

Opposition

None on file

Analysis Prepared by:William Herms / A. & A.R. / (916) 319-3600

AB 19 (Chang)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

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DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 19 (Chang) - Governor's Office of Business and Economic Development: small business: regulations. – version as amended May 6, 2015.

Issue: AB 19 (Chang), introduced December 1, 2014 in the Legislature, is a bill which would require the Governor's Office of Business and Economic Development, in consultation with the Small Business Advocate within the Governor's office, to establish a process for the ongoing review of existing regulations. This bill would require the review to be primarily focused on regulations affecting small business adopted prior to January 1, 2016 to determine whether the regulations could be less administratively burdensome or costly to the affected sectors. This bill contains other related provisions.

Current Status: Currently in the Assembly Appropriations Committee; no hearing date set.

Background: Existing law creates the Governor's Office of Business and Economic Development (often referred to as 'GoBiz') to exercise various powers, including, among others, making recommendations to the Governor and the Legislature regarding policies, programs, and actions to advance statewide economic goals. Currently, GoBiz is not required to review regulatory packages which may have an impact on small businesses. As part of the regulatory process, each Board is required to do an analysis of the regulation upon small businesses, which is posted as part of the public notice and the initial statement of reasons. These documents are freely available on the Board's website, in OAL's regulatory notice, and are sent to all interested parties via the mail or in electronic form. Further, each package is required to be reviewed by the CA Department of Finance, which analyses the economic impact upon the State, DCA, and private and small businesses.

Discussion and Implementation:

This bill would provide an additional administrative review and approval level to an already crowded field of reviewers and approvers of regulations. The problem it is trying

to solve is not to improve the regulatory review process by adding a critical missing reviewer to the regulatory process; rather it is to add a reviewer that then has veto power over regulations as a means to control regulations. The attempt to eliminate burdensome regulations is misplaced. Regulations are merely implementing statutes; they do not stand on their own. They exist only by virtue of statutory authority. They provide detail that statutes often do not provide. The policy decisions are primarily made by statutes, not regulations, unless the statute provides agencies with Board authority. In such cases, the regulatory process provides for public comment, whose very purpose is to raise concerns and impact of the regulations. These concerns must be addressed before the regulations can be approved and implemented. Additionally, the bill does not anticipate the impact to Boards and Agencies that are by law required to promulgate regulations in order to provide transparency in programs and their requirements. If this new reviewer is allowed to function as a veto for regulations burdensome to business, that would render agencies, boards and program powerless to run their programs because they rely on regulatory authority to operate.

The Acupuncture Board relies on its regulations to operate and it promulgates regulations due to statutory mandates and to define its requirements for licensees, schools, license applicants. If our regulations were found to be too burdensome to business, the Board would be unable to operate and make the changes it needs to make. The proper place to determine whether policies are burdensome is the Legislature where legislation is created. Instituting a litmus test for regulations would create chaos for Boards and Agencies simply following the law. Additionally, adding another review without extending the OAL deadline for completion of regulatory packages may jeopardize regulatory packages being approved within the statutory deadline of 1 year from filing.

The Acupuncture Board is currently completing several regulatory packages, following all laws governing the development as laid out by OAL and DCA Legal Counsel. Each package is carefully compiled by staff and undergoes multiple layers of review before submittal to OAL. Currently, there is no requirement to submit these packages to GoBiz. The current regulatory process requires roughly 8-12 months from start to finish for a basic regulation once approved by an entity for rulemaking. Larger, more complex packages – such as the Board's Consumer Protection Enforcement Initiative (CPEI) which was filed with OAL back in August 2014 – was just returned by DCA to the Board for final filing. AB 19 would potentially add considerable time to the process, and there are concerns about Go-Biz's ability to review highly technical regulations and determine if there are workable alternatives. Additionally, almost the entire licensee population of the Board could be classified as a small business, and this bill specifically requires Go-Biz to focus their regulatory review on regulations primarily affecting small businesses.

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The bill is supported by a number of industry groups, including the CA Chamber of Commerce, California Manufacturers and Technology Association, and the National Federation of Independent Business. The bill is opposed by labor groups, such as International Longshore & Warehouse Union, AFL-CIO and the Utility Workers of America.

AMENDED IN ASSEMBLY MAY 6, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY MARCH 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 19

Introduced by Assembly Member Chang
(Coauthor: Assembly Member Olsen)
(Coauthor: Senator Huff)

December 1, 2014

An act to add and repeal Section 12098.2 of the Government Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 19, as amended, Chang. Governor's Office of Business and Economic Development: small business: regulations.

Existing law creates the Governor's Office of Business and Economic Development to exercise various powers, including, among others, making recommendations to the Governor and the Legislature regarding policies, programs, and actions to advance statewide economic goals. Existing law establishes the Office of Small Business Advocate, within the Governor's Office of Business and Economic Development, that is headed by the Director of the Office of Small Business Advocate who is also referred to as the Small Business Advocate.

This bill would require the Governor's Office of Business and Economic Development, ~~under the direction of~~ *in consultation with* the advocate, to *establish a process for the ongoing* review *of existing* regulations. *The bill would require the review to be primarily focused on regulations* affecting small businesses adopted prior to January 1,

2016, to determine whether the regulations ~~need to be amended in order to become more effective,~~ *could be* less ~~burdensome, or to decrease the cost impact~~ *administratively burdensome or costly* to affected sectors. The bill would require the office to submit the results of its review, including its conclusions and recommendations, to the agency with jurisdiction over the *reviewed* regulations and to ~~provide public access to this~~ *post the same* information on its Internet Web site.

The bill would also require the office to report to the Legislature and the Governor prior to January 1, 2021, and would repeal all of these requirements on January 1, 2021.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12098.2 is added to the Government Code, to read:

12098.2. (a) The Governor's Office of Business and Economic Development, ~~under the direction of~~ *in consultation with* the advocate, shall *establish a process for the ongoing* review *of existing* ~~regulations~~ *regulations. The review shall focus on regulations primarily* affecting small businesses adopted prior to January 1, 2016, to determine whether the regulations ~~need to be amended in order to become more effective,~~ *could be* less ~~burdensome, or to decrease the cost impact~~ *administratively burdensome or costly* to affected sectors.

(b) The office shall establish a process ~~through which stakeholders may request that a regulation be reviewed by the office. The office shall establish a priority review process and shall determine whether a regulation identified pursuant to this subdivision is suitable for priority review.~~ *that includes all of the following:*

(1) An annual calendar of reviews, which shall be no less than two per year.

(2) A means by which stakeholders may request that a regulation be reviewed by the office.

(3) A means by which the office can set priorities for undertaking reviews.

(4) A means by which the public, including small business, can provide input on current costs and challenges in implementing the regulation under review.

(5) A means by which the public, including small business, can make recommendations for an alternative implementation method or methods that would be less burdensome and costly.

(c) The ~~office~~ *office, following a public comment period,* shall determine whether the regulation ~~presents problems, as set forth in subdivision (a), and shall identify proposed remedies~~ *could be implemented through an alternative method or methods that are less administratively burdensome or costly*. Upon completion of the review, the office shall submit the results of its review, including its conclusions and recommendations, to the agency with jurisdiction over the *reviewed* regulations and shall ~~provide public access to this~~ *post the same* information on its Internet Web site.

(d) Notwithstanding any law, the office shall report to the Legislature and the Governor prior to January 1, 2021. The report shall include a listing of all regulations reviewed, the results of each review including the ~~remedies~~ *alternative implementation method or methods* the office proposed, and a description of the actions taken by the responsible agency. The report shall be submitted in compliance with Section 9795.

(e) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

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Assembly Bill 19 (Chang)
Small Business Regulation Review

Background

California consistently ranks among of the worst states in the country for business. For example:

- CNBC- 48th in business friendliness and cost of business
- Forbes-43rd in regulatory environment
- Tax Foundation- 48th in tax climate

It should come as no surprise that with rankings like this, California possesses the seconded highest unemployment rate of all 50 states as well as the highest poverty rate.

Over the years, many small business owners have been forced to downsize, close their doors, or move their business to a neighboring state with a better environment for business. It is time to change the way that businesses are treated in California.

Proposal

AB 19 will instruct the office of GoBiz. Under the direction of their Small Business Advocate, to begin to review all regulations implemented prior to January 1, 2016 that impact small businesses. From their review, the office of GoBiz will determine whether these regulations must be amended in order to become more effective, less burdensome, or to decrease the cost impact to small businesses.

By doing this, California will receive a clear picture of the regulatory environment small business owners are forced to deal. We can then use that information as a roadmap to create a regulatory system that works for both small businesses and consumers.

Support

- California Small Business Administration
- California Chamber of Commerce
- Building Owners and Managers Association
- CalAsian Chamber of Commerce
- California Business Properties Association
- California Manufacturers and Technology Association
- Industrial Environmental Association
- International Council of Shopping Centers
- NAIOP- Commercial Real Estate Development Association
- National Federation of Independent Business
- USANA Health Sciences
- Western Plastics Association
- Plumbing-Heating-Colling Contractors Association of California
- Air Conditioning Trade Association
- Western Electrical Contractors Association
- Central Coast Forest Association
- Southwest California Legislative Council

Status

- Introduced 12/1/14

For More Information

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Updated 04/23/15

BILL ANALYSIS

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Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Eduardo Garcia, Chair

AB 19
(Chang) - As Amended March 16, 2015

SUBJECT: Governor's Office of Business and Economic Development: small business: regulations

SUMMARY: Requires the Governor's Office of Business and Economic Development (GO-Biz), under the direction of the Small Business Advocate (SBA), to review all regulations affecting small businesses adopted on or after January 1, 2016, in order to determine whether the regulations need to be amended in order to become more effective, less burdensome, or to decrease the cost impact to affected sectors.

EXISTING LAW:

1)Finds and declares that it is in the public interest to aid, counsel, assist, and protect the interests of small business concerns in order to maintain a healthy state economy.

2)Establishes GO-Biz to serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. In meeting its mission, GO-Biz is authorized to make recommendations to the Governor and the Legislature regarding new

state policies, programs, and actions, or amendments to existing programs, in order to advance statewide economic goals, respond to emerging economic problems, and to ensure that all state policies and programs conform to the adopted state economic and business development goals.

3)Establishes the Office of the SBA to serve, among other things, as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations that affect small businesses.

4)Finds and declares that there has been an unprecedented growth in the number of administrative regulations in recent years and that correcting the problems requires the direct involvement of the Legislature, as well as that of the executive branch of the state

government. Further, statute finds and declares that the complexity and lack of clarity in many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage.

5) Establishes basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations, including assessing the potential adverse impact of an action on California businesses and individuals with the purpose of avoiding the imposition of unreasonable and unnecessary regulations, reporting, recordkeeping, or compliance requirements. Among other requirements, an agency is required to:

   a) Base decisions on adequate information;
   b) Consider the impact of a proposed rule on an industry's ability to compete with businesses in other states; and
   c) Assess its impact on the creation or elimination of jobs and new and expanding businesses.

6) Requires the Department of Finance to adopt, and rulemaking agencies to follow, a specific set of regulations for undertaking an economic impact analysis for regulations that are anticipated to have an impact on businesses in excess of $50 million.

FISCAL EFFECT: Unknown

POLICY FRAME:
Although the state has a vigorous public process that is designed to allow the rulemaking agency to fully consider the comments, suggestions, and economic impacts of proposed regulations on all business - especially small businesses - state agencies are often unable to clearly identify which types of businesses are potentially affected by a proposed rule and assess the cost and complexity of the proposed implementation model on varying size businesses. An intrinsic conflict to California's rulemaking process is that those businesses that may be most affected have the least ability to monitor the broad range of state rulemaking entities, recommend appropriate alternative implementation models or engage meaningfully in the often complex and highly technical rule making proceedings.

Given that nearly 3 million firms in California have no employees and 90% of firms with employees have less than 20, having implementation methods that are appropriate for small businesses in terms of time, money, and expertise are important state's economic growth.

This measure proposes to have GO-Biz and the SBA review adopted regulations to determine whether modifications are needed to reduce their impact on small businesses. The analysis includes information on the California small business economy, state rulemaking practices, and studies on the cost of regulations to small businesses. Opposition concerns are explained in Comment 2. Suggested technical amendments are included in Comment 7.

COMMENTS:

1)Author's Purpose: According to the author, "AB 19 is intended to bring relief to the small business owners of California. Our state consistently ranks as one of the worst business climates due to heavy regulation and taxation. There is a direct nexus between this unfriendly business climate and California's unemployment rate and the highest poverty rate. Through the review of regulations impacting small businesses, the office of GoBiz can shift that environment to one in which small businesses are hiring new employees instead of closing their doors or moving on to other states.

Within the office of GoBiz, efforts have been made to aid small businesses with the regulatory process. This legislation pushes those efforts further. Instead of simply accepting regulations as they are, this legislation will do more by serving as a catalyst for change. By identifying where the challenges and redundancies exist, we can cut the red tape and clear the way for economic growth. "

2)Oppositions Concerns: The opposition raises a number of issues relative to implementation of AB 19 including that the resources to undertake a review of every regulation adopted before January 1, 2016, would be "colossal" and that these resources could be better spent elsewhere. Another issue of concern is GO-Biz' ability to review highly technical regulation and determine whether there is a workable alternative.

3)California's Small Business Economy: Small businesses form the core of California's $2.2 trillion economy. Research shows that net new job creation is strongest among businesses with less than 20 employees, that small businesses have historically led the state's local and regional economies out of recessions, and that these businesses are essential to the state's global competitiveness by meeting niche industry needs.

Businesses with no employees make up the single largest component of businesses in California, 2.9 million out of an estimated 3.6 million firms in 2012, representing over $149 billion in revenues with the highest number of businesses in the professional, scientific, and technical services industry sector. As these non-employer businesses grow, they continue to serve as an important component of California's dynamic economy.

Excluding non-employer firms, businesses with less than 20 employees comprise nearly 90% of all businesses and employ approximately 18% of all workers. Businesses with less than 100 employees represent 97% of all businesses and employ 36% of the workforce. These non-employer and small employer firms create jobs, generate taxes, and revitalize communities.

Reflective of their important role, the JEDE Committee members regularly hear about the challenges small businesses face meeting the implementation requirements of state, local, and federal regulations. While opponents of regulatory reform accuse small businesses of trying to avert their responsibilities, businesses

that have testified before the Committee have repeatedly stated that their goal is to achieve a regulatory environment that encourages small business development, while still maintaining public health and safety standards. AB 19 does not authorize the lowering of any regulatory standard. The bill provides for a second review of adoptet regulations to identify areas where modifications may benefit small businesses.

4) Cost of Regulations on Business: There are two major sources of data on the cost of regulatory compliance on businesses, the federal SBA and the Office of the Small Business Advocate (OSBA). For the last 10 years, the federal SBA has conducted a peer reviewed study that analyzes the cost of federal government regulations on different size businesses. This research shows that small businesses continue to bear a disproportionate share of the federal regulatory burden. On a per employee basis, it costs about $2,400, or 45% more, for small firms to comply with federal regulations than their larger counterparts.

   The first study on the impact of California regulations on small businesses was released by the OSBA in 2009. This first in-the-nation study found that the total cost of regulations to small businesses averaged about $134,000 per business in 2007. Of course, no one would advocate that there should be no regulations in the state. The report, however, importantly identifies that the cost of regulations can provide a significant cost to the everyday operations of California businesses and should therefore be a consideration among the state's economic development policies.

   Regulatory costs are driven by a number of factors including multiple definitions of small business in state and federal law, the lack of e-commerce solutions to address outdated paperwork requirements, procurement requirements that favor larger size bidders, and the lack of technical assistance to alleviate such obstacles that inhibit small business success.

5) Different Approaches to Regulatory Reform: In general, the Legislature's engagement on regulatory reforms has taken two basic approaches. One set of policies have addressed specific regulatory challenges on a case-by-case basis. The other approach makes systemic change to the way in which rules are adopted, often adding a supplemental more targeted review pre- or post-adoption. Recommendations for systemic change have included:

   a) Dynamic Fiscal Analysis in Appropriations Committee: These bills required an analysis of bills before the Legislature on their impact on business and the economy. Currently, the Legislature's fiscal committee reviews focus on the bill's direct impact on state funds, and most specifically on the General Fund. The fiscal committee's analysis is not intended to include legislations' potential economic impact on the state.

   b) Substantive Administrative Review: These bills shifted the review of the Office of Administrative Law from a procedural review of the regulation package to a substantive review of its impact on business and the economy, including the sufficiency of

the assessment of alternatives. Alternatively, legislation has suggested that another state entity, such as the State Auditor or Legislative Analyst's Office, could be designated to undertake an expanded review of proposed regulations.

c) Enhanced Analysis of Alternatives: These bills required a more meaningful consideration of alternative implementation models, which could lower costs or reduce the implementation burden on small businesses.

d) Post Implementation Analysis: These bills required a review of a regulation's impact five-years after its implementation. Alternatively, legislation has been suggested that all regulations have a sunset date, which would allow for full review once the actual impacts could be identified.

Until now, the first approach has been the most successful, although by its nature it has had very limited overall impact on California's regulatory business climate. Due to their potential implementation costs, a majority of the bills advancing the systemic approach to regulatory reform have failed to move from the fiscal committees - as illustrated in the comment on related legislation.

The most significant systemic change in recent years was approved in SB 617 (Calderon), Chapter 496, Statutes of 2011, which required an enhanced economic impact analysis for regulations anticipated to have an impact of $50 million or more. The SB 617 process follows the federal regulatory model (described below), however, it should be noted that the state process is silent as to the assessment of costs based on size of business.

The Legislature heard several bills to refine the SB 617 process in 2013-14 session including AB 2723 (Medina), which would have required rulemaking entities to consider the specific impact of major regulations on sole proprietorships, and AB 1711 (Cooley) which moved up the economic impact assessment to the initial statement of reasons for all regulations. Ultimately, the Governor signed AB 1711 (Cooley), Chapter 779, Statutes of 2014 and vetoed AB 2723 (veto message below).

5) Federal and State Small Business Advocacy: In 1976, the federal government established the Federal Office of Advocacy (FOA) within the Small Business Administration for the purpose of protecting and effectively representing the nation's small businesses within the federal government's legislative and rule-making processes. A few years later, the Regulatory Flexibility Act of 1980 was enacted, which provided a specific process for assessing and mitigating the potential impact of federal regulations on small businesses. The federal process, which has been updated over the years, includes the annual publication of a regulatory agenda, an initial and final regulatory flexibility analysis, a mandatory periodic review of adopted rules, and direction for a possible judicial review of regulations. The FOA serves as the "watchdog" agency for the Federal Regulatory Flexibility Act.

In carrying out its duties, the FOA regularly reviews federal regulations and makes recommendations on how to reduce the burden on

small firms and maximize small business participation within the federal government. In 2013, the FOA issued 19 letters to federal agencies requesting alternative implementation methods and encouraging better technical review of proposed regulations.

Another FOA activity is the convening of issue-specific Small Business Advocacy Review Panels. Utilizing the FOA as a facilitator has proven to be particularly useful in developing more detailed

comments and making specific and technical recommendations to assist the rulemaking entity in modifying a rule to lessen its impact on small businesses, without reducing its policy objective.

Adopted over a series of years, California law currently has several but not all of the key elements of the federal model. As an example, existing state law sets forth an extensive process for the development and adoption of regulations, including requiring the identification of potential adverse impacts on small businesses and individuals, as well as the consideration of alternative.

The process, however, places the primary responsibility for developing alternative implementation methods on the impacted parties. As noted above, small businesses do not have the capacity in terms of time nor expertise to follow every rulemaking process that the state is undertaking in a given year, nor the expertise to offer alternatives.

While California has an Office of the Small Business Advocate, the state advocate does not currently have the staff to formally comment on pending state regulations. On a case-by-case basis, the Governor's Office of Business and Economic Development has been able to engage with other agencies on current and proposed regulatory proposals through its Office of Permit Assistance, but again, state statutory direction is permissive and not mandatory.

1)Amendments: Below is a list of technical and implementing amendments the author may want to consider.

a) Limit the number and prioritize the types of regulations being reviewed.

b) Provide greater direction to GO-Biz as to what should be assessed, who will receive the assessment, and what that individual(s) or entity is intended to do with the information.

c) Clarify whether GO-Biz is to recommend remedies to identified issues, i.e. alternative implementation methods that meet similar policies, but in a less burdensome manner.

d) Consider stakeholder involvement.

e) Include both a metric for evaluating success and a sunset so the effectiveness of the process can be determined.

2)Related Legislation: Below is a list of bills from the current and prior sessions.

a) Legislation from the current session:

i) AB 419 (Kim) Compilation of Regulations: This bill requires the Governor's Office of Business and Economic Development (GO-Biz) to compile annually all regulations adopted by the state that affect small businesses and report this information to the Legislature, as specified. Status: Scheduled to be heard on April 21, 2015, in the Assembly Committee on Jobs, Economic Development, and the Economy.

ii) AB 582 (Calderon) Professionals in Public Service: This bill establishes the Professionals in Public Service Program, under the administrative oversight of the Board of Equalization (BOE), for the purpose of utilizing the expertise of private sector professionals to help make BOE practices more accessible to small businesses. Status: Scheduled to be heard on April 21, 2015, in the Assembly Committee on Jobs, Economic Development, and the Economy.

iii) AB 866 (E. Garcia) Small Business Impact Data: This bill expands the duties of the Small Business Advocate to include assisting state rulemaking agencies in identifying the aggregate number and size of business which may be affected by a proposed new or amended regulation. Status: scheduled to be heard on April 21, 2015, in the Assembly Committee on Jobs, Economic Development, and the Economy.

iv) AB 1286 (Mayes) California Regulatory Reform Council: This bill establishes the California Regulatory Reform Council (Council) for the purpose of analyzing the holistic impact of all levels of state and local regulations on specific industries operating within the state. The Council's recommendations may be made to the Governor and the Legislature, as appropriate. Status: Scheduled to be heard on April 21, 2015, in the Assembly Committee on Jobs, Economic Development, and the Economy.

b) Legislation from prior sessions:

v) AB 393 (Cooley) GO-Biz Website: This bill requires the Director of GO-Biz to ensure that the GO-Biz website contains information on the fee requirements and fee schedules of state agencies. Status: Signed by the Governor, Chapter 124, Statutes of 2013.

vi) AB 1098 (Quirk-Silva) Small Business Regulation Report: As passed by JEDE, this bill would have directed the Office of the Small Business Advocate within GO-Biz to commission a study of the costs of state regulations on small businesses every five years. Amendments taken in the Senate deleted the content of the bill and added language relating to legal documents provided over the internet with Assemblymember Gray as the author. Status: Died in the Senate Committee on Rules, 2014.

vii) AB 1400 (Assembly Committee on Jobs, Economic Development, and the Economy) Export Document Certificates: This bill modifies the state's Export Document Program to accept requests

electronically, expedite approval of existing labels, and extend the term of the export labels from 180 days to 365 days, in order to alleviate backlog of exports of food, drug, and medical devices. Status: Signed by the Governor, Chapter 539, Statutes of 2013.

viii) AB 1711 (Cooley) Economic Impact Assessment: This bill requires an economic impact assessment to be included in the Initial Statement of Reasons that a state agency submits to the Office of Administrative Law when adopting, amending, or repealing a non-major regulation. Status: Signed by the Governor, Chapter 779, Statutes of 2014.

ix) AB 2723 (Medina) Small Businesses and Major Regulations: This bill would have added statutory protections to ensure that the costs of major regulations on the state's smallest size businesses are considered when state agencies undertake their economic impact assessment for major regulations. Status: Vetoed by the Governor, 2014. The veto message reads: " This bill would require the economic analysis for major regulations to include a separate assessment of the impact on sole proprietorships and small businesses. I signed legislation in 2011 to require a comprehensive economic analysis of proposed major regulations. The analysis must assess whether, and to what extent, the proposed regulations will affect all California jobs and businesses. Agencies must also identify alternatives that would lessen any adverse impact on small businesses. I am not convinced that an additional layer of specificity based solely on the legal structure of a business would add value to the comprehensive economic analysis already required."

x) SB 176 (Galgiani) Outreach on Administrative Procedures: This bill would have amended the Administrative Procedure Act by requiring state agencies to make a reasonable effort to outreach and provide notice to affected entities when developing regulations. Statutes: Held on the Suspense File of the Assembly Committee on Appropriations, 2013.

xi) SB 560 (Wright) Small Business Regulations: This bill would have made a number of reforms to help small businesses grow encouraging more realistic regulations and a real assessment of the actual costs of regulations to the business community. The bill would have: (1) authorized a state agency to consult with "parties who would be subject to the proposed regulations" rather than "interested persons." It also would have required the agency to notify in writing the Office of Small Business Advocate and the Department of Finance (DOF) if the agency does not, or is unable to, consult with parties subject to the regulation and reasons for not consulting the impacted businesses; (2) revised the economic impact assessment to include a small business economic impact statement as specified; (3) required the notice of proposed adoption, amendment, or repeal of a regulation to also include the small business impact statement and removes the requirement for an agency to make a specified statement in the notice of proposed adoption, amendment, or repeal of a regulation if the agency is

not aware of any cost impacts that a representative private person or business would incur in compliance with the regulation, and instead required the agency to include a statement describing how a private person or business could comply with the proposed regulation without incurring a cost; (4) required Office of Administrative Law to also return any regulation to the adopting agency if the adopting agency has not provided the above cost estimate and small business economic statement; and (5) added restrictions for regulations relating to a new or emerging technology, as specified. Status: Held in the Senate Committee on Environmental Quality, 2012.

xii) SB 617 (Calderon) State Government and Financial and Administrative Accountability: This bill revises the state Administrative Procedure Act to require each state agency adopting a major regulation to prepare an economic impact analysis and requires state agencies to implement ongoing monitoring of internal auditing and financial controls and other best practices in financial accounting. Status: Signed by the Governor, Chapter 496, Statutes of 2011.

xiii) SB 981 (Huff) Review of Prior Regulations: This bill would have required each state agency to review each regulation adopted prior to January 1, 2014, and to develop a report to the Legislature containing prescribed information. Among other information, the report would have included the regulations purpose, identification of impacted sectors, direct costs by sector, and an assessment as to whether the regulation needs updating. Status: Died in Senate Committee on Governmental Organization, 2014.

xiv) SB 1099 (Wright) Streamline Implementation of Regulations: This bill requires new regulations to become effective on one of four dates in any given year. This limitation is designed to create a regulatory environment that is more predictable. In addition, the bill requires regulations to be posted on the internet website in an easily identifiable location for a minimum of six months. Status: Signed by the Governor, Chapter 295, Statutes of 2012.

REGISTERED SUPPORT / OPPOSITION:

Support
California Chamber of Commerce

Building Owners and Managers Association

CalAsian Chamber of Commerce

California Business Properties Association

California Manufacturers and Technology Association

Industrial Environmental Association

International Council of Shopping Centers

NAIOP - Commercial Real Estate Development Association

National Federation of Independent Business

USANA Health Sciences

Western Plastics Association

Opposition

California Conference Board of the Amalgamated Transit Union

California Conference of Machinists

Engineers & Scientists of California

International Longshore & Warehouse Union

Professional & Technical Engineers

The Teamsters

UNITE-HERE, AFL-CIO

Utility Workers Union of America

Analysis Prepared by:Toni Symonds / J., E.D., & E. / (916) 319-2090

AB 41 (Chau)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

DATE	May 29, 2019
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 41 (Chau) – Healing Arts: Provider Discrimination

Issue: AB 41 (Chau), introduced December 1, 2014 in the Legislature, is a bill which would prohibit a health care service plan or health insurer from discriminating against any health care provider who is acting within the scope of that provider's license or certification.

Current Status: Located in the Assembly Appropriations committee but is on the suspense file; the committee indicates all suspense bills will be heard at the May 28th hearing.

Background: Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance, and prohibits certain discriminatory acts by health care service plans and health insurers. Existing federal law (the Affordable Care Act), beginning January 1, 2014, prohibits a group health plan and a health insurance issuer offering group or individual health insurance coverage from discriminating with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable state law.

Discussion and Implementation: AB 41 would expressly codify the federal law protection that prohibits health plans from discriminating against any professional category of healthcare provider when making decisions about what type of providers to include in networks or which services to cover. It does not require health plans to contract with any individual provider who is willing to abide by the terms and conditions for participation established by the plan or issuer, but rather prohibits exclusion of an entire class of provider for discriminatory reasons.

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Acupuncture is a defined benefit under the federal Affordable Care Act and is covered by most health insurance plans. Acupuncturists, defined in law as "primary care practitioners", are often the primary medical professional for individuals and families.

The Board does not have any jurisdiction over insurance issues or any of the issues raised in this bill. For this reason, this bill does not impact the Board. This bill impacts acupuncturist who may be discriminated by insurance companies from being included as a contracted provider within an insurance network. The Board is aware of this issue because we frequently receive calls from practitioners who complain about insurance providers, from reimbursement to poor response rates for their services. These calls are logged and then referred to the CA Department of Managed Health Care. According to the author:

"Commonly, health plans and insurance companies limit types of health care providers allowed to provide services. In some cases, for example, providers have excluded allied health practitioners altogether from the networks and have refused to allow them to perform services covered under the plan even though those services are equally within their scope of practice just as much as the other providers who were included in the network. In other cases, insurers have imposed limitations or conditions upon payment to, or upon services, diagnosis, or treatment by allied health practitioners, limitations which are not applied to other providers."

This bill is sponsored by the California Chiropractic Association, and has support from the CA Association of Nurse Anesthetists and CA Naturopathic Doctors association.

ASSEMBLY BILL No. 41

Introduced by Assembly Member Chau

December 1, 2014

An act to add Section 1373.15 to the Health and Safety Code, and to add Section 10177.15 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 41, as introduced, Chau. Health care coverage: discrimination.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits certain discriminatory acts by health care service plans and health insurers. Existing federal law, beginning January 1, 2014, prohibits a group health plan and a health insurance issuer offering group or individual health insurance coverage from discriminating with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable state law.

Beginning January 1, 2016, this bill would prohibit a health care service plan or health insurer from discriminating against any health care provider who is acting within the scope of that provider's license or certification, as specified.

Because a willful violation of the bill's provisions relative to health care service plans would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1373.15 is added to the Health and Safety Code, to read:

1373.15. (a) Beginning January 1, 2016, no health care service plan shall discriminate with respect to provider participation or coverage under the plan against any health care provider who is acting within the scope of that provider's license or certification under applicable state law, including an initiative act.

(b) Notwithstanding subdivision (a), this section shall not be construed to require that a health care service plan contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer.

(c) Nothing in this section shall be construed as preventing a health care service plan from establishing varying reimbursement rates based on quality or performance measures.

(d) This section shall be implemented only to the extent required by the provider nondiscrimination provisions established in Section 2706 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-5), and any federal rules or regulations issued under that section.

SEC. 2. Section 10177.15 is added to the Insurance Code, to read:

10177.15. (a) Beginning January 1, 2016, no health insurer shall discriminate with respect to provider participation or coverage under the policy against any health care provider who is acting within the scope of that provider's license or certification under applicable state law, including an initiative act.

(b) Notwithstanding subdivision (a), this section shall not be construed to require that a health insurer contract with any health care provider willing to abide by the terms and conditions for participation established by the insurer or issuer.

(c) Nothing in this section shall be construed as preventing a health insurer from establishing varying reimbursement rates based on quality or performance measures.

(d) This section shall be implemented only to the extent required by the provider nondiscrimination provisions established in Section 2706 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-5), and any federal rules or regulations issued under that section.

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.

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Assemblymember Ed Chau – District 49

Assembly Bill (AB) 41 – Health Care Coverage Discrimination

Sponsor: California Chiropractic Association

SUMMARY

AB 41 would expressly codify the federal law protection that prohibits health plans from discriminating against any professional category of healthcare provider when making decisions about what type of providers to include in networks or which services to cover.

BACKGROUND

Current federal law establishes the Patient Protection and Affordable Care Act (ACA), which took effect January 1, 2014. Section 2706 of the ACA bans discrimination against whole classes of healthcare providers: "A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable State law. This section shall not require that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer. Nothing in this section shall be construed as preventing a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures."

Current state law provides for the regulation of health care service plans and health insurers by the Department of Managed Health Care and the Department of Insurance. This bill would clarify that these departments have the authority to enforce the ban on provider discrimination just as they have authority to take enforcement action against other discriminatory acts by health care service plans and insurers.

Commonly, health plans and insurance companies limit types of health care providers allowed to provide services. In some cases, for example, providers have excluded allied health practitioners altogether from the networks and have refused to allow them to perform services covered under the plan even though those services are equally within their scope of practice just as much as the other providers who were included in the network. In other cases, insurers have imposed limitations or conditions upon payment to, or upon services, diagnosis, or treatment by allied health practitioners, limitations which are not applied to other providers.

Provider discrimination is not only wrong in principle, but is anti-competitive in nature. This abusive practice limits, or even denies, patient choice and access to a range of beneficial providers and results in a less than ideal and optimal health care delivery system.

Patients are best served when they have access to a team of health care professionals who work together to ensure their overall health and wellness. Access to a full range of providers is crucial for patients so that they are able to receive the right care at the right time – this results in greater accessibility and affordability.

As growing demands for health care services add stress to an already overburdened health care system, efficient utilization of health care professions other than traditional physicians is essential to ensuring access and reining in health care costs.

Eliminating provider discrimination lowers cost, improves quality, increases access (which is an especially acute problem in rural areas), mitigates the shortage of providers (which will only be magnified with millions of new covered lives in CA under the ACA), and honors consumers' choices.

Assemblymember Ed Chau – District 49

Assembly Bill (AB) 41 – Health Care Coverage Discrimination
Sponsor: California Chiropractic Association

PROPOSAL

Specifically, the bill would prohibit a health care service plan contract or health insurance policy issued on or after January 1, 2014 from discriminating against any health care provider who is acting within the scope of that provider's license.

The bill is not an "any willing provider" bill; it does not require health plans to contract with any individual provider who is willing to abide by the terms and conditions for participation established by the plan or issuer, but rather prohibits exclusion of an entire class of provider for discriminatory reasons

The bill does not prevent a health care service plan or health insurer from establishing varying reimbursement rates based on quality or performance measures.

SUPPORT

California Chiropractic Association (Sponsor)
California Association of Nurse Anesthetists
California Naturopathic Doctors Association

BILL STATUS

Introduced December 1, 2014.

FOR MORE INFORMATION

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AB 41 BILL ANALYSES

Date of Hearing: April 28, 2015

ASSEMBLY COMMITTEE ON HEALTH

Rob Bonta, Chair

AB 41
(Chau) - As Introduced December 1, 2014

SUBJECT: Health care coverage: discrimination.

SUMMARY: Prohibits a health care service plan (plan) or health insurer (insurer) from discriminating against any health care provider who is acting within the scope of that provider's license or certification. Specifically, this bill:

1) Prohibits, beginning January 1, 2016, a plan or insurer from discriminating with respect to provider participation or coverage under the plan against any health care provider who is acting within the scope of that provider's license or certification.

2) Clarifies that the prohibition on discrimination is not to be construed to require that a plan or insurer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer.

3) Clarifies that its provisions are not to be construed as preventing a plan or insurer from establishing varying reimbursement rates based on quality or performance measures.

4) Makes implementation of this bill conditional upon

requirements of federal law, as specified.

EXISTING LAW:

1) Establishes, under federal law, the Patient Protection and Affordable Care Act (ACA) which, among other provisions, prohibits plans and insurers offering group or individual insurance coverage from discriminating with respect to participation under the plan or policy against any health care provider who is acting within the scope of the provider's license or certification under applicable state law.

2) Establishes the Knox-Keene Health Care Service Plan Act of

1975, the body of law governing plans in the state, and provides for the licensure and regulation of plans by the Department of Managed Health Care.

3) Provides for the regulation of health insurers by the California Department of Insurance (CDI).

4) Provides that plans and insurers that negotiate and enter into contracts with professional providers to provide services at alternative rates of payment, as specified, must give reasonable consideration to timely written proposals for affiliation by licensed or certified professionals providers. Defines "reasonable consideration" as consideration in good faith of the terms of proposals for affiliations prior to the time that contracts for alternative rates of payment are entered into or renewed.

5) Authorizes health plans and insurers to specify the terms and conditions of contracting to assure cost-efficiency, qualification of providers, and appropriate utilization of services, accessibility, and convenience to persons who would receive the provider's services, and consistency with basis methods of operation, but not exclude providers because of their category of license.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

1) PURPOSE OF THIS BILL. According to the author, with the passage of the ACA, an influx of newly insured people will engage with an overburdened health care system that faces severe shortages of health care practitioners. The author states that we must utilize our health care practitioners whose scope of practice and training will allow them to perform more vital functions. The author states that while federal law bans discrimination against whole classes of health care providers, plans and insurers commonly limit the types of health care providers allowed to provide services. The author cites an example of optometrists who are permitted to provide routine vision care under a health plan or insurance contract are often prohibited from treating other conditions that are within their scope of practice. The author asserts that provider discrimination is wrong in principle, anti-competitive, limits or denies patient choice and access to a range of beneficial providers, and results in a less than optimal health care delivery system. The author concludes by stating that this bill will help eliminate provider discrimination which will lead to lower health care costs, improve quality, increase access, and mitigate provider shortages.

2) BACKGROUND.

a) Provider nondiscrimination under the ACA. This bill codifies a provision of the ACA, which prohibits discrimination with respect to participation under a plan or coverage against any health care provider who is acting within the scope of that provider's license or certification applicable under state law. The specific section for this provision of the ACA is Section 2706(a) of the Public Health Services Act (PHSA) 42 U.S. Code Section 300gg-5 (PHSA Section 2706(a)), and it contains language nearly identical to that in this bill.

b) Federal regulations. On April 29, 2013, the federal Departments of Labor, Health and Human Services, and Treasury (collectively the departments), issued Frequently Asked Questions (FAQ) stating that the departments did not intend to issue regulations to implement PHSA Section 2706(a), and that ACA provider non-discrimination language as self-implementing and stated that the departments did not intend to issue regulations. The April 2013 FAQ also stated that plans and insurers are expected to implement the non-discrimination requirements of PHSA Section 2706(a) using a good faith and reasonable interpretation of the law; and, that the provisions of the law do not require plans or issues to accept all types of providers into a network or govern provider reimbursement rates which may be subject to quality, performance, or market standards and considerations.

In July 2013, the U.S. Senate Appropriations (USSA) Committee issued a report, within which it expressed concerns regarding the FAQ. The USSA Committee stated that the goal of PHSA Section 2706(a) is to ensure patients have the right access to covered health services from the full range of providers licensed and certified in the state. The USSA Committee also expressed concerns that the FAQ advised insurers that PHSA Section 2706(a) allows them to exclude whole categories of providers, and allows discrimination in reimbursement rates based on market considerations rather than the law's more limited exceptions based on performance and quality measures. Following this report, the departments issued a Request for Information on all aspects of PHSA Section 2706, with public comments due by June 10, 2014. The USSA Committee issued another report in June 2014, directing the departments to correct its FAQ by November 3, 2014.

As of the writing of this analysis, the original FAQ document is still posted on the departments' Websites, and federal agencies have not adopted specific federal rules to implement PHSA Section 2706(a). It is unclear if additional rules will be forthcoming.

Additionally, existing federal law and regulations governing Medicare Advantage (MA) plans implement similar requirements as those enacted under the ACA and proposed under this bill. Specifically, the regulations provide that MA plans may select the practitioners that participate in its plan networks, but may

not discriminate in terms of participation, reimbursement or indemnification against any health professional who is acting within the scope of his or her license or certification under state law. These regulations have been in effect since 2000.

c) Healing arts practitioners in California. Existing state law provides for the licensure and certification of various healing arts licensees, including physicians and surgeons, dentists, podiatrists, naturopathic doctors, registered nurses, physician assistants, radiologic technologists, social workers, acupuncturists, and massage therapists. Generally, the practice or title acts of the practitioners define the procedures, actions, or processes that are permitted for the individual that is licensed or certified. Additionally, there are healing arts practitioners whose scope of practice is defined in an initiative act, specifically chiropractors and osteopathic physicians. The scope of practice of practitioners can sometimes overlap. For example, physicians and surgeons may perform acupuncture without obtaining an acupuncture license. Ophthalmologists and optometrists (certified pursuant to specified regulations) can both treat glaucoma.

3) SUPPORT. The California Chiropractic Association (CCA), the bill's sponsor, states that plans and insurers routinely discriminate against whole classes of providers based solely on licensure and certification. CCA state that bill codifies federal ACA requirements to prohibit this discrimination, thus ensuring that patients have access to health care providers of their choice and broadening the range of providers available in our health care delivery system. CCA adds that neither federal law, nor this bill, prevents a plan or insurer from varying reimbursement rates based on quality or performance measures. Other supporters state that this bill will reduce costs, improve quality, increase efficient utilization, and increase access to care.

4) OPPOSITION. CSAC Excess Insurance Authority (EIA) states that the rising cost of health care is due in part to the rising cost of provider expense, and that this bill opens the field for any non-physician provider type to be reimbursed based on the sole discretion of the non-physician provider and not based on the guidelines of the contractual agreement or taking into consideration of physician specialty. CSAC EIA states that the bill is not based on prudent health care considerations and works to undermine health plan and insurer administrative initiatives to monitor care and control costs.

5) PREVIOUS LEGISLATION. AB 2015 (Chau) from 2014, and SB 690 (Ed Hernandez) from 2012, were identical to this bill. Both bills were held on the Suspense file by the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chiropractic Association (sponsor)

California Academy of Audiology

California Immigrant Policy Center

California Optometric Association

California Naturopathic Doctors Association

California Nurse-Midwives Association

California Pharmacists Association

California Psychological Association

Occupational Therapy Association of California

Opposition

CSAC Excess Insurance Authority

Analysis Prepared by:Kelly Green / HEALTH / (916) 319-2097

AB 85 (Wilk)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
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DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 85 (Wilk) Open meetings -- version introduced January 6, 2015 *Urgency statute*

Issue: AB 85 (Wilk), introduced January 6, 2015 in the Legislature, is an urgency bill which would specify when an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body is acting in an official capacity of a state body and is funded in whole or part by the state body, the entity is subject to the Act, regardless of committee size or membership. More specifically, this bill would require that when any Board members discuss board or bureau-related business during a 2 person meeting, then that "meeting" must be treated as a public meeting which would require the board or bureau to incur all the costs identified with holding a public meeting.

Current Status: Passed 21-0 out of the Assembly Governmental Organization committee on April 8, 2015. It is now in the Assembly Appropriations but is on the suspense file; the committee indicates all suspense bills will be heard at the May 28th hearing.

Background: The Bagley-Keene Open Meeting Act, set forth in Government Code Sections 11120-11132, covers all state boards and commissions and generally requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session. The Board is fully compliant with these requirements. A previous version of the bill, AB 2058 (Wilk), was introduced during the 2013-2014 Legislative session and passed out of both Legislative houses but was vetoed by the Governor.

The bill is supported by the CA Association of Licensed Investigators. As of this writing, the CA Board of Accountancy is opposed to the bill.

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Discussion and Implementation:

According to the author's office, the current definition of "state body" in the Bagley-Keene Act contains an ambiguity with respect to whether a "standing committee" composed of fewer than three members needs to comply with the public notice and open meeting requirements of the Act. They maintain that certain state bodies have allowed standing committees to hold closed-door meetings as long as they contain two rather than three members and do not vote to take action on items. The author's office believes such entities are intentionally limiting membership on standing committees to no more than two members for the explicit purpose of avoiding open meeting requirements, and that this bill is simply intended to clarify that all standing committees, including advisory committees, are subject to the transparency of open meeting regulations regardless of committee size or membership.

In the past, the Board's committee structure operated with a series of 2 person committees that were not subject to the open meetings law. This was criticized by the Legislature. As a result, the Board created committees with 3 or more members that are subject to the open meetings law. So, currently all of the committees operate under the open meetings laws. Where this law would impact the board is that it may cause conversations between staff and one or two members of the Board to also be subject to open meetings.

Currently, the Board is able to hold small meetings with two individuals without being subject to open meeting requirements. Many of these meetings are handled via a phone/conference call or a small informal discussion between committee or board members and staff and do not require 10 days prior public notice of the meetings. If they were to become public meetings, the 10 day prior public notice of these two person meetings would severely slow communication and board operations. Additionally, more staff time and effort would be needed to organize and plan for these small meetings.

Further, these extra meetings would significantly increase the Board's meeting costs because there would be significant costs related to hosting public meetings. Expenses would include reservations for a dedicated meeting room that can be open to the public; associated travel costs and per diem for the members that make up the subcommittee; and any travel costs for support staff needed to take minutes and provide input. The Board would have a difficult time supporting such expenses and it would be an additional barrier to doing business. This would be a significant barrier for Board communications and significant cost.

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 85

Introduced by Assembly Member Wilk

January 6, 2015

An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 85, as amended, Wilk. Open meetings.

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions.

This bill would specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

~~This bill would make legislative findings and declarations, including, but not limited to, a statement of the Legislature's intent that this bill is declaratory of existing law.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. The Legislature finds and declares all of the following:~~

~~(a) The unpublished decision of the Third District Court of Appeals in Funeral Security Plans v. State Board of Funeral Directors (1994) 28 Cal. App.4th 1470 is an accurate reflection of legislative intent with respect to the applicability of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) to a two-member standing advisory committee of a state body.~~

~~(b) A two-member committee of a state body, even if operating solely in an advisory capacity, already is a "state body," as defined in subdivision (d) of Section 11121 of the Government Code, if a member of the state body sits on the committee and the committee receives funds from the state body.~~

~~(c) It is the intent of the Legislature that this bill is declaratory of existing law.~~

~~SEC. 2.~~

SECTION 1. Section 11121 of the Government Code is amended to read:

11121. As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory

body so created consists of three or more persons, except as in subdivision (d).

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

~~SEC. 3.~~

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid unnecessary litigation and ensure the people's right to access the meetings of public bodies pursuant to Section 3 of Article 1 of the California Constitution, it is necessary that *this* act take effect ~~immediately~~ *immediately.*

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Assembly California Legislature

SCOTT WILK
ASSEMBLYMAN, THIRTY-EIGHTH DISTRICT

Fact Sheet
AB 85—Open Meetings

Background

Current law requires all standing committees of a local government entity or of the Legislature to hold meetings that are open to the public whether or not the standing committee takes action. However, existing law is slightly ambiguous for state bodies, which some state agencies are exploiting as a loophole. Multiple state agencies have used this misinterpretation to mean that standing committees can hold closed door meetings as long as they contain two rather than three members and do not vote to take action on items. These agencies purposefully limit their standing committees to two members for the explicit purpose of avoiding open meeting requirements.

Government Code contains two parallel open meeting statutes: the Brown Act for local governments and the Bagley-Keene Act for state government. Prior to 1993, the Brown Act contained language very similar to the current language in the Bagley-Keene Act regarding standing committees. However, in the 1990s, after a local government entity attempted to claim a loophole existed for two-member standing committees, the Legislature promptly removed any ambiguity on the matter from the Brown Act [SB 1140 (Calderon) (Chapter 1138, Statutes of 1993)]. A conforming change was not made, however, to the Bagley-Keene Act, as no change was thought necessary. Last session's AB 2058 (Wilk) would have fixed this ambiguity and aligned the definitions in the Bagley-Keene Act with those in the Brown Act. While AB 2058 passed the Legislature unanimously, Governor Brown vetoed it, claiming it expanded current law.

This left ambiguity in the Bagley-Keene Act, allowing state bodies to continue to deliberate and direct staff behind closed doors. These state agencies are allowing standing committees to interpret the language of the Bagley-Keene Act in a manner that is contrary to the intent of the Legislature and the public; the government at all levels must conduct its business visibly and transparently.

This Bill

- This bill affirms Legislative intent that, declaratory of existing law, a two-member committee is a "state body".
- AB 85 clarifies the language of the statue explaining that when two-member advisory committees are acting in an official capacity of a state body and are funded in whole or part by the state body, they are also subject to the full provisions of the Bagley-Keene Act.

Support

California Association of Licensed Investigators (CALI)

4/1/2015

BILL ANALYSIS.

Date of Hearing: April 8, 2015

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Adam Gray, Chair

AB 85
(Wilk) - As Introduced January 6, 2015

SUBJECT: Open meetings

SUMMARY: An urgency measure, is intended to clarify language within the Bagley-Keene Open Meeting Act (Act) by stating that when an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body is acting in an official capacity of a state body and is funded in whole or part by the state body, the entity is subject to the Act, regardless of committee size or membership. Specifically, this bill:

1) States that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as described, except a board, commission, committee, or similar multimember body on which a member of a body serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

2) Makes legislative findings and declarations

3) Contains an urgency clause.

EXISTING LAW:

1) The Bagley-Keene Open Meeting Act, set forth in Government Code Sections 11120-11132, covers all state boards and commissions and generally requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session. The Ralph M. Brown Act (Brown Act), set forth in Government Code Section 54950 et seq., governs meetings of legislative bodies of local agencies. In general, both Acts are virtually identical. While both acts contain specific exceptions from the open meeting

requirements where government has demonstrated a need for confidentiality, such exceptions have been narrowly construed by the courts.

2) The Act defines "state body" to mean each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body. Advisory bodies created to consist of fewer than three individuals are not a state body, except that standing — committees of a state body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body are state bodies for the purposes of this chapter.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

FISCAL EFFECT: Unknown

COMMENTS:

Background : When the Legislature enacted the Bagley-Keene Act of 1967, it essentially said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. In doing so, the Legislature has provided the public with the ability to monitor and be part of the decision-making process. The Act explicitly mandates open meetings for California State agencies, boards, and commissions. It facilitates transparency of government activities and protects the rights of citizens to participate in state government deliberations. Therefore, absent a specific reason to keep the public out of meetings, the public is allowed to monitor and participate in the decision-making process.

Similarly, the Ralph M. Brown Act of 1953 protects citizen's rights to open meetings at the local and county government

Existing law defines an advisory board, commission, committee, and subcommittee of a state body that is comprised of three or more persons and created by a formal action of the body as a "state body" for purposes of the Act. This generally requires state agencies, boards, and commissions to publicly notice meetings, prepare formal agendas, accept public testimony, and conduct meetings in public, unless specifically authorized to meet in closed session.

Purpose of the bill : According to the author's office, the current definition of "state body" in the Bagley-Keene Act contains an ambiguity with respect to whether a "standing committee" composed of fewer than three members needs to comply with the public notice and open meeting requirements of the Act. The author's office maintains that certain state bodies have allowed standing committees to hold closed-door meetings as long as they contain two rather than three members and do not vote to take action on items. The author's office believes such entities are intentionally limiting membership on standing committees to no more than two members for the explicit purpose of avoiding open meeting requirements.

The author's office states that prior to 1993, the Brown Act contained language very similar to the current language in the Bagley-Keene Act relative to standing committees. However, in

the 90's when a local government entity attempted to claim a loophole existed for two-member standing committees, the Legislature promptly removed any ambiguity on the matter from the Brown Act (SB 1140 {Calderon}, Chapter 1138, Statutes of 1993). A conforming change was not made, however, to the Bagley-Keene Act, as no change was thought necessary.

The author's office emphasizes that the ambiguity left in the Act is allowing state bodies to deliberate and direct staff behind closed doors. These state agencies are allowing standing committees to interpret the language of the Act in a manner that is contrary to the intent of the Legislature and the public.

The author's office states this bill is simply intended to clarify that all standing committees, including advisory committees, are subject to the transparency of open meeting regulations regardless of committee size or membership. AB 85 corrects the ability of state agencies to deny the public full transparency by clarifying current statute language, rather than expanding current law.

Arguments in support : The California Association of Licensed Investigators (CALI) writes that the bill would provide for enhanced transparency in the proceedings of government. AB 85 will help to ensure that the public is provided with the critical opportunity to become aware of proposals, and to provide meaningful comment.

Argument in opposition : California Board of Accountancy (CBA) states that this bill would prevent the CBA, and all of its various committees, from asking fewer than three members to review a document, draft a letter, provide expert analysis, or work on legal language without giving public notice. Under current law, the advisory activities of these two-member bodies are already vetted and voted upon in a publically noticed meeting of the whole committee or board.

In addition, making advisory activities of two members open to the public will greatly increase costs, as a staff member would need to travel to attend the meeting for the purpose of recording minutes. Agencies would also need to contract for meeting space that would be able to accommodate the public, thus incurring further costs.

Prior legislation : AB 2058 (Wilk), 2013-2014 Legislative Session. An urgency measure, would have required all standing committees of a state body, irrespective of composition, that has a continuing subject matter jurisdiction or fixed meeting schedule to comply with the provisions of the Act. (Vetoed by Governor Brown)

The Governor's veto message stated, "This bill expands the definition of a state body, under the Bagley-Keene Open Meeting

Act, to standing advisory committees with one or two members.

"Any meeting involving formal action by a state body should be open to the public. An advisory committee, however, does not have authority to act on its own and must present any findings and recommendations to a larger body in a public setting for formal action. That should be sufficient."

AB 2720 (Ting), Chapter 510, Statutes of 2014. Requires a state body to publicly report any action taken at an open meeting, and the vote or abstention on that action, of each member present for the action.

SB 751 (Yee), Chapter 257, Statutes of 2013. Required local agencies to publicly report any action taken and the vote or abstention of each member of a legislative body.

SB 103 (Liu), 2011-12 Session. Would have made substantive changes to provisions of the Act relating to teleconference meetings. (Died Assembly Appropriations Suspense File)

AB 277 (Mountjoy), Chapter 288, Statutes of 2005. Made permanent certain provisions authorizing closed sessions for purposes of discussing security related issues pertaining to a state body.

AB 192 (Canciamilla), Chapter 243, Statutes of 2001. Made various changes to the Act, which governs meetings held by state bodies, to make it consistent with provisions of the Brown Act,

which governs meetings of legislative bodies of local agencies.

SB 95 (Ayala), Chapter 949, Statutes of 1997. Made numerous changes to the Act by expanding the notice, disclosure and reporting requirements for open and closed meetings of state bodies.

SB 752 (Kopp) Chapter 32 of 1994; SB 1140 (Calderon) Chapter 1138 of 1993; and SB 36 (Kopp) Chapter 1137 of 1993. These measures extensively amended the Brown Act.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Licensed Investigators

Opposition

Califoria Board of Accountancy

Analysis Prepared by:Eric Johnson / G.O. / (916) 319-2531

AB 333 (Melendez)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
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DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 333 (Melendez) Healing Arts: Continuing Education, version as amended April 30, 2015

Issue: AB 333 (Melendez), introduced in the Legislature in February and amended most recently on April 30, 2015, would allow a licensee of a healing arts board to apply credits gained by becoming a certified trainer for cardiopulmonary resuscitation (CPR) or the proper use of an automated external defibrillator (AED) to their continuing education requirement once every two-year renewal cycle.

Current Status: Passed out of the Assembly Appropriations committee May 13, 2015 on consent; currently on the Assembly floor for second reading.

Background: Existing law establishes the continuing education requirements for various boards within the Department of Consumer Affairs. The Board is authorized to establish CEU requirements under CA Business and Professions code 4945. Under California Code of Regulations Section 1399.489(a), the Board currently requires 50 CEUs every two years as a condition of renewal. All courses must be off the Board's approved course list.

Discussion and Implementation: This bill would authorize healing arts licensees, who are required to complete CE units as a condition of renewing their license, to earn one unit of CE credit by attending a course that results in the licensee becoming a certified instructor of CPR or the proper use of an AED. It would further authorize healing arts licensees to apply up to two units of CE credit towards the requirement for conducting CPR or AED training sessions for employees of school districts and community college districts in the state. In both cases, these CEU credits could only be used once every two-year renewal cycle.

The author considers this bill a no-cost means of incentivizing licensed medical professionals to become certified and to provide CPR and AED training. The purpose is to increase the amount of training in the community and in schools. The author states

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this will ultimately lead to less hesitation in emergency environments and increases in the success rate of cardiac emergency care.

As this bill is not a statutory mandate, the Board would be free to implement such a CEU requirement if desired. Once this regulation is approved by the Board, a rulemaking package would need to be adopted to implement this requirement, and there would be a minor ongoing impact to staff to track licensees who want to take advantage of this policy. Considering the small licensee population of the Board, the numbers of licensees taking advantage of this program would likely be extremely low.

The bill is supported by the American Red Cross and has no opposition.

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 333

Introduced by Assembly Member Melendez

February 13, 2015

An act to add Section 856 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 333, as amended, Melendez. Healing arts: continuing education.

Existing law provides for the licensure and regulation of various healing arts licensees by various boards, as defined, within the Department of Consumer Affairs and imposes various continuing education requirements for license renewal.

This bill would allow specified healing arts licensees to apply one unit, as defined, of continuing education credit *once per renewal cycle* towards any required continuing education units for attending ~~a course~~ *certain courses* that ~~results~~ *result* in the licensee becoming a certified instructor of cardiopulmonary resuscitation (CPR) or the proper use of an automated external defibrillator ~~(`AED),~~ *(AED),* and would allow specified healing arts licensees to apply up to 2 units of continuing education credit *once per renewal cycle* towards any required continuing education units for conducting *board-approved* CPR or AED training sessions for employees of school districts and community college districts in the state. *The bill would specify that these provisions would not apply if a licensing board's laws or regulations establishing*

continuing education requirements exclude the courses or activities mentioned above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 856 is added to the Business and Professions Code, to read:

856. (a) *(1)* A person licensed pursuant to this division who is required to complete continuing education units as a condition of renewing his or her license ~~may~~ *may, once per renewal cycle,* apply one unit of continuing education ~~credit~~ *credit, pursuant to paragraph (2),* towards that requirement for attending a course that results in the licensee becoming a certified instructor of cardiopulmonary resuscitation (CPR) or the proper use of an automated external defibrillator (AED).

(2) A licensee may only apply continuing education credit for attending one of the following courses:

(A) An instructional program developed by the American Heart Association.

(B) An instructional program developed by the American Red Cross.

(C) An instructional program that is nationally recognized and based on the most current national evidence-based emergency cardiovascular care guidelines for the performance of CPR and the use of an AED.

(b) *(1)* A person licensed pursuant to this division who is required to complete continuing education units as a condition of renewing his or her license ~~may~~ *may, once per renewal cycle,* apply up to two units of continuing education ~~credit~~ *credit, pursuant to paragraph (2),* towards that requirement for conducting CPR or AED training sessions for employees of school districts and community college districts in the state.

(2) A licensee may only apply continuing education credit for holding a training session if the training session is approved by the applicable licensing board.

(c) For purposes of this section, "unit" means any measurement for continuing education, such as hours or course credits.

(d) This section shall not apply to a person licensed under this division if the applicable licensing board's laws or regulations establishing continuing education requirements exclude the courses or activities described in subdivisions (a) and (b).

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LEGISLATIVE BACKGROUND SHEET May 19, 2015

Assemblywoman Melissa A. Melendez
67th District

Assembly Bill 333

Background
AB 2217 (Melendez, 2014) authorizes a public school to solicit and receive non-state funds to acquire and maintain an automatic external defibrillator (AED), and requires that such funds shall only be used to acquire and maintain an AED and to provide training to school employees regarding use of an AED.

Problem Being Addressed
With AED's becoming more common on K-12 and college school facilities due to its life saving ability during cardiac emergencies, it is important that adequate training resources and instructors are available to school administrators and staff should they seek it.

However, pro bono instructors and training resources are in short supply and many of the private alternatives are cost prohibitive.

Which code section is affected?
Adding Section 856 to the Business and Professions Code.

Summary
AB 333 would allow licensed medical professionals (pursuant to Division 2 of the Business and Professions Code) to receive one continuing education unit (CEU) for becoming a licensed instructor in cardiopulmonary resuscitation (CPR) and the proper use of an automated external defibrillator (AED). They would also receive up to two CEU's for conducting CPR/AED training sessions for employees of K-12 and college districts.

While training is not required for AED operation, it provides a chance for school faculty and staff to become familiar with the device and its operation, resulting in an increase in comfort and familiarity with the device.

In addition, AB 333 specifies that these provisions would not apply if a licensing board's laws or regulations establishing continuing education requirements exclude the courses or activities mentioned above.

AB 333 creates a cost-neutral incentive that would benefit both the instructor and school which results in school officials being more likely to utilize an AED in a real world medical situation.

Support
American Red Cross

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BILL ANALYSIS

Date of Hearing: April 28, 2015

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Susan Bonilla, Chair

AB 333
(Melendez) - As Amended March 26, 2015

SUBJECT: Healing arts: continuing education.

SUMMARY: Authorizes healing arts licensees to earn one unit of continuing education (CE) credit by attending a course that results in the licensee becoming a certified instructor of cardiopulmonary resuscitation (CPR) or the proper use of an automated external defibrillator (AED) and up to two units of CE credit for conducting CPR or AED training sessions for employees of school districts and community college districts in the state.

EXISTING LAW:

1) Provides for the licensure and regulation of various healing arts licensees by various boards within the Department of Consumer Affairs (DCA) and imposes various continuing education (CE) requirements for license renewal. (Business and Professions Code (BPC) §§ 500-4999.129)

2) Requires the Director of the DCA to establish guidelines for mandatory CE administered by the boards under the DCA, including, among other things, the CE's relevancy to the occupation. (BPC § 166)

THIS BILL:

3) Authorizes healing arts licensees, who are required to complete CE units as a condition of renewing their license, to earn one unit of CE credit by attending a course that results in the licensee becoming a certified instructor of CPR or the proper use of an AED.
4) Authorizes healing arts licensees, who are required to complete CE units as a condition of renewing their license, to apply up to two units of CE credit towards the requirement for conducting CPR or AED training sessions for employees of school districts and community college districts in the state.

5)Defines "unit" as a measurement for continuing education, such as hours or course credits.

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

COMMENTS:

6)Purpose. This bill is sponsored by the author. According to the author, "As cardiac emergencies become more common on school campuses, it is not only imperative that our schools have lifesaving resources available to faculty and administration, but the ability to provide the faculty and administration with hands-on training with those resources. By incentivizing licensed medical professionals to provide this training in turn for continual education credit, we are providing a no-cost solution that will allow school officials to become familiar with the technology. This will ultimately lead to less hesitation in emergency environments and increases in the success rate of cardiac emergency care."

7)Background. All 20 healing arts boards under the DCA develop their own CE curriculum for licensees and approve the providers that offer the CE courses. However, they are limited to CE that is relevant to the profession. Current law specifies that the purpose of CE is "?to create a more competent licensing population, thereby enhancing public protection" (BPC § 166).

Further, the boards often have limiting language within their practice acts. For instance, the Dental Board is permitted to establish its own CE curriculum within the general areas of patient care, health and safety, and law and ethics (BPC § 1645). The Medical Board's standards are aimed at maintaining, developing, or increasing the knowledge, skills, and professional performance that licensees use to provide care (BPC § 2190.1).

Using the criteria set out in statute, the boards then determine relevant CE courses and approve the providers that teach the courses. This bill would permit the licensees of healing arts boards to use CPR and AED instructor certification courses and teaching sessions to earn credit towards the CE requirements established by the boards, regardless of the approved CE courses.

ARGUMENTS IN SUPPORT:

The American Red Cross writes in support, "The American Red Cross is pleased to support your AB 333, which would incentivize the training of K-12 school faculty and administrators in the use of [AEDs], by allowing individuals the ability to earn continuing education units.

AEDs are used to treat the effects of sudden cardiac arrest,

which is triggered by an electrical malfunction in the heart-with the heart unable to pump blood to the brain, lungs, and other vital organs, death can happen in minutes. Each year nearly 424,000 people experience sudden cardiac arrest outside of a hospital. Only 10% of these individuals survive. Encouraging school employees to be prepared in time of emergency, including the use of an AED, can save lives."

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUES:
This bill may conflict with the California Emergency Medical Services Authority's (EMSA) regulations regarding "lay rescuers" and AED training (California Code of Regulations Title 22, § 100031-100043). The author may wish to work with EMSA to ensure that the requirements for lay rescuers, as spelled out in the EMSA regulations, is consistent with the requirements for healing arts licensees that would be impacted by this bill.

POLICY ISSUES:

Some boards, such as the Board for Behavioral Sciences (BBS), may wish to opt out of this bill. For instance, at the April 23, 2015 BBS Policy and Advocacy Committee meeting, a board analysis noted that this bill may conflict with the board's continuing education statutory and regulatory requirements. The analysis stated that:

> "Current law specifies that continuing education must incorporate either aspects of the discipline for which licensed that are fundamental to the practice of the profession, aspects of the discipline where significant recent developments have occurred, or aspects of other disciplines that enhance the understanding or practice of the profession.
>
> While CPR/AED training is important, it may be difficult to argue that it is fundamental to, or enhances the understanding of, the practice of psychotherapy."

Therefore, the author should make the following amendments to provide boards the authority to opt out and to exclude boards with conflicting statutes.

AMENDMENTS:

8)Ensure that licensees only apply the credits once per renewal cycle:
On page 2, line 5, strike: ~~may~~ and after "license" insert:

may, once per renewal cycle,

On page 2, line 12, strike: ~~may~~ and after "license" insert:

may, once per renewal cycle,

9)Specify which certification courses apply:

On page 2, line 9, after "state" insert:

The licensee may attend the following courses:

(1) An instructional program developed by the American Heart Association.

(2) An instructional program developed by the American Red Cross.

(3) An instructional program that is nationally recognized and based on the most current national evidence-based emergency cardiovascular care guidelines for the performance of CPR and the use of an AED.

10)Ensure the training sessions are approved by the appropriate board:

On page 2, line 15, after "state" insert:

The training session must be approved by the applicable licensing entity.

11)and exclude boards that do not wish to participate or have conflicting statutory or regulatory requirements:

On page 2, after line 17, insert:

(e) This section does not apply to a person licensed under this division if the applicable board's laws establishing continuing education exclude the courses or activities described in subdivisions (a) and (b).

REGISTERED SUPPORT:

The American Red Cross

REGISTERED OPPOSITION:

None on file.

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

AB 483 (Patterson)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 483 (Patterson) Healing Arts : Initial License Fees: Proration; version as amended April 9, 2015

Issue: AB 483 (Patterson) introduced in the Legislature in December and most recently amended April 9, 2015, is a bill which requires initial licensing fees for specified healing arts practitioners and architects to be prorated on a monthly basis. This bill is author-sponsored.

Current Status: In Assembly Appropriations committee, currently on the suspense file.

Background: Existing law, Business and Professions Code section 4965 and 4970, specifies that the Board shall administer a birth date renewal program, with an initial license fee not to exceed $325.00. Under California Code of Regulations section 1399.460(c), the Board currently administers an initial license fee, which is prorated based upon the birth month of the applicant and the month the license is applied for. This regulation specifies that no initial license shall be issued for less than 12 months, or will exceed 24 months in length. The initial license fee is prorated from $176 to $325. This regulation has been in place since 1996.

Discussion and Implementation: This bill would standardize initial licensing fees across state-licensed professions that follow a birth month renewal policy. Many of the boards within the DCA have implemented a birth date renewal program to calculate license expiration dates. Under the program, a license expires on the licensee's birth date or on the last day of the licensee's birth month on the second year of a two-year renewal term. For many boards, licensees submit applications for licensure at the same time (e.g. because of the timing of exams). This causes boards to have a large number of applications for initial licenses during peak times.

As a result, many boards now renew licenses based on birth date, rather than the date the license was issued, which helps prevent the boards from processing large numbers of applications or renewals at one time. Depending on the board, the initial license period can vary from a few months up to 24 months, depending on the applicant's birth month.

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The Acupuncture Board already operates a pro-rated initial license fee system. Legal counsel has indicated the Board would need to implement a regulatory package to modify existing regulations to align with the new law. The target of this bill is other boards that do not use birth dates and prorate licensure fees. However, the Acupuncture Board, which already complies with this policy, was included in this bill. As a result, one of the negative impacts of this bill is that it would require the Board to promulgate regulations to implement a policy that it has already promulgated in regulations. Additionally, it removes the Board's flexibility to change the policy in the future if prorating licensure fees is no longer a manageable workload. Under the current system of prorating licensure fees, the Board has to process a significant number of refunds for applicants who have either miscalculated their fees or who receive their license later than anticipated due to enforcement reviews or finger print clearance delays. This process of refunds is manageable under the current computer system and number of licensees being processed, but this workload may be unmanageable in the future under Breeze or as the licensee population increases. This bill would eliminate the Board's flexibility to change its policy because it would be in statute not regulation as it currently exists. The Board can only change its own regulation, not a statute.

As of this writing, the CA Physical Therapy association and the Fresno Chamber of Commerce are in support of the bill. No opposition is on file.

AMENDED IN ASSEMBLY APRIL 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 483

Introduced by Assembly Member Patterson
(Principal coauthor: Assembly Member Gordon)
(Coauthors: Assembly Members Chang, Chávez, Grove, Obernolte, Waldron, and Wilk)
(Coauthor: Senator Anderson)

February 23, 2015

An act to amend Sections 1724, 1944, 2435, *2456.1*, 2538.57, 2570.16, 2688, ~~2987,~~ 4842.5, 4905, 4970, and 5604 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 483, as amended, Patterson. Healing arts: initial license fees: proration.

Existing law provides for the regulation and licensure of various professions and ~~vocations.~~ *vocations by boards within the Department of Consumer Affairs.* Existing law establishes fees for initial licenses, initial temporary and permanent licenses, and original licenses for those various professions and vocations. Existing law requires that licenses issued to certain licensees, including, among others, architects, acupuncturists, dental hygienists, dentists, occupational therapists, *osteopathic physicians and surgeons,* physical therapists, physicians and surgeons, ~~psychologists,~~ and veterinarians, expire at 12 a.m. on either the last day of the birth month of the licensee or at 12 a.m. of the legal birth date of the licensee during the 2nd year of a 2-year term, if not renewed.

This bill would require that the fees imposed by these provisions for an initial license, an initial temporary or permanent license, ~~or~~ an original license, *or a renewal* be prorated on a monthly basis.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1724 of the Business and Professions Code is amended to read:

1724. The amount of charges and fees for dentists licensed pursuant to this chapter shall be established by the board as is necessary for the purpose of carrying out the responsibilities required by this chapter as it relates to dentists, subject to the following limitations:

(a) The fee for application for examination shall not exceed five hundred dollars ($500).

(b) The fee for application for reexamination shall not exceed one hundred dollars ($100).

(c) The fee for examination and for reexamination shall not exceed eight hundred dollars ($800). Applicants who are found to be ineligible to take the examination shall be entitled to a refund in an amount fixed by the board.

(d) The fee for an initial license and for the renewal of a license is five hundred twenty-five dollars ($525). The fee for an initial license fee shall be prorated on a monthly basis.

(e) The fee for a special permit shall not exceed three hundred dollars ($300), and the renewal fee for a special permit shall not exceed one hundred dollars ($100).

(f) The delinquency fee shall be the amount prescribed by Section 163.5.

(g) The penalty for late registration of change of place of practice shall not exceed seventy-five dollars ($75).

(h) The application fee for permission to conduct an additional place of practice shall not exceed two hundred dollars ($200).

(i) The renewal fee for an additional place of practice shall not exceed one hundred dollars ($100).

(j) The fee for issuance of a substitute certificate shall not exceed one hundred twenty-five dollars ($125).

(k) The fee for a provider of continuing education shall not exceed two hundred fifty dollars ($250) per year.

(*l*) The fee for application for a referral service permit and for renewal of that permit shall not exceed twenty-five dollars ($25).

(m) The fee for application for an extramural facility permit and for the renewal of a permit shall not exceed twenty-five dollars ($25).

The board shall report to the appropriate fiscal committees of each house of the Legislature whenever the board increases any fee pursuant to this section and shall specify the rationale and justification for that increase.

SEC. 2. Section 1944 of the Business and Professions Code is amended to read:

1944. (a) The committee shall establish by resolution the amount of the fees that relate to the licensing of a registered dental hygienist, a registered dental hygienist in alternative practice, and a registered dental hygienist in extended functions. The fees established by board resolution in effect on June 30, 2009, as they relate to the licensure of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions, shall remain in effect until modified by the committee. The fees are subject to the following limitations:

(1) The application fee for an original license and the fee for the issuance of an original license shall not exceed two hundred fifty dollars ($250). The fee for the issuance of an original license shall be prorated on a monthly basis.

(2) The fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(3) For third- and fourth-year dental students, the fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(4) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed the actual cost of the examination.

(5) The fee for examination for licensure as a registered dental hygienist in alternative practice shall not exceed the actual cost of administering the examination.

(6) The biennial renewal fee shall not exceed one hundred sixty dollars ($160).

(7) The delinquency fee shall not exceed one-half of the renewal fee. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee, and compliance with all other applicable requirements of this article.

(8) The fee for issuance of a duplicate license to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater.

(9) The fee for certification of licensure shall not exceed one-half of the renewal fee.

(10) The fee for each curriculum review and site evaluation for educational programs for dental hygienists who are not accredited by a committee-approved agency shall not exceed two thousand one hundred dollars ($2,100).

(11) The fee for each review or approval of course requirements for licensure or procedures that require additional training shall not exceed seven hundred fifty dollars ($750).

(12) The initial application and biennial fee for a provider of continuing education shall not exceed five hundred dollars ($500).

(13) The amount of fees payable in connection with permits issued under Section 1962 is as follows:

(A) The initial permit fee is an amount equal to the renewal fee for the applicant's license to practice dental hygiene in effect on the last regular renewal date before the date on which the permit is issued.

(B) If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued.

(b) The renewal and delinquency fees shall be fixed by the committee by resolution at not more than the current amount of the renewal fee for a license to practice under this article nor less than five dollars ($5).

(c) Fees fixed by the committee by resolution pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(d) Fees collected pursuant to this section shall be collected by the committee and deposited into the State Dental Hygiene Fund, which is hereby created. All money in this fund shall, upon

appropriation by the Legislature in the annual Budget Act, be used to implement this article.

(e) No fees or charges other than those listed in this section shall be levied by the committee in connection with the licensure of registered dental hygienists, registered dental hygienists in alternative practice, or registered dental hygienists in extended functions.

(f) The fee for registration of an extramural dental facility shall not exceed two hundred fifty dollars ($250).

(g) The fee for registration of a mobile dental hygiene unit shall not exceed one hundred fifty dollars ($150).

(h) The biennial renewal fee for a mobile dental hygiene unit shall not exceed two hundred fifty dollars ($250).

(i) The fee for an additional office permit shall not exceed two hundred fifty dollars ($250).

(j) The biennial renewal fee for an additional office as described in Section 1926.4 shall not exceed two hundred fifty dollars ($250).

(k) The initial application and biennial special permit fee is an amount equal to the biennial renewal fee specified in paragraph (6) of subdivision (a).

(*l*) The fees in this section shall not exceed an amount sufficient to cover the reasonable regulatory cost of carrying out this article.

SEC. 3. Section 2435 of the Business and Professions Code is amended to read:

2435. The following fees apply to the licensure of physicians and surgeons:

(a) Each applicant for a certificate based upon a national board diplomate certificate, each applicant for a certificate based on reciprocity, and each applicant for a certificate based upon written examination, shall pay a nonrefundable application and processing fee, as set forth in subdivision (b), at the time the application is filed.

(b) The application and processing fee shall be fixed by the board by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed at an amount necessary to recover the actual costs of the licensing program as projected for the fiscal year commencing on the date the fees become effective.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any, in an amount fixed by the

board consistent with this section. The initial license fee shall not exceed seven hundred ninety dollars ($790). The initial license fee shall be prorated on a monthly basis. An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(d) The biennial renewal fee shall be fixed by the board consistent with this section and shall not exceed seven hundred ninety dollars ($790).

(e) Notwithstanding subdivisions (c) and (d), and to ensure that subdivision (k) of Section 125.3 is revenue neutral with regard to the board, the ~~board may,~~ *board,* by regulation, *may* increase the amount of the initial license fee and the biennial renewal fee by an amount required to recover both of the following:

(1) The average amount received by the board during the three fiscal years immediately preceding July 1, 2006, as reimbursement for the reasonable costs of investigation and enforcement proceedings pursuant to Section 125.3.

(2) Any increase in the amount of investigation and enforcement costs incurred by the board after January 1, 2006, that exceeds the average costs expended for investigation and enforcement costs during the three fiscal years immediately preceding July 1, 2006. When calculating the amount of costs for services for which the board paid an hourly rate, the board shall use the average number of hours for which the board paid for those costs over these prior three fiscal years, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. Beginning January 1, 2009, the board shall instead use the average number of hours for which it paid for those costs over the three-year period of fiscal years 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. In calculating the increase in the amount of investigation and enforcement costs, the board shall include only those costs for which it was eligible to obtain reimbursement under Section 125.3 and shall not include probation monitoring costs and disciplinary costs, including those associated with the citation and fine process and those required to implement subdivision (d) of Section 12529 of the Government Code.

(f) Notwithstanding Section 163.5, the delinquency fee shall be 10 percent of the biennial renewal fee.

(g) The duplicate certificate and endorsement fees shall each be fifty dollars ($50), and the certification and letter of good standing fees shall each be ten dollars ($10).

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Contingent Fund of the Medical Board of California in an amount not less than two nor more than four months' operating expenditures.

(i) Not later than January 1, 2012, the Office of State Audits and Evaluations within the Department of Finance shall commence a preliminary review of the board's financial status, including, but not limited to, its projections related to expenses, revenues, and reserves, and the impact of the loan from the Contingent Fund of the Medical Board of California to the General Fund made pursuant to the Budget Act of 2008. The office shall make the results of this review available upon request by June 1, 2012. This review shall be funded from the existing resources of the office during the 2011–12 fiscal year.

SEC. 4. Section 2456.1 of the Business and Professions Code is amended to read:

2456.1. *(a)* All osteopathic physician's and surgeon's certificates shall expire at 12 midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed on or before that day.

~~The~~

(b) The board shall establish by regulation procedures for the administration of a birth date renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates such that a relatively equal number of licenses expire monthly.

~~To~~

(c) To renew an unexpired license, the licensee shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.

(d) The fee assessed pursuant to this section shall be prorated on a monthly basis.

~~SEC. 4.~~

SEC. 5. Section 2538.57 of the Business and Professions Code is amended to read:

2538.57. The amount of fees and penalties prescribed by this article shall be those set forth in this section unless a lower fee is fixed by the board:

(a) The fee for applicants applying for the first time for a license is seventy-five dollars ($75), which shall not be refunded, except to applicants who are found to be ineligible to take an examination for a license. Those applicants are entitled to a refund of fifty dollars ($50).

(b) The fees for taking or retaking the written and practical examinations shall be amounts fixed by the board, which shall be equal to the actual cost of preparing, grading, analyzing, and administering the examinations.

(c) The initial temporary license fee is one hundred dollars ($100). The fee for an initial temporary license shall be prorated on a monthly basis. The fee for renewal of a temporary license is one hundred dollars ($100) for each renewal.

(d) The initial permanent license fee is two hundred eighty dollars ($280). The fee for an initial permanent license shall be prorated on a monthly basis. The fee for renewal of a permanent license is not more than two hundred eighty dollars ($280) for each renewal.

(e) The initial branch office license fee is twenty-five dollars ($25). The fee for renewal of a branch office license is twenty-five dollars ($25) for each renewal.

(f) The delinquency fee is twenty-five dollars ($25).

(g) The fee for issuance of a replacement license is twenty-five dollars ($25).

(h) The continuing education course approval application fee is fifty dollars ($50).

(i) The fee for official certification of licensure is fifteen dollars ($15).

~~SEC. 5.~~

SEC. 6. Section 2570.16 of the Business and Professions Code is amended to read:

2570.16. Initial license and renewal fees shall be established by the board in an amount that does not exceed a ceiling of one hundred fifty dollars ($150) per year. The initial license fee shall be prorated on a monthly basis. The board shall establish the following additional fees:

(a) An application fee not to exceed fifty dollars ($50).

(b) A late renewal fee as provided for in Section 2570.10.

(c) A limited permit fee.

(d) A fee to collect fingerprints for criminal history record checks.

~~SEC. 6.~~

SEC. 7. Section 2688 of the Business and Professions Code is amended to read:

2688. The amount of fees assessed in connection with licenses issued under this chapter is as follows:

(a) (1) The fee for an application for licensure as a physical therapist submitted to the board prior to March 1, 2009, shall be seventy-five dollars ($75). The fee for an application submitted under Section 2653 to the board prior to March 1, 2009, shall be one hundred twenty-five dollars ($125).

(2) The fee for an application for licensure as a physical therapist submitted to the board on or after March 1, 2009, shall be one hundred twenty-five dollars ($125). The fee for an application submitted under Section 2653 to the board on or after March 1, 2009, shall be two hundred dollars ($200).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of an application fee under this subdivision to an amount that does not exceed the cost of administering the application process, but in no event shall the application fee amount exceed three hundred dollars ($300).

(b) The examination and reexamination fees for the physical therapist examination, physical therapist assistant examination, and the examination to demonstrate knowledge of the California rules and regulations related to the practice of physical therapy shall be the actual cost to the board of the development and writing of, or purchase of the examination, and grading of each written examination, plus the actual cost of administering each examination. The board, at its discretion, may require the licensure applicant to pay the fee for the examinations required by Section 2636 directly to the organization conducting the examination.

(c) (1) The fee for a physical therapist license issued prior to March 1, 2009, shall be seventy-five dollars ($75).

(2) The fee for a physical therapist license issued on or after March 1, 2009, shall be one hundred dollars ($100).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of the fee under this subdivision

to an amount that does not exceed the cost of administering the process to issue the license, but in no event shall the fee to issue the license exceed one hundred fifty dollars ($150).

(4) The fee assessed pursuant to this subdivision for an initial physical therapist license issued on or after January 1, 2016, shall be prorated on a monthly basis.

(d) (1) The fee to renew a physical therapist license that expires prior to April 1, 2009, shall be one hundred fifty dollars ($150).

(2) The fee to renew a physical therapist license that expires on or after April 1, 2009, shall be two hundred dollars ($200).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of the renewal fee under this subdivision to an amount that does not exceed the cost of the renewal process, but in no event shall the renewal fee amount exceed three hundred dollars ($300).

(e) (1) The fee for application and for issuance of a physical therapist assistant license shall be seventy-five dollars ($75) for an application submitted to the board prior to March 1, 2009.

(2) The fee for application and for issuance of a physical therapist assistant license shall be one hundred twenty-five dollars ($125) for an application submitted to the board on or after March 1, 2009. The fee for an application submitted under Section 2653 to the board on or after March 1, 2009, shall be two hundred dollars ($200).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of the fee under this subdivision to an amount that does not exceed the cost of administering the application process, but in no event shall the application fee amount exceed three hundred dollars ($300).

(f) (1) The fee to renew a physical therapist assistant license that expires prior to April 1, 2009, shall be one hundred fifty dollars ($150).

(2) The fee to renew a physical therapist assistant license that expires on or after April 1, 2009, shall be two hundred dollars ($200).

(3) Notwithstanding paragraphs (1) and (2), the board may decrease or increase the amount of the renewal fee under this subdivision to an amount that does not exceed the cost of the renewal process, but in no event shall the renewal fee amount exceed three hundred dollars ($300).

(g) Notwithstanding Section 163.5, the delinquency fee shall be 50 percent of the renewal fee in effect.

(h) (1) The duplicate wall certificate fee shall be fifty dollars ($50). The duplicate renewal receipt fee amount shall be fifty dollars ($50).

(2) Notwithstanding paragraph (1), the board may decrease or increase the amount of the fee under this subdivision to an amount that does not exceed the cost of issuing duplicates, but in no event shall that fee exceed one hundred dollars ($100).

(i) (1) The endorsement or letter of good standing fee shall be sixty dollars ($60).

(2) Notwithstanding paragraph (1), the board may decrease or increase the amount of the fee under this subdivision to an amount that does not exceed the cost of issuing an endorsement or letter, but in no event shall the fee amount exceed one hundred dollars ($100).

~~SEC. 7. Section 2987 of the Business and Professions Code is amended to read:~~

~~2987. The amount of the fees prescribed by this chapter shall be determined by the board, and shall be as follows:~~

~~(a) The application fee for a psychologist shall not be more than fifty dollars ($50).~~

~~(b) The examination and reexamination fees for the examinations shall be the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination.~~

~~(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued. The initial license fee shall be prorated on a monthly basis.~~

~~(d) The biennial renewal fee for a psychologist shall be four hundred dollars ($400). The board may increase the renewal fee to an amount not to exceed five hundred dollars ($500).~~

~~(e) The application fee for registration and supervision of a psychological assistant by a supervisor under Section 2913, which is payable by that supervisor, shall not be more than seventy-five dollars ($75).~~

~~(f) The annual renewal fee for registration of a psychological assistant shall not be more than seventy-five dollars ($75).~~

~~(g) The duplicate license or registration fee is five dollars ($5).~~

~~(h) The delinquency fee is twenty-five dollars ($25).~~

~~(i) The endorsement fee is five dollars ($5).~~

~~Notwithstanding any other law, the board may reduce any fee prescribed by this section, when, in its discretion, the board deems it administratively appropriate.~~

SEC. 8. Section 4842.5 of the Business and Professions Code is amended to read:

4842.5. The amount of fees prescribed by this article is ~~that~~ fixed by the following schedule:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed three hundred fifty dollars ($350).

(b) The fee for the California registered veterinary technician examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed three hundred dollars ($300).

(c) The initial registration fee shall be set by the board at not more than three hundred fifty dollars ($350) and shall be prorated on a monthly basis. The board may adopt regulations to provide for the waiver or refund of the initial registration fee when the registration is issued less than 45 days before the date on which it will expire.

(d) The biennial renewal fee shall be set by the board at not more than three hundred fifty dollars ($350).

(e) The delinquency fee shall be set by the board at not more than fifty dollars ($50).

(f) Any charge made for duplication or other services shall be set at the cost of rendering the services.

(g) The fee for filing an application for approval of a school or institution offering a curriculum for training registered veterinary technicians pursuant to Section 4843 shall be set by the board at an amount not to exceed three hundred dollars ($300). The school or institution shall also pay for the actual costs of an onsite inspection conducted by the board pursuant to Section 2065.6 of Title 16 of the California Code of Regulations, including, but not limited to, the travel, food, and lodging expenses incurred by an inspection team sent by the board.

(h) The fee for failure to report a change in the mailing address is twenty-five dollars ($25).

SEC. 9. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars ($350).

(b) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars ($350).

(c) The fee for the Veterinary Medicine Practice Act examination shall be set by the board in an amount it determines reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred dollars ($100).

(d) The initial license fee shall be set by the board not to exceed five hundred dollars ($500) and shall be prorated on a monthly basis. The ~~board may,~~ *board*, by appropriate regulation, *may* provide for the waiver or refund of the initial license fee when the license is issued less than 45 days before the date on which it will expire.

(e) The renewal fee shall be set by the board for each biennial renewal period in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed five hundred dollars ($500).

(f) The temporary license fee shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be set by the board, not to exceed fifty dollars ($50).

(h) The fee for issuance of a duplicate license is twenty-five dollars ($25).

(i) Any charge made for duplication or other services shall be set at the cost of rendering the service, except as specified in subdivision (h).

(j) The fee for failure to report a change in the mailing address is twenty-five dollars ($25).

(k) The initial and annual renewal fees for registration of veterinary premises shall be set by the board in an amount not to exceed four hundred dollars ($400) annually.

(*l*) If the money transferred from the Veterinary Medical Board Contingent Fund to the General Fund pursuant to the Budget Act of 1991 is redeposited into the Veterinary Medical Board Contingent Fund, the fees assessed by the board shall be reduced correspondingly. However, the reduction shall not be so great as to cause the Veterinary Medical Board Contingent Fund to have a reserve of less than three months of annual authorized board expenditures. The fees set by the board shall not result in a Veterinary Medical Board Contingent Fund reserve of more than 10 months of annual authorized board expenditures.

SEC. 10. Section 4970 of the Business and Professions Code is amended to read:

4970. The amount of fees prescribed for licensed acupuncturists shall be those set forth in this section unless a lower fee is fixed by the board in accordance with Section ~~4972.~~ *4972*.

(a) The application fee shall be seventy-five dollars ($75).

(b) The examination and reexamination fees shall be the actual cost to the Acupuncture Board for the development and writing of, grading, and administering of each examination.

(c) The initial license fee shall be three hundred twenty-five dollars ($325) and shall be prorated on a monthly basis.

(d) The renewal fee shall be three hundred twenty-five dollars ($325) and in the event a lower fee is fixed by the board, shall be an amount sufficient to support the functions of the board in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the board shall assess the renewal fee biennially.

(e) The delinquency fee shall be set in accordance with Section 163.5.

(f) The application fee for the approval of a school or college under Section 4939 shall be three thousand dollars ($3,000). This subdivision shall become inoperative on January 1, 2017.

(g) The duplicate wall license fee is an amount equal to the cost to the board for the issuance of the duplicate license.

(h) The duplicate renewal receipt fee is ten dollars ($10).

(i) The endorsement fee is ten dollars ($10).

(j) The fee for a duplicate license for an additional office location as required under Section 4961 shall be fifteen dollars ($15).

SEC. 11. Section 5604 of the Business and Professions Code is amended to read:

5604. The fees prescribed by this chapter for architect applicants or architect licenseholders shall be fixed by the board as follows:

(a) The application fee for reviewing a candidate's eligibility to take any section of the examination shall not exceed one hundred dollars ($100).

(b) The fee for any section of the examination administered by the board shall not exceed one hundred dollars ($100).

(c) The fee for an original license at an amount equal to the renewal fee in effect at the time the license is issued. The fee for an original license shall be prorated on a monthly basis. The ~~board may,~~ *board*, by appropriate regulation, *may* provide for the waiver or refund of the fee for an original license if the license is issued less than 45 days before the date on which it will expire.

(d) The fee for an application for reciprocity shall not exceed one hundred dollars ($100).

(e) The fee for a duplicate license shall not exceed twenty-five dollars ($25).

(f) The renewal fee shall not exceed four hundred dollars ($400).

(g) The delinquency fee shall not exceed 50 percent of the renewal fee.

(h) The fee for a retired license shall not exceed the fee prescribed in subdivision (c).

O

AB 483 (Patterson)
Professional Licenses: Initial Licensure Fees

SUMMARY

AB 483 amends the Business and Professions Code to allow members of certain professions to pay a pro-rated initial licensure fee so that they are not unduly overcharged for a license that, due to current law which links license renewals to birth dates rather than license issuance dates, may expire only a few months after they first receive it.

EXISTING LAW

Various sections of the California Business and Professions Code state that licenses for specific professions, including architects, acupuncturists, dental hygienists, dentists, hearing aid dispensers, occupational therapists, physical therapists, physicians and surgeons, psychologists, veterinary technicians, and veterinarians, expire at 12 midnight on the last day of the licensee's birth month on the second year of their second term. These licensees are required to pay a specified license issuance fee in order to receive their license.

PROBLEM

By basing license expiration and renewal on a licensee's birth month, California law requires certain licensees to renew their license based on their date of birth rather than when they were first issued the license.

While this policy was put in place to expedite license issuance, it can have an adverse financial effect on licensees who may have to pay the complete license issuance fee and then pay a full renewal fee once their birth month occurs after they are first licensed, even if only a few months have elapsed in between issuance and renewal.

For example, a constituent in my district recently graduated from school and received her dental hygienist license. Right after receiving her license, she was notified that her brand-new license expired in three weeks, due to her birth date, and that she had to pay a full $160 renewal fee. This occurred only a few months after she paid $575 for her state exam and application and $100 for her initial license.

Birth month license renewal date policies, such as the one experienced by my constituent, add insult to injury when newly-licensed professionals may not have had much time to recoup the costs of getting their license by working in their chosen field before being hit again with a renewal fee.

SOLUTION

Allowing licensees to pay a pro-rated amount of their license issuance fee will ensure that these licensees will not be burdened with an exorbitant license issuance fee when their license may expire only a few months from issuance.

By charging licensees a pro-rated amount of the licensure fee based on how many months have elapsed between initial license issuance and their birth date renewal, AB 483 will even the playing field for licensees in professions that must comply with the birth month renewal policy.

This relief from issuance fees that affect licensees because of their birth month will

lessen unnecessary financial burdens on new licensees and make it easier for them to begin their careers and start earning a living.

FISCAL EFFECT

Unknown at this time.

SPONSOR

Author

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BILL ANALYSIS

Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Susan Bonilla, Chair

AB 483
(Patterson) - As Amended April 9, 2015

SUBJECT: Healing arts: initial license fees: proration.

SUMMARY: Requires that the fees for an initial license, an initial temporary or permanent license, an original license, or a renewal for specified regulatory entities, be prorated on a monthly basis.

EXISTING LAW:

1)Provides for the regulation and licensure of various professions and vocations by boards within the Department of Consumer Affairs (DCA). (Business and Professions Code (BPC) §§ 100-11506)
2)Establishes fees for initial licenses, initial temporary and permanent licenses, and original licenses for various professions and vocations, as follows:
 a) Requires the Dental Board of California (DBC) to establish the charges and fees for dentists and prohibits the initial license fee and the renewal fee from exceeding five hundred twenty-five dollars ($525). (BPC §1724)
 b) Requires the Dental Hygiene Committee of California to establish licensing fees for dental hygienists, prohibits the initial license fee from exceeding two hundred fifty dollars ($250), and provides that a dental hygienist license, unless specifically excepted, expires at 12 midnight on the last day of the month of the legal birth date of the licensee during the second year of a two-year term, if not renewed. (BPC §§ 1935, 1944)

 c) Requires the Medical Board of California (MBC) to establish the application and license fee for a physician and surgeon, prohibits the initial license fee and the biennial renewal fee from exceeding seven hundred ninety dollars ($790), and provides that all physician and

surgeon's certificates expire at 12 midnight on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed, and requires the Division of Licensing to establish regulatory procedures for the administration of a birth date renewal program. (BPC §§ 2423, 2435, 2456.1)

d) Prohibits the initial temporary license fee and the fee for renewal of a temporary license for hearing aid dispenser licensees from exceeding one hundred dollars ($100) and the initial permanent license fee and the fee for renewal of a permanent license from exceeding two hundred eighty dollars ($280), and provides that all licenses expire at 12 midnight of the last date of the birth month of the licensee during the second year of a two-year term, if not renewed. (BPC §§ 2535, 2538.57)

e) Requires the California Board of Occupational Therapy (BOT) to establish the initial license and renewal fee for an occupational therapist and limits the fee to one hundred fifty dollars ($150) per year; and provides that any license is subject to renewal as prescribed by the BOT. (BPC §§ 2570.10, 2570.16)

f) Provides that licenses for physical therapists expire at 12 midnight on the last date of the birth month of the licensee during the second year of a two-year term, if not renewed, and prohibits the Physical Therapy Board of California (PTB) from establishing a license fee that exceeds one hundred fifty dollars ($150). (BPC §§ 2644, 2688)

g) Requires the California Veterinary Medical Board (VMB) to set an initial license fee for veterinarians not to exceed five hundred dollars ($500), and to set the initial fee for veterinary technicians not to exceed three hundred fifty dollars ($350), except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the VMB at not more than one hundred seventy-five dollars ($175). (BPC §§ 4842.5, 4905)

h) Requires the VMB to establish procedures for the administration of the birth date renewal program, including the establishment of a pro rata formula for the payments of fees, and provides that all licenses and registrations expire at 12 midnight on the last date of the birth month

of the registrant during the second year of a two-year term, if not renewed. (BPC § 4900)

i) Provides that the initial license fee for an acupuncturist not exceed three hundred twenty five dollars ($325), provides that licenses shall expire on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed, and requires the California Acupuncture Board (CAB) to establish and administer a birth date renewal program. (BPC §§ 4965, 4970)

j) Requires the California Architecture Board to fix the initial license fee for an architect that is equal to the renewal fee in effect at the time the license is issued, and provides that license shall expire at 12 midnight on the last day of the birth month of the license holder in each odd-numbered year following the issuance or renewal of the license. (BPC §§ 5600, 5604)

THIS BILL:

1)Requires that the fees imposed for an initial license, an initial temporary or permanent license, an original license, or a renewal be prorated on a monthly basis for the following licenses:

a) Dentist;
b) Dental hygienist;
c) Physician and surgeon;
d) Osteopathic physician and surgeon;
e) Hearing aid dispenser;
f) Occupational therapist or occupational therapy assistant;
g) Physical therapist;
h) Registered veterinary technician;
i) Veterinarian;
j) Acupuncturist; and,
aa) Architect.

2)Makes other minor and technical changes.

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

COMMENTS:

1)Purpose. This bill is author sponsored. According to the author, "[This bill] will decrease financial burdens on newly-licensed professionals in our state. Current law in California states that initial licenses for certain professions? expire on the last day of a licensee's birth month on the second year of their second term."

For example, a constituent in my district? was notified that her brand-new license expired in three weeks, due to her birth

date, and that she had to pay a full $160 renewal fee. This occurred only a few months after she paid $575 for her state exam and application and $100 for her initial license. Various licensing agencies have tried to remedy this issue, but this piecemeal approach still means that licensees in some professions pay far more than is appropriate for the duration of their initial license. [This bill] would standardize initial licensing fees across state-licensed professions that follow a birth month renewal policy. [This bill] makes a common-sense change to a policy that can adversely affect young professionals who are just starting out in their careers."

2)Background. Many of the boards within the DCA have implemented a birth date renewal program to calculate license expiration dates. Under the program, a license expires on the licensee's birth date or on the last day of the licensee's birth month on the second year of a two-year renewal term. For many boards, licensees submit applications for licensure at the same time (e.g. because of the timing of exams). This causes boards to have a large number of applications for initial licenses during peak times. As a result, many boards now renew licenses based on birth date, rather than the date the license was issued, which helps prevent the boards from processing large numbers of applications or renewals at one time. Depending on the board, the initial license period can vary from a few months up to 24 months, depending on the applicant's birth month.

Existing License Fee Pro Rata Formulas. Currently, there are boards that use an initial license fee pro rata formula. The California Board of Psychology (BOP) and the VMB are required by statute to establish a birth date renewal program that includes a pro rata formula for the payment of fees. The CAB voluntarily established a pro rata formula through regulation. The BOP was initially included in this bill but requested to be excluded from this bill because AB 773 (Baker), of this legislative session, would revise the licensure renewal program for psychologists to a two-year renewal program based on application date.

The VMB uses a yearly pro rata formula. For a license that is valid for less than one year, a licensee pays half the initial license fee. For a license that is valid between one to two years, a licensee pays the full fee.

The CAB has used a formula for an initial license that pro rates fees on a monthly basis. According to the CAB, its pro rata formula has been in place for over a decade and continues to operate well. While there are boards that currently use

pro rata formulas, this bill would create a consistent system for all the boards.

3)Current Related Legislation. AB 773 (Baker) of the current legislative session, will change the expiration date of a psychologist's license from the licensee's birthdate to two-years after the date of issuance. STATUS: This bill is pending in the Assembly Appropriations Committee.

4)Prior Related Legislation. AB 1758 (Patterson), would have required that the fee for an initial temporary or permanent license or an original license be prorated on a monthly basis. It was amended in appropriations to authorize a board or committee to impose an additional fee to cover the reasonable costs of issuing an initial or original license that expires in less than 12 months. NOTE: This bill was held in the Senate Appropriations Committee.

Arguments IN SUPPORT:

The California Physical Therapy Association writes in support, "By charging licensees a pro-rated amount of the licensure fee based on how many month have elapsed between initial license issuance and their birth date renewal, AB 483 will even the playing field for licensees in professions that must comply with the birth month renewal policy."

The Fresno Chamber of Commerce writes in support, "The [BPC] links license renewals for numerous professions? to birth dates instead of license issuance dates. For many professionals, their license may expire only a few months after they first receive it, forcing them to spend hundreds of extra dollars."

ARGUMENTS IN OPPOSITION:

None on file.

IMPLEMENTATION ISSUE:

The DCA anticipates that implementing pro rata formulas will have an impact on BreEZe, the new information technology program created to assist regulatory boards in licensing and other pertinent functions. However, the DCA is unsure of what the impact will be and it is currently looking into the issue.

REGISTERED SUPPORT:

California Physical Therapy Association
Fresno Chamber of Commerce
2 Individuals

REGISTERED OPPOSITION:

None on file.

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

AB 758 (Chau)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
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DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 758 (Chau) Acupuncture: education and training programs; version as introduced February 25, 2015.

Issue: AB 758 (Chau), introduced in the Legislature, is a bill which would allow acupuncture schools to receive approval from another accreditation agency recognized by the United States Department of Education (USDE) as an alternative to the Accreditation Commission for Acupuncture and Oriental Medicine (ACOAM), requires the Board to conduct site visits to acupuncture schools, and requires the Board to impose a fee for the site visits. The bill is sponsored by the Council of Acupuncture and Oriental Medicine Associations.

Current Status: The bill was scheduled for hearing in the Assembly Business and Professions committee on April 28, 2015, but was not heard. The author indicates the bill will be a 2-year bill and may be taken up at the beginning of the next legislative session in December 2015.

Background: In 2014, the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business, Professions, and Consumer Protection performed a sunset review of the Board. The sunset review raised a number of concerns with the Board, such as its difficulty with carrying out regulatory duties and failing to do site inspections for many years. SB 1246 (Lieu) – Chapter 397, Statutes of 2014 – was a response to those issues. It extended the sunset on the Board's authority to exist, but made a number of changes to the functions of the board. Among other things, beginning in 2017, SB 1246 shifted the approval and oversight of acupuncture schools from the Board to the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and removed the Board's authority to perform site visits to acupuncture schools and charge fees.

Discussion and Implementation: This bill adds other accreditation agencies recognized by the U.S. Department of Education to the list of accreditation agencies who can oversee acupuncture schools and from which graduates as a condition of licensure must graduate. The bill also restores the authority for inspection of schools

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and reimbursement for inspections to the Board. This bill does not restore the entire authority for school approval, oversight and enforcement that was removed by SB 1246. It would restore the authority for the Board to inspect schools for compliance and in particular compliance with clinical curriculum requirements for schools seeking Board approval of their curriculum. The Board needs inspection authority to complete its curriculum compliance review of clinical training. The Board would also need reimbursement for such inspections.

Supporters of the bill include:

- Alhambra Medical University
- California Acupuncture Oriental Medicine Association
- California Labor Federation
- National Guild of Acupuncture and Oriental Medicine
- Office and Professional Employees International Union
- United Acupuncture Association
- CAN Medical Group, Inc.

Opposition to the bill includes:

- Acupuncture & Integrative Medicine College (AIMC)
- American College of Traditional Chinese Medicine (ACTCM)
- California State Oriental Medical Association (CSOMA)
- Council of Colleges of Acupuncture and Oriental Medicine (CCAOM).

ASSEMBLY BILL No. 758

Introduced by Assembly Member Chau

February 25, 2015

An act to amend Section 4927.5 of, and to add Section 4939.5 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 758, as introduced, Chau. Acupuncture: education and training programs.

The Acupuncture Licensure Act provides for the licensure and regulation of the practice of acupuncture by the Acupuncture Board within the Department of Consumer Affairs. The act, until January 1, 2017, requires the board to establish standards for the approval of schools and colleges offering education and training in the practice of an acupuncturist, as specified. The act, commencing January 1, 2017, defines an "approved educational and training program," for purposes of licensure as an acupuncturist, as a school or college that: offers curriculum that has been submitted to and approved by the board and includes specified hours of didactic and laboratory training and supervised clinical instruction; is approved by the Bureau for Private Postsecondary Education or is the appropriate out-of-state governmental educational authority; and is accredited or granted candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), or has submitted a letter of intent to pursue accreditation to the ACAOM, as specified. The act, commencing January 1, 2017, requires the board, within 30 days of receiving curriculum submitted by a school or college pursuant to these provisions, to review the curriculum, determine whether the curriculum satisfies the board's

requirements, and notify the school or college, the ACAOM, and the bureau of whether the board has approved the curriculum.

This bill would include another accreditation agency recognized by the United States Department of Education as an alternative to the ACAOM in the above provisions. The bill would require the board to conduct site visits to each site of a school or college of acupuncture to inspect or reinspect the school or college for purposes of approval or continued approval of its training program, and to impose a fee for the site visits in an amount to recover direct reasonable regulatory costs incurred by the board in conducting the inspection and evaluation of the school or college.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 4927.5 of the Business and Professions Code, as added by Section 2 of Chapter 397 of the Statutes of 2014, is amended to read:

4927.5. (a) For purposes of this chapter, "approved educational and training program" means a school or college offering education and training in the practice of an acupuncturist that meets all of the following requirements:

(1) Offers curriculum that includes at least 3,000 hours of which at least 2,050 hours are didactic and laboratory training, and at least 950 hours are supervised clinical instruction. Has submitted that curriculum to the board, and has received board approval of the curriculum.

(2) Has received full institutional approval under Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code in the field of traditional Asian medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code.

(3) Meets any of the following:

(A) Is accredited by the Accreditation Commission for Acupuncture and Oriental ~~Medicine.~~ *Medicine or another*

accreditation agency recognized by the United States Department of Education.

(B) Has been granted candidacy status by the Accreditation Commission for Acupuncture and Oriental ~~Medicine.~~ *or another accreditation agency recognized by the United States Department of Education.*

(C) Has submitted a letter of intent to pursue accreditation to the Accreditation Commission for Acupuncture and Oriental Medicine *or another accreditation agency recognized by the United States Department of Education* within 30 days of receiving full institutional approval pursuant to paragraph (2), and is granted candidacy status within three years of the date that letter was submitted.

(b) Within 30 days after receiving curriculum pursuant to paragraph (1), the board shall review the curriculum, determine whether the curriculum satisfies the requirements established by the board, and notify the school or college, the Accreditation Commission for Acupuncture and Oriental Medicine, *any other accreditation agency recognized by the United States Department of Education,* and Bureau of Private and Postsecondary Education of whether the board has approved the curriculum.

(c) This section shall become operative on January 1, 2017.

SEC. 2. Section 4939.5 is added to the Business and Professions Code, to read:

4939.5. (a) The board shall conduct site visits to each site of a school or college of acupuncture to inspect or reinspect the school or college for purposes of approval or continued approval of its training program.

(b) The board shall impose a fee for the site visits in an amount to recover direct reasonable regulatory costs incurred by the board in conducting the inspection and evaluation of the school or college.

O

Assembly Bill (AB) 758 – Acupuncture

Sponsor: Council of Acupuncture and Oriental Medicine Associations

SUMMARY

AB 758 strengthens California Acupuncture standards by requiring schools for acupuncture and Chinese medicine to receive accreditation by any United States Department of Education (USDOE) approved agency. To ensure compliance with state education and training standards, it also requires the California Acupuncture Board (CAB) to conduct site visits.

BACKGROUND

The practice of acupuncture has been recognized and regulated in California since 1972. In 1976 acupuncturists first became licensed and in 1978 acupuncture became designated as a primary health care profession. CAB has existed in various forms since 1975, where it was an advisory committee underneath the Board of Medical Examiners and later became an autonomous body in 1982.

The CAB's mission is to protect California consumers from incompetent, and/or fraudulent practice through the enforcement of the Acupuncture Licensure Act and the Board's regulations. As such, the CAB regulates the practice of acupuncture and Asian medicine in the State of California. It currently licenses approximately 16,874 acupuncturists and approves 36 schools/training programs (21 in California and 15 in other states).

In 2014, the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Business, Professions, and Consumer Protection performed a sunset review of the CAB. The sunset review raised a number of concerns with the board, such as its difficulty with carrying out regulatory duties and failing to do site inspections for many years. SB 1246 (Lieu) – Chapter 397, Statutes of 2014 – was a response to those issues. It extended the sunset on the CAB's authority to exist, but made a number of changes to the functions of the board.

Among other things, beginning in 2017, SB 1246 vested authority to accredit acupuncture schools with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and removed the CAB's authority to perform site visits to acupuncture schools.

However, in 2011 ACAOM underwent a review and approval process by the National Advisory Committee on Instructional Quality and Integrity (NACIQI) which found 24 incidents of underperformance in its accreditation duties. NACIQI will again reevaluate ACAOM in 2016. If problems persist, then ACAOM could potentially be stripped of its accreditation authority by USDOE. This would result in California acupuncture schools being accredited by a body that is no longer approved by USDOE. Furthermore, the CAB began conducting site visits of acupuncture schools in 2014 and found compliance issues with many of the 21 acupuncture schools they reviewed, which are also accredited by ACAOM. Without changes to California law, we could weaken what are considered the highest acupuncture standards in the Nation.

SOLUTION

Specifically, the bill allows acupuncture schools to be accredited by ACAOM or any accrediting agency recognized by the USDOE and it requires CAB to perform site visits of acupuncture schools.

SUPPORT

- Council of Acupuncture and Oriental Medicine Associations (Sponsor)
- Alhambra Medical University
- California Acupuncture Oriental Medicine Association
- California Labor Federation
- CAN Medical Group, Inc.

Assembly Bill (AB) 758 – Acupuncture

Sponsor: Council of Acupuncture and Oriental Medicine Associations

- Kan-Sai Health Center
- Korean Acupuncture and Asian Medicine Association in U.S.A
- National Guild of Acupuncture and Oriental Medicine
- Office and Professional Employees International Union
- United Acupuncture Association

BILL STATUS

Introduced on February 25, 2015.

FOR MORE INFORMATION

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BILL ANALYSIS

AB 758

Date of Hearing: April 28, 2015

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Susan Bonilla, Chair

AB 758
(Chau) - As Introduced February 25, 2015

SUBJECT: Acupuncture: education and training programs.

SUMMARY: Allows acupuncture schools to receive approval from another accreditation agency recognized by the United States Department of Education (USDE) as an alternative to the Accreditation Commission for Acupuncture and Oriental Medicine (ACOAM), requires the California Acupuncture Board (CAB) to conduct site visits to acupuncture schools, and requires the CAB to impose a fee for the site visits.

EXISTING LAW:

1) Provides for the licensure and regulation of the practice of acupuncture by the CAB within the Department of Consumer Affairs (DCA). (Business and Professions Code (BPC) § 4928 et seq.)

2) Grants the CAB authority to establish standards for the approval of schools and colleges offering education and training in the practice of acupuncture, including standards for the faculty in those schools and colleges and tutorial programs. (BPC § 4939 et seq.)

3) Defines an "approved educational and training program," for purposes of licensure as an acupuncturist, as a school or college that meets the following: (BPC § 4927.5(a))

   a) Offers curriculum that has been submitted to and approved by the CAB and includes specified hours of didactic and laboratory training and supervised clinical instruction;
   b) Is approved by the Bureau of Private and Postsecondary Education (BPPE) or the appropriate out-of-state governmental educational authority; and,

c) Is accredited or granted candidacy status by the ACAOM, or has submitted a letter of intent to pursue accreditation to the ACAOM.

4) Requires the CAB, until January 1, 2017, to investigate and evaluate each school or college applying for approval under BPC § 4939 and may utilize and contract with consultants to evaluate those training programs.
5) Requires the CAB, commencing January 1, 2017, to review a school's curriculum, within 30 days of receiving curriculum from the school, determine whether the curriculum satisfies the CAB's requirements, and notify the school or college, the ACAOM, and the BPPE of whether the CAB has approved the curriculum. (BPC § 4927.5(b))

THIS BILL:

6) Defines "approved educational and training program" as a school or college offering education and training in the practice of an acupuncturist that, among other things, meets any of the following:

a) Is accredited by the ACOAM or another accreditation agency recognized by the USDE;
b) Has been granted candidacy status by the ACOAM or another accreditation agency recognized by the USDE; and,

c) Has submitted a letter of intent to pursue accreditation to the ACOAM or another accreditation agency recognized by the USDE within 30 days of receiving full institutional approval, and is granted candidacy status within three years of the date the letter was submitted.

7) Requires the CAB, within 30 days after receiving the curriculum, to review the curriculum, determine whether the curriculum satisfies the requirements established by the CAB, and notify the school or college, the ACOAM, any other accreditation agency recognized by the USDE, and the BPPE of whether the CAB has approved the curriculum.
8) States that the section will become operative on January 1, 2017.

9) Requires the CAB to conduct site visits to each site of a school or college of acupuncture to inspect or reinspect the school or college for purposes of approval or continued approval of its training program.

10) Requires the CAB to impose a fee for the site visits in an amount to recover direct reasonable regulatory costs incurred by the CAB in conducting the inspection and evaluation of the school or college.

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

COMMENTS:

11)Purpose. This bill is sponsored by the Council of Acupuncture and Oriental Medicine Associations . According to the author, "AB 758 strengthens California Acupuncture standards by requiring schools for acupuncture and Chinese medicine to receive accreditation by ACAOM or any [USDE] approved accrediting agency. To ensure compliance with state education and training standards, it also requires the CAB to conduct site visits.

Since the passage of [SB 1246] concerns have been raised among the acupuncture community about ACAOM and the removal of the authority for the CAB to perform site visits of schools? The CAB began conducting site visits of acupuncture schools in 2014 and found compliance issues with many of the 16 acupuncture schools they reviewed which are also accredited by ACAOM. Without CAB site visits acupuncture schools could go many years without being in compliance with state law without an ACAOM review to ensure compliance. Without changes to California law, we could weaken what are considered the highest acupuncture standards in the Nation."

12)Background. In 2014, the Senate Business and Professions Committee and the Assembly Business, Professions and Consumer Protection Committee (Committees) conducted joint oversight hearings to review nine regulatory entities, including the CAB. The Committees began their review of the licensing agencies in March 2014, and conducted two days of hearings. The resulting sunset bills were intended to implement Committee staff recommendations reflected in the Background Papers prepared for each agency reviewed. SB 1426 (Lieu), Chapter 397, Statutes of 2014, reflected the recommendations for CAB.

CAB School Approval. The CAB approves training programs at acupuncture schools and colleges, in particular, their curriculum programs, to ensure they meet the standards adopted by the CAB. The school approval process requires review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures, and financial solvency.

Due to several issues raised during the 2014 Sunset Review Oversight Hearings, including a failure to conduct site visits for 20 years, the CAB will only perform school site visits to review implementation of policies and procedures, facilities and clinical training until January 1, 2017. Additionally, it is important to note that it is no longer common practice for

licensing entities, under the DCA, to approve schools versus utilize a private national accreditation organization to approve training programs.

ACAOM Accreditation. The ACAOM is the only national, USDE-approved accrediting agency for the field of acupuncture and oriental (Asian) medicine. While many other states defer to ACAOM accreditation as being a sufficient condition for applicants to take the licensing exam in their states, California has traditionally conducted its own school approval process. As of January 1, 2017, this will no longer be the case.

There are approximately 65 acupuncture schools throughout the U.S., 36 of which are approved by the CAB. Twenty one of the CAB-approved schools are located in California and 15 are located in other states. Sixty of the 65 schools are already accredited by the ACAOM.

In 2004, the Little Hoover Commission (LHC) conducted a comprehensive comparative analysis of the school approval processes of the ACAOM and the CAB. The LHC's report found that the processes used by ACAOM appeared to be "superior" to the school approval process used by the CAB and could be used by the state to ensure the quality of education for potential licensees.

According to the Committees' 2014 Sunset Review Background Paper, because CAB performs its own school approvals, there are a number of consequences and problems. These include:

a) Students who are educated in accredited schools that are not approved by CAB receive only partial credit for their training. If they wish to gain licensure in California, they must complete a CAB approved training program.
b) The CAB is slow to approve applications for schools located outside of California due to budget constraints.

c) The CAB had just began conducting site visits in 2014, after a 20 year hiatus; and stated that because of staff vacancies, the process was moving slowly.

In the 2012 Sunset Review Background Paper to the CAB, the Committee wrote:

"?It should also be required that these acupuncture schools either have currently, or obtain within a reasonable time, accreditation from an accrediting agency recognized by the United States Department of Education. Especially since

the accrediting process for these schools appears to be superior to that of the Board. At some time in the future, consideration could be given, based on the success of accreditation of these schools, to eliminating the Board's responsibility and need for approving acupuncture educational programs."

As a result of the sunset review recommendations from 2012 and 2014, the Committees thoroughly investigated the available USDE-approved acupuncture accrediting organizations. After a comprehensive investigation and review of the available evidence, the Committees decided to recommend ACOAM as the required accreditation entity for California acupuncture schools, which was enacted by SB 1246 (Lieu), Chapter 397, Statutes of 2014. The Legislature clearly indicated that using a national, USDE-approved acupuncture school accreditation agency will help free up the CAB's time and resources to address the other salient issues identified during its prior sunset reviews.

ACOAM and USDE/NACIQI Review. In a letter to the Committees dated March 9, 2015, the National Guild for Acupuncture and Oriental Medicine discussed ACAOM's 2011 USDE and National Advisory Committee on Institutional Quality and Integrity (NACIQI) review. The letter included editorial statements pointing out issues ACAOM was required to address in order to maintain USDE approval.

In response, ACAOM sent a letter to the Committees, dated March 26, 2015, to clarify and explain the issues. First, it explained, "The primary context of the letter refers to a perceived negative review ACAOM received in 2011 from the [USDE] and the [NACIQI]. ACAOM, like other accrediting agencies, is on a five-year recognition cycle with USDE? The last review was conducted in 2011, followed by a compliance report review in 2013 and the next comprehensive review for continuing recognition will occur in 2016."

Among other things, ACAOM noted that the issues identified in the 2011 review have since been resolved. The NACIQI deemed ACAOM "fully compliant" in its June 2013 compliance review and ACAOM remains USDE approved. ACAOM's next review will occur in 2016.

13)Prior Related Legislation. SB 1246 (Lieu), Chapter 397, Statutes of 2014, among other things, removed CAB's authority to approve schools and requires acupuncture schools to be accredited by the ACOAM and repealed the CAB's authority to investigate and evaluate each school or college applying for approval or continued approval.

SB 1236 (Price), Chapter 332, Statutes of 2012, extended the sunset date for the CAB and other boards under the DCA and the term of the Board's Executive Officer by two years, until January 1, 2015, and made technical and clarifying changes to statutes governing CAB-approved acupuncture training programs.

ARGUMENTS IN SUPPORT:

The Council of Acupuncture and Oriental Medicine Associations supports the bill and writes, "AB 758 will amend language in the Practice Act that was removed last year under SB 1246. Unfortunately, that 2014 bill will open California to a flood of graduates who wish to take the California Acupuncture Licensing Exam. A "free for all" situation will reduce public safety and cause harm to our profession. Authority to regulate schools and graduates of those schools and graduates of those schools should remain within California instead of in the hands of an outside agency."

The Asian Pacific Islander American Public Affairs Association writes in support, "California has the most acupuncture licensees and the most acupuncture schools in the nation. AB 758 will prevent California from becoming an "open" state for a graduate from any ACAOM approved school to become licensed in our state. California regulation of acupuncture must conducted by a California regulatory agency."

ARGUMENTS IN OPPOSITION:

The Council of Colleges of Acupuncture and Oriental Medicine writes in opposition to the bill, "The [Committee] was instrumental in 2014 in passing SB 1246 unanimously as did the full Assembly and Senate and every other legislative committee. AB 758 represents a direct effort to undermine the unanimous decision of the California legislature?As the committee is aware, apart from ACAOM, there is currently no other agency recognized by the USDOE for professional accreditation of [acupuncture] schools and programs in the United States. Regional accrediting agencies assess institutional capacity."

The California State Oriental Medical Association opposes the bill unless amended to require programmatic accreditation by a specialized agency recognized by the USDE, specifically it writes, "Effective in 2017, last year's Sunset Review bill limited the CAB's role in educational oversight to establishing curricular requirements for acupuncture training programs. Accordingly, SB 1246 also eliminated the CAB's authority to investigate and evaluate schools...Given that curricular reviews can be effectively performed via administrative desk checks, there is no discernible purpose for conducting site visits as part of this process. Finally, recent CAB site visit reports indicate that it may already be stretching its regulatory authority by enforcing broadly defined rules in an exceptionally

specific and arbitrary fashion. This enforcement activity raises concerns regarding potential underground regulation. By extending site visit activities beyond the CAB's 2017 reduction in regulatory scope, AB 758 heightens these concerns."

POLICY ISSUES FOR CONSIDERATION:

Sunset Review Recommendations. The intent of SB 1246 was to implement the recommendations made by the Committee staff after the thorough sunset review process had been conducted. This bill would undo several of the solutions designed to rectify the identified problems with the CAB, including requiring the CAB to use a national accreditation organization and remove the CAB's authority to conduct school site visits.

In addition, the changes have not gone into effect-they will become operative on January 1, 2017-when the CAB is next reviewed by the joint oversight Committees. Ongoing discussions regarding the CAB and ACAOM school approval are taking place in preparation for the law to go into effect, and the Committees are working to resolve the CAB's concerns with the loss of its school-approval authority. Therefore, this measure is premature.

Agency Transparency and Quality. The CAB and the sponsors of this bill argue that because ACAOM is not a "non-governmental agency," there are transparency issues regarding ACAOM's process. Further, the CAB argues that ACAOM's school approval standards do not meet CAB's own standards which are detailed in Title 16 California Code of Regulations § 1399.434-1399.436.

While ACAOM, and most other national accrediting organizations, are not required to meet the same open meeting and public document standards that the CAB must meet, almost all of ACAOM's processes, procedures, and standards are publicly available. ACAOM has also been very forthcoming with producing documents and answering questions presented by the legislative policy Committees.

Further, ACAOM's standards are available for the Committees to examine, are developed through a public comment period, and are approved by the USDE. While CAB's general standards are listed in its regulations, it has yet to produce the specific criteria it uses when approving schools. For instance, the CAB has criticized ACAOM's clinical chart review process. However, when asked to produce the criteria for chart review that the CAB has been using on recent school site visits, it was unable to.

The "Flood" of Out of State Acupuncturists. A popular concern raised by supporters of this measure is the possibility that the law, which will go into effect in 2017, will allow a flood of

individuals from outside of California to take the California licensing examination. This is reflected in the form letters sent in from various organizations and individuals as well as statements made by the CAB staff during public CAB meetings last year.

As was thoroughly discussed during last year's Sunset Review hearings, this is quite unlikely. The law states that the CAB must set the curriculum standards that acupuncture schools must adhere to. The California curriculum standards are the most stringent in the nation. As such, out of state applicants would be unable to apply for licensure in this state because the curriculum standards in their academic programs are not equivalent to those required by the CAB. In essence, the out of state institutions would need to completely change their curriculum standards in order to conform to California's curriculum standards so that their graduates would be eligible to take the California licensing examination.

Accreditation by a USDE Approved Entity. On its face, the request for the law to be expanded to include school approval by any entity approved by the USDE may not seem problematic. However, if this happens, the current standards for school approval would be lessened-which is contradictory to what the CAB indicates it desires. For example, this bill would allow a number of regional accreditors, who focus broadly on approving an institution e.g. faculty and premises, not the specifics of an acupuncture program, to be the entity that approves acupuncture schools and programs. This is contradictory to what the CAB claims it desires e.g. a regional accreditor would not be involved in the specifics of a program such as the clinical chart review etc.

Based on the aforementioned reasons, in combination with the recent review of the CAB, the Legislature's recent decision to remove the CAB's school approval authority and require accreditation of all acupuncture schools by the ACAOM, as well as the fact that the law has not even been implemented, it is not clear that the need for this bill has been established.

REGISTERED SUPPORT:

Council of Acupuncture and Oriental Medicine Associations (sponsor)

Alhambra Medical University

American Association of Chinese Medicine and Acupuncture

Aian Pacific Islander American Public Affairs Association

California Acupuncture Medical Association

California Acupuncture Oriental Medicine Association

California Labor Federation

Chinese Herb Trade Association of America

Heilongjiang University of Chinese Medicine

Korean Acupuncture & Asian Medicine Association

National Guild of Acupuncture and Oriental Medicine

Office and Professional Employees International Union

United Acupuncture Association

Over 35 individuals

REGISTERED OPPOSITION:
Acupuncture & Integrative Medicine College

American College of Traditional Chinese Medicine

California State Oriental Medical Association

Council of Colleges of Acupuncture and Oriental Medicine

Emperor's College

Southern California University of Health Sciences

Analysis Prepared by:Le Ondra Clark Harvey, Ph.D. and Vincent Chee / B. & P. / (916) 319-3301

AB 1351 (Eggman)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
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DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 1351 (Eggman) Deferred entry of judgment: pretrial diversion. Version as amended April 16, 2015.

Issue: AB 1351 (Eggman), introduced in the Legislature and amended on April 16th, is a bill which would provide pre-plea diversion, instead of post-plea deferred entry of judgment, for minor drug offenses. AB 1352 (Eggman) is a companion bill.

Current Status: Currently in the Assembly Appropriations Committee, on the suspense file. Hearing date is not set.

Background: California law provides for deferred entry of judgment (DEJ) for minor nonviolent drug offenses, most involving possession or use of drugs. A defendant is required to plead guilty, waive his or her right to a speedy trial, and complete a drug treatment program. If the program is completed, the criminal case is dismissed. The dismissal may not protect a defendant from federal consequences, including deportation for non-citizen residents.

Discussion and Implementation: This bill will amend Penal Code 1000 et seq. to allow for pre-trial diversion, instead of requiring the defendant to plead guilty first and then seek deferred entry of judgment for nonviolent misdemeanor drug offenses. For any person who fails to adhere to conditions of a pre-trial diversion program, the court could reinstate the charges and schedule proceedings pursuant to existing law. Pre-trial diversion would not be available to any person with a prior conviction for possession of drugs for sale, sale of drugs, or involving a minor in drug sales, or any violent or serious felony offense. Because there will be no guilty plea, there will be no 'conviction' for federal immigration or other purposes.

According to the author:

"This bill seeks to limit harsh consequences to immigrants by changing the current process for nonviolent, misdemeanor drug offenses from deferred entry of judgment (DEJ) to pretrial diversion. While the current DEJ process eliminates a conviction if a defendant successfully completes DEJ, the defendant may still face federal

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consequences, including deportation if the defendant is undocumented, or the prohibition from becoming a U.S. citizen if the defendant is a legal permanent resident. This is systemic injustice to immigrants in this country, but even U.S. citizens may face federal consequences, including loss of federal housing and educational benefits."

The Board currently does not have a program-specific diversion program for licensees. However, if the defendant successfully completes the criminal diversion program as proposed by the bill, no 'conviction' would exist to give the Board jurisdiction to act upon. Under Business and Professions code 4956, a plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction. If this bill were to become law, it may impact the Board's ability to take disciplinary action against licensees who such a provision may apply to, since no conviction would be in place. However, if the licensee does not complete the diversion program, and the criminal proceedings commence and a conviction is then granted, then the Board would be able to take disciplinary action since a conviction would be in place.

This bill impacts the Board's ability and authority to bring enforcement actions against licensees who qualify under this bill to have their convictions expunged or eliminated as if they did not exist. However, the bill is narrowly defined to apply to minor drug offenses and not violent crimes and requires full compliance with diversion programs.

This bill is sponsored by the Drug Policy Alliance, Immigrant Legal Resource Center, American Civil Liberties Union of California, and Coalition for Humane Immigrant Rights of Los Angeles, Mexican American Legal Defense and Education Fund and the National Council of La Raza.

A partial list of bill supporters includes the Asian Law Alliance, California Public Defenders Association, Chinese for Affirmative Action, Del Sol Group, Harvey Milk LGBT Democratic Club and PICO California.

Opposition is from the CA District Attorneys Association and the CA State Sheriff's Association.

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 1351

Introduced by Assembly Member Eggman

February 27, 2015

An act to amend Sections 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, and 1000.6 of the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1351, as amended, Eggman. Deferred entry of judgment: pretrial diversion.

~~(1) Existing~~

Existing law allows individuals ~~convicted of~~ *charged with* specified crimes to qualify for deferred entry of judgment. A defendant qualifies if ~~they have~~ *he or she has* no conviction for any offense involving controlled substances, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program, the defendant's record does not indicate that probation or parole has ever been revoked without being completed, and the defendant's record does not indicate that he or she has been granted diversion, deferred entry of judgment, or was convicted of a felony within 5 years prior to the alleged commission of the charged offense.

Under the existing deferred entry of judgment program, ~~defendants can plead guilty and~~ *an eligible defendant may* have entry of judgment deferred, ~~in return for~~ *upon pleading guilty to the offenses charged and* entering a drug treatment program for 18 months to 3 years. If the defendant does not perform satisfactorily in the program, does not

benefit from the program, is convicted of specified crimes, or engages in criminal activity rendering ~~them~~ *him or her* unsuitable for deferred entry of judgment, the defendant's guilty plea is entered and the court *enters judgment and* proceeds to schedule a sentencing hearing. If the defendant completes the program, the criminal charges are dismissed. Existing law allows the presiding judge of the superior court, with the district attorney and public defender, to establish a pretrial diversion drug program.

~~(2) This~~

This bill would change the deferred entry of judgment program into a pretrial diversion program. Under the pretrial diversion program created by this bill, a defendant ~~qualifies if they have~~ *would qualify if he or she has* no prior conviction for any offense involving controlled substances other than the offenses that qualify for diversion, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program and the defendant has no prior ~~felony~~ conviction for a serious or violent ~~felony.~~ *felony within 5 years prior to the alleged commission of the charged offense.*

Under the pretrial diversion program created by this bill, a qualifying defendant would not enter a guilty plea, but instead would suspend the proceedings in order to enter a drug treatment program for 6 months to one year. If the defendant does not perform satisfactorily in the program or is convicted of specified crimes, the court would terminate the program and the criminal proceedings would be reinstated. If the defendant completes the program, the criminal charges would be dismissed.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, or 11365, paragraph (2) of subdivision (b) of Section 11375, Section 11377, or Section 11550 of the Health and Safety Code, or subdivision (b) of Section 23222 of the Vehicle Code, or Section 11358 of the Health and Safety Code if the

marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no prior conviction for any offense involving controlled substances other than the offenses listed in this subdivision.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant has no prior conviction *within five years prior to the alleged commission of the charged offense* for a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (4), inclusive, of subdivision (a) apply to the defendant. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for pretrial diversion of judgment at the arraignment. If the defendant is found ineligible for pretrial diversion, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for pretrial diversion is a postconviction appeal.

(c) All referrals for pretrial diversion granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Pretrial diversion for an alleged violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

SEC. 2. Section 1000.1 of the Penal Code is amended to read:

1000.1. (a) If the prosecuting attorney determines that this chapter may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of that determination. This notification shall include all of the following:

(1) A full description of the procedures for pretrial diversion.

(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process.

(3) A clear statement that ~~in lieu of trial,~~ the court may grant pretrial diversion with respect to any crime specified in subdivision (a) of Section 1000 that is charged, provided that the defendant ~~waive~~ *waives* the right to a speedy ~~trial and~~ preliminary hearing, if applicable, and that upon the defendant's successful completion of a program, as specified in subdivision (c) of Section 1000, the positive recommendation of the program authority and the motion of the defendant, prosecuting attorney, the court, or the probation department, but no sooner than six months and no later than one year from the date of the defendant's referral to the program, the court shall dismiss the charge or charges against the defendant.

(4) A clear statement that upon any failure of treatment or condition under the program, or any circumstance specified in Section 1000.3, the prosecuting attorney or the probation department or the court on its own may make a motion to the court to terminate pretrial diversion and schedule further proceedings as otherwise provided in this code.

(5) An explanation of criminal record retention and disposition resulting from participation in the pretrial diversion program and the defendant's rights relative to answering questions about his or her arrest and ~~deferred entry of judgment~~ *pretrial diversion* following successful completion of the program.

(b) If the defendant consents and waives his or her right to a speedy trial ~~or~~ *and* a speedy preliminary hearing, *if applicable,* the court may refer the case to the probation department or the court may summarily grant pretrial diversion. When directed by the court, the probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which programs the defendant would benefit from and which programs would accept the defendant. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, or rehabilitation for the defendant. If the court determines that it is appropriate, the court shall grant pretrial diversion if the defendant waives the right to a speedy trial and to a speedy preliminary hearing, if applicable.

(c) (1) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, that is made during the course of any investigation conducted by the probation department or treatment program pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

(2) No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged,

that is made to any probation officer or drug program worker subsequent to the granting of pretrial diversion shall be admissible in any action or proceeding.

(d) A defendant's participation in pretrial diversion pursuant to this chapter shall not constitute a conviction or an admission of guilt for any purpose.

SEC. 3. Section 1000.2 of the Penal Code is amended to read:

1000.2. (a) The court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and if the defendant should be granted pretrial diversion. If the defendant does not consent to participate in pretrial diversion the proceedings shall continue as in any other case.

(b) At the time that pretrial diversion is granted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

(c) The period during which pretrial diversion is granted shall be for no less than six months nor longer than one year. Progress reports shall be filed by the probation department with the court as directed by the court.

SEC. 4. Section 1000.3 of the Penal Code is amended to read:

1000.3. (a) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is convicted of an offense that reflects the defendant's propensity for violence, or the defendant is convicted of a felony, the prosecuting attorney, the court on its own, or the probation department may make a motion for termination from pretrial diversion.

(b) After notice to the defendant, the court shall hold a hearing to determine whether pretrial diversion shall be terminated.

(c) If the court finds that the defendant is not performing satisfactorily in the assigned program, or the court finds that the defendant has been convicted of a crime as indicated in subdivision ~~(b)~~ *(a)* the court shall reinstate the criminal charge or charges and schedule the matter for further proceedings as otherwise provided in this code.

(d) If the defendant has completed pretrial diversion, at the end of that period, the criminal charge or charges shall be dismissed.

(e) Prior to dismissing the charge or charges or terminating pretrial diversion, the court shall consider the defendant's ability to pay and whether the defendant has paid a diversion restitution fee pursuant to Section 1001.90, if ordered, and has met his or her financial obligation to the program, if any. As provided in Section 1203.1b, the defendant shall reimburse the probation department for the reasonable cost of any program investigation or progress report filed with the court as directed pursuant to Sections 1000.1 and 1000.2.

SEC. 5. Section 1000.4 of the Penal Code is amended to read:

1000.4. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases referred to pretrial diversion pursuant to this chapter. Upon successful completion of a pretrial diversion program, the arrest upon which the defendant was diverted shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted pretrial diversion for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a pretrial diversion program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the pretrial diversion program, the arrest upon which pretrial diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

SEC. 6. Section 1000.5 of the Penal Code is amended to read:

1000.5. (a) The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions

and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a pretrial diversion program as provided in this chapter.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

SEC. 7. Section 1000.6 of the Penal Code is amended to read:

1000.6. (a) Where a person is participating in a pretrial diversion program or a preguilty plea program pursuant to this chapter, the person shall be allowed, under the direction of a licensed health care practitioner, to use medications including, but not limited to, methadone, buprenorphine, or levoalphacetylmethadol (LAAM) to treat substance use disorders if the participant allows release of his or her medical records to the court presiding over the participant's preguilty plea or pretrial diversion program for the limited purpose of determining whether or not the participant is using such medications under the direction of a licensed health care practitioner and is in compliance with the pretrial diversion or preguilty plea program rules.

(b) If the conditions specified in subdivision (a) are met, using medications to treat substance use disorders shall not be the sole reason for exclusion from a pretrial diversion or preguilty plea program. A patient who uses medications to treat substance use

disorders and participates in a preguilty plea or pretrial diversion program shall comply with all court program rules.

(c) A person who is participating in a pretrial diversion program or preguilty plea program pursuant to this chapter who uses medications to treat substance use disorders shall present to the court a declaration from their health care practitioner, or their health care practitioner's authorized representative, that the person is currently under their care.

(d) Urinalysis results that only establish that a person described in this section has ingested medication duly prescribed to that person by his or her physician or psychiatrist, or medications used to treat substance use disorders, shall not be considered a violation of the terms of the pretrial diversion or preguilty plea program under this chapter.

(e) Except as provided in subdivisions (a) to (d), inclusive, this section shall not be interpreted to amend any provisions governing diversion programs.

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Date of Hearing: April 21, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Bill Quirk, Chair

AB 1351 (Eggman) - As Amended April 16, 2015

SUMMARY: Changes the existing deferred entry of judgment (DEJ) program for specified offenses involving personal use or possession of controlled substances into a pretrial drug diversion program. Specifically, this bill:

1) Requires, to be eligible for diversion, the defendant must not have a prior conviction for any offense involving a controlled substance other than the offenses that may be diverted as specified; the offense charged must not have involved a crime of violence or threatened violence; there must be no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of an offense that may be diverted; and the defendant must not have any prior convictions within five years prior to the alleged commission of the charged offense for a serious or violent felony, as defined.

2) Provides that a defendant's participation in pretrial diversion shall not constitute a conviction or an admission of guilt in any action or proceeding.

3) Changes the minimum time allowed prior to dismissal of the case from 18 months to six months, and the maximum time the proceedings in the case can be suspended from three years to one year.

4) Provides that if it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is convicted of an offense that reflects the defendant's propensity for violence, or the defendant is convicted of a felony, the prosecuting attorney, the court on its own, or the probation department may make a motion for termination of pre-trial diversion.

5) Provides that if the court finds that the defendant is not

performing satisfactorily in the assigned program, or the court finds that the defendant has been convicted of a specified type of crime, the court shall reinstate the criminal charge or charges and schedule the matter for further proceedings.

6) States if the defendant has completed pretrial diversion, at the end of that period, the criminal charge or charges shall be dismissed. Upon successful completion of a pretrial diversion program, the arrest upon which the defendant was diverted shall be deemed to have never occurred.

7) Retains provisions in current law but changes references from DEJ to pre-trial diversion and deletes references to affecting judgment to be entered against the defendant.

8) States that a person participating in a pretrial diversion program or a preguilty plea program shall be allowed, under the direction of a licensed health care practitioner, to use medications to treat substance use disorders if the participant allows release of his or her medical records to the court for the limited purpose of determining whether or not the participant is using such medications under the direction of a licensed health care practitioner and is in compliance with the pretrial diversion or preguilty plea program rules.

EXISTING LAW:

1) Provides that a defendant may qualify for DEJ of specified non-violent drug possession offenses if the following apply to the defendant:

   a) The defendant has no prior conviction for any offense involving controlled substances;

   b) The offense charged did not involve a crime of violence or threatened violence;

   c) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the specified deferrable drug offenses;

   d) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed;

   e) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense;

   f) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense. (Pen. Code, § 1000, subd. (a).)

2)Specifies the offenses that are eligible for DEJ, which include possession for personal use of specified controlled substances, possession of certain drug paraphernalia, being under the influence of a controlled substance, cultivation of marijuana for personal use, and being present in a place where controlled substances are being used. (Pen. Code, 1000, subd. (a).)

3)States a prosecutor has a duty to review files to decide whether the defendant is eligible for DEJ. The prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for DEJ at the arraignment. (Pen. Code, § 1000, subd. (b).)

4)Requires all referrals for DEJ granted by the court pursuant to this chapter to be made only to programs that have been certified by the county drug program administrator, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria specified. (Pen. Code, § 1000, subd. (c).)

5)Provides that the court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings and if the defendant should be granted DEJ. If the court does not deem the defendant a person who would be benefited by deferred entry of judgment, or if the defendant does not consent to participate, the proceedings shall continue as in any other case. The period during which deferred entry of judgment is granted shall be for no less than 18 months nor longer than three years. Progress reports shall be filed by the probation department with the court as directed by the court. (Pen. Code, § 1000.2.)

6)Requires, if the defendant has performed satisfactorily during the period in which DEJ was granted, at the end of that period, the criminal charge or charges to be dismissed. If the defendant does not perform satisfactorily, DEJ may be terminated and the defendant may be sentenced as he or she would for a conviction. (Pen. Code, § 1000.3.)

7)States that upon successful completion of a DEJ program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified for employment as a peace officer. A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in

any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1000.4, subd. (a).)

8)Authorizes counties to establish and conduct a preguilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants if so agreed upon in writing by the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender. If the defendant is not performing satisfactorily in the program, the court may reinstate criminal proceedings. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed. (Pen. Code, § 1000.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1)Author's Statement: According to the author, "This bill seeks to limit harsh consequences to immigrants by changing the current process for nonviolent, misdemeanor drug offenses from deferred entry of judgment (DEJ) to pretrial diversion. While the current DEJ process eliminates a conviction if a defendant successfully completes DEJ, the defendant may still face federal consequences, including deportation if the defendant is undocumented, or the prohibition from becoming a U.S. citizen if the defendant is a legal permanent resident. This is systemic injustice to immigrants in this country, but even U.S. citizens may face federal consequences, including loss of federal housing and educational benefits.

"Given that President Obama has publicly called for immigration officials to focus on violent, dangerous felons, this bill will have a profoundly positive impact on more than $2 million undocumented immigrants and the more than 3 million

legal permanent residents living in California by eliminating the draconian consequences faced by immigrants who participate in diversion programs in good faith. This bill will keep families together, help people retain eligibility for U.S. citizenship, and also preserve access to other benefits for those who qualify."

2)DEJ as Compared to Diversion: Under existing law, a defendant charged with violations of certain specified drug may be eligible to participate in a DEJ program if he or she meets specified criteria. (Pen. Code, §§ 1000 et seq.) With DEJ, a defendant must enter a guilty plea and entry of judgment on the defendant's guilty plea is deferred pending successful completion of a program or other conditions. If a defendant placed in a DEJ program fails to complete the program or comply with conditions imposed, the court may resume criminal proceedings and the defendant, having already pleaded guilty, would be sentenced. If the defendant successfully completes

DEJ, the arrest shall be deemed to never have occurred and the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted pretrial diversion for the offense.

Diversion on the other hand suspends the criminal proceedings without requiring the defendant to enter a plea. Diversion also requires the defendant to successfully complete a program and other conditions imposed by the court. Unlike DEJ however, if a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense.

In order to avoid adverse immigration consequences, diversion of an offense is preferable to DEJ because the defendant is not required to plea guilty in order to participate in the program. Having a conviction for possession of controlled substances, even if dismissed, could trigger deportation proceedings or prevent a person from becoming a U.S. citizen. (Paredes-Urrestarazu v. U.S. INS (9th Cir. 1994) 36 F3d. 801.)

This bill seeks to minimize the potential exposure to adverse immigration consequences for persons who commit minor drug possession offenses by re-establishing a pretrial diversion program for minor drug possession. Prior to 1997, the program pursuant to Penal Code § 1000 et seq. was a pretrial diversion program. SB 1369 (Kopp), Chapter 1132, Statutes of 1996, changed the diversion program to a DEJ program.

3)Argument in Support: The Immigrant Legal Resource Center (ILRC), a sponsor of this bill, writes, "According to data published by Syracuse University, over 250,000 people have been deported from the U.S. for nonviolent drug offenses since 2008. A nonviolent drug offense was the cause of deportation for more than one in every ten people deported in 2013 for any reason.

"This is particularly devastating to families in California, which is the most immigrant-rich state in America. One out of every four persons living in the state is foreign-born. Half of California's children live in households headed by at least one foreign-born parent - and the majority of these children are U.S. citizens. It is estimated that 50,000 parents of U.S. citizen children were deported in a little over two years, leaving many children parentless. Deportation due to minor drug offenses destroys California families.

"AB 1351 will amend Penal Code 1000 et seq. to allow courts to order pre-trial diversion, rather than require a guilty plea. This was the way that PC 1000 worked until 1997. Because there will be no guilty plea, there will be no 'conviction' for federal immigration purposes. For any person who fails to adhere to conditions of a pre-trial diversion program, the

court could reinstate the charges and schedule proceedings pursuant to existing law. Diversion will not be allowed for any person charged with drug sale, or possession for sale, nor will be allowed for persons who involve minors in drug sales or provide drugs to minors."

4) Argument in Opposition: According to the California District Attorneys Association, "AB 1351 would turn [the current] process on its head, allowing the defendant to enter a treatment program before entering a plea. If the program was not completed successfully, only then would criminal proceedings actually begin. From a practical standpoint, this creates tremendous problems for prosecutors, as it becomes much more difficult to locate witnesses and maintain evidence many months after the offense has occurred.

"Additionally, AB 1351 would reduce the length of drug treatment programs down to one-third of what they currently are. Right now, someone participates in drug diversion for 18 months to 36 months. This bill would only allow 6 to 12 months of treatment. Much of the success of drug diversion is based on this long-term treatment. Reducing the required length of treatment might lead to more people completing their programs, but it also reduces the likelihood that those programs will actually have positive long-term outcomes for drug offenders. It's unclear how reducing the amount of drug treatment that someone receives would have any positive impact on their immigration consequences.

"Further, AB 1351 removes many of the pre-requisites for participation in drug diversion. Currently, a defendant must not have any prior drug convictions in order to be eligible for drug diversion. Under AB 1351, as long as the prior offenses were all diversion-eligible offenses, there is no limit to the number of drug offenses someone could accumulate while maintaining drug diversion eligibility. This bill also eliminates the requirement that a defendant have no felony convictions in the previous five years, instead only requiring that a defendant not have any prior serious or violent felonies."

5) Related Legislation:

a) AB 1352 (Eggman) requires a court to allow a defendant to withdraw his or her guilty or nolo contendere plea and thereafter dismiss the case upon a finding that the case was dismissed after the defendant completed DEJ and that the plea may result in the denial or loss to the defendant, as specified. AB 1352 will be heard by this Committee today.

b) AB 813 (Gonzales) would create an avenue of post-conviction relief for a person to vacate a conviction or sentence based on error damaging the petitioner's ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction. AB 813 will be heard by this Committee today.

6)Prior Legislation: SB 1369 (Kopp), Chapter 1132, Statutes of 1996, changed the diversion program for drug offenders to a deferred entry of judgment program. Increased the time allowed before a case can be dismissed from a period of no less than six months to two years, to a period of no less than 18 months to 3 years.

REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (Sponsor)
Immigrant Legal Resource Center (Sponsor)
American Civil Liberties Union of California (Co-Sponsor)
Coalition for Humane Immigrant Rights of Los Angeles (Co-Sponsor)
Mexican American Legal Defense and Education Fund (MALDEF) (Co-Sponsor)
National Council of La Raza (Co-Sponsor)
African Advocacy Network
Asian Americans Advancing Justice - Asian Law Caucus
Asian Americans Advancing Justice - L.A.
Asian Law Alliance
California Immigrant Policy Center
California Partnership
California Public Defenders Association
California Rural Legal Assistance Foundation
Californians for Safety and Justice
Californians United for a Responsible Budget
Central American Resource Center - Los Angeles
Chinese for Affirmative Action
Community United Against Violence
Congregations Building Community
ConXión to Community
Del Sol Group
Dolores Street Community Services

Faith in Action Kern County
Harvey Milk LGBT Democratic Club
Human Rights Watch
Immigration Action Group
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Los Angeles Regional Reentry Partnership
Justice Not Jails
MAAC
Mujeres Unidas y Activas
National Association of Social Workers - California Chapter
National Day Laborer Organizing Network
Pangea Legal Services
PICO California
Placer People of Faith
Presente.org
Progressive Christians Uniting
Red Mexicana de Lideres y Organizaciones Migrantes

Santa Clara County Public Defender's Office
Silicon Valley De-Bug
Solutions for Immigrants
William C. Velasquez Institute
Vital Immigrant Defense Advocacy and Services (VIDAS)

Two private individuals

Opposition

California District Attorneys Association
California State Sheriff's Association

Analysis Prepared
by: Stella Choe / PUB. S. / (916) 319-3744

AB 1351: Deferred entry of judgment: pretrial diversion

SUMMARY

This bill would provide pre-plea diversion, instead of post-plea deferred entry of judgment, for minor drug offenses.

BACKGROUND

California law provides for deferred entry of judgment for minor nonviolent drug offenses, most involving possession or use of drugs. A defendant is required to plead guilty, waive his or her right to a speedy trial, and complete a drug treatment program. If the program is completed, the criminal case is dismissed. Defendants are often led to believe that once the case is dismissed they will not be denied any benefit and the arrest will be deemed never to have occurred.

However, this dismissal does not protect a defendant from federal consequences, including deportation for non-citizen residents. Even for US citizens that complete the terms of court-ordered diversion, convictions can carry long-term negative consequences, including loss of federal housing and educational benefits.

Convictions for minor drug offenses result in much harsher consequences for non-U.S. citizens, including deportation and separation from family, loved ones and employment. According to the Transactional Records Access Clearinghouse at Syracuse University, since 2008, over 250,000 people have been deported from the U.S. for nonviolent drug offenses. A nonviolent drug offense was the cause of deportation for more than one in every ten people deported in 2013 for any reason.

Noncitizen defendants charged with minor drug offenses, including misdemeanors, are often incorrectly advised or believe that pleading guilty with a deferred entry of judgment will not count as a conviction for any purpose. However, under federal immigration laws, post-plea deferred entry of judgment programs, as provided currently under PC 1000 *et. seq*, are still considered a conviction for immigration purposes, even if the defendant successfully completed the program, the case dismissed, and the conviction no longer exists under state law. Deferred entry of judgments convictions are used against non-U.S. citizens to deport them, prevent them from gaining lawful status, and from being eligible for pardons against deportation. These unjust consequences are equally true for longtime lawful permanent residents (green card holders), and beneficiaries of the Deferred Action for Childhood Arrivals program, as for undocumented persons.

THIS BILL

This bill will amend Penal Code 1000 et seq. to allow for pre-trial diversion, instead of requiring the defendant to plead guilty first and then seek deferred entry of judgment for nonviolent misdemeanor drug offenses. For any person who fails to adhere to conditions of a pre-trial diversion program, the court could reinstate the charges and schedule proceedings pursuant to existing law.

Pre-trial diversion would not be available to any person with a prior conviction for possession of drugs for sale, sale of drugs, or involving a minor in drug sales, or any violent or serious felony offense.

SUPPORT

- ACLU (Co-sponsor)
- CHIRLA (Co-sponsor)
- Drug Policy Alliance (Co-sponsor)
- Immigrant Legal Resource Center (Co-sponsor)
- MALDEF (Co-sponsor)
- NCLR (Co-sponsor)
- Asian Americans Advancing Justice – Asian Law Caucus
- Asian Law Alliance
- California Immigrant Policy Center
- California Partnership

- California Rural Legal Assistance Foundation
- Californians United for a Responsible Budget
- Central American Resource Center
- Chinese for Affirmative Action
- CIVIC
- Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
- Community United Against Violence
- Congregations Building Community
- ConXion
- Del Sol Group
- Dolores Street Community Services
- Faith in Action – Kern County
- Harvey Milk LGBT Democratic Club
- Human Rights Watch
- Immigration Action Group
- Justice Not Jails
- Lawyers' Committee for Civil Rights of the San Francisco Bay Area
- Legal Services for Prisoners with Children
- The Los Angeles Regional Reentry Partnership
- MAAC
- Mujeres Unidas y Activas
- NAACP
- National Association of Social Workers
- National Day Laborer Organizing Network
- National Immigration Law Center
- Pangea Legal Services
- PICO California
- Placer People of Faith Together
- Presente.org
- Progressive Christians Uniting
- Red Mexicana de Lideres Y Organizaciones Migrantes
- Santa Clara County Public Defender's Office
- Silicon Valley De-Bug
- Solutions 4 Immigrants
- Vital Immigrant Defense Advocacy and Services
- William C. Velasquez Institute

FOR MORE INFORMATION

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AB 1352 (Eggman)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
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DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	AB 1352 (Eggman) Deferred entry of judgment: withdrawal of plea. Version as amended April 27, 2015.

Issue: AB 1352 (Eggman), introduced in the Legislature and amended on April 27th, is a bill which requires a court to allow a defendant to withdraw his or her guilty or nolo contendere plea and thereafter dismiss the case upon a finding that the case was dismissed after the defendant completed DEJ and that the plea may result in the denial or loss to the defendant, as specified. AB 1351 (Eggman) is a companion bill.

Current Status: Passed out of the Assembly on May 4, 2015 and on to the Senate. Referred to the Senate Public Safety committee on May 14th with no hearing date set.

Background: California law provides for deferred entry of judgment (DEJ) for minor nonviolent drug offenses, most involving possession or use of drugs. A defendant is required to plead guilty, waive his or her right to a speedy trial, and complete a drug treatment program. If the program is completed, the criminal case is dismissed. The dismissal may not protect a defendant from federal consequences, including deportation for non-citizen residents.

Discussion and Implementation: This bill will allow a defendant who entered a plea of guilty or nolocontendere under deferred entry of judgment to withdraw their plea if the following conditions are met:

- The plea was entered on or after January 1, 1997
- DEJ was successfully completed
- The charges were dismissed
- The entry of judgment may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, which includes causing a noncitizen defendant to potentially be deported

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The proposed expungement does not retroactively change DEJ's effect under California law. Under Penal Code Section 1000.4, a person who successfully completes DEJ already has no conviction or arrest record. Instead, this is a technical plea withdrawal specifically made to meet federal requirements. According to the bill analysis from the Assembly Public Safety committee, this bill would apply to cases that have already been dismissed, since a court may have jurisdiction over a case that has been dismissed.

If the defendant successfully completes the criminal diversion program as proposed by AB 1351 (Eggman), no 'conviction' or plea would exist to give the Board jurisdiction to act upon. Under Business and Professions code 4956, a plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction. If this bill were to become law, it may impact the Board's ability to take disciplinary action against licensees who such a provision may apply to, since no conviction or plea would be in place. However, if the licensee does not complete the diversion program, and the criminal proceedings commence and a conviction is then granted, then the Board would be able to take disciplinary action since a conviction would be in place.

This bill impacts the Board's ability and authority to bring enforcement actions against licensees who qualify under this bill to have their convictions expunged or dismissed as if they did not exist. However, the bill is narrowly defined to apply to minor drug offenses and not violent crimes and requires full compliance with diversion programs.

This bill is sponsored by the Drug Policy Alliance, Immigrant Legal Resource Center, American Civil Liberties Union of California, Coalition for Humane Immigrant Rights of Los Angeles, Mexican American Legal Defense and Education Fund and the National Council of La Raza.

A partial list of bill supporters includes the Asian Law Alliance, California Public Defenders Association, Chinese for Affirmative Action, Del Sol Group, Harvey Milk LGBT Democratic Club and PICO California.

Opposition is from the CA District Attorneys Association and the CA State Sheriff's Association.

AMENDED IN ASSEMBLY APRIL 27, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL No. 1352

Introduced by Assembly Member Eggman

February 27, 2015

An act to add Section 1203.43 to the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1352, as amended, Eggman. Deferred entry of judgment: withdrawal of plea.

Existing law allows judgment to be deferred with respect to a defendant who is charged with certain crimes involving possession of controlled substances and who meets certain criteria, including that he or she has no prior convictions for any offense involving controlled substances and has had no felony convictions within the 5 years prior, as specified. Existing law prohibits the record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program from being used in any way that could result in the denial of employment, benefit, license, or certificate.

This bill would require a court to allow a defendant who was granted deferred entry of judgment on or after January 1, 1997, after pleading guilty or nolo contendere to the charged offense, to withdraw his or her plea and enter a plea of not guilty, *and would require the court to dismiss the complaint or information against the defendant,* if the ~~charges were dismissed after the~~ defendant performed satisfactorily during the deferred entry of judgment period and the defendant shows that the plea may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, including, but not limited to, causing a

noncitizen defendant to potentially be found inadmissable, deportable, or subject to any other kind of adverse immigration consequence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.43 is added to the Penal Code, to read:

1203.43. (a) (1) The Legislature finds and declares that the statement in Section 1000.4, that "successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate" constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences.

(2) Accordingly, the Legislature finds and declares that based on this misinformation and the potential harm, the defendant's prior plea is invalid.

(b) In any case in which a defendant was granted deferred entry of judgment on or after January 1, 1997, after pleading guilty or nolo contendere to the charged offense, the defendant shall be permitted by the court to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty, *and thereafter the court shall dismiss the complaint or information against the defendant,* if the defendant shows both of the following:

(1) The charges were dismissed after the defendant performed satisfactorily during the deferred entry of judgment period.

(2) The plea of guilty or nolo contendere may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, including, but not limited to, causing a noncitizen defendant to potentially be found inadmissable, deportable, or subject to any other kind of adverse immigration consequence.

O

ASSEMBLY THIRD READING

AB
1352 (Eggman)

As Amended April 27, 2015

Majority vote

Committee	Votes	Ayes	Noes
Public Safety	5-2	Quirk, Jones-Sawyer, Low, Santiago, Thurmond	Melendez, Lackey

SUMMARY: Requires the court to allow a defendant to withdraw his or her guilty or nolo contendere plea in order to avoid specified adverse consequences if certain conditions are met. Specifically, this bill:

1) Provides in any case in which a defendant was granted deferred entry of judgment (DEJ), on or after January 1, 1997, after pleading guilty or nolo contendere to the charged offense, the defendant shall be permitted by the court to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty if the defendant shows both of the following:

   a) The charges were dismissed after the defendant performed satisfactorily during the DEJ period; and,

   b) The plea may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, including, but not limited to, causing a noncitizen defendant to potentially be found inadmissable, deportable, or subject

to any other kind of adverse immigration consequence.

2)Requires the court to dismiss the complaint or information against the defendant.

3)States the Legislative finding that the statement in Penal Code (PC) Section 1000.4, that "successful completion of a DEJ program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate" constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences.

4)Declares based upon this misinformation and the potential harm, the defendant's prior plea is invalid.

EXISTING LAW:

1)Provides that a defendant may qualify for DEJ of specified non-violent drug possession offenses if the following apply to the defendant:
   a) The defendant has no prior conviction for any offense involving controlled substances;
   b) The offense charged did not involve a crime of violence or threatened violence;

   c) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the specified deferrable drug offenses;

   d) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed;

   e) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense;

   f) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

2)States a prosecutor has a duty to review files to decide whether the defendant is eligible for DEJ. The prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for DEJ at the arraignment.

3)Requires all referrals for DEJ granted by the court pursuant to this chapter to be made only to programs that have been certified by the county drug program administrator, or to

programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria specified.

4)Provides that the court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings and if the defendant should be granted DEJ. If the court does not deem the defendant a person who would be benefited by deferred entry of judgment, or if the defendant does not consent to participate, the proceedings shall continue as in any other case. The period during which deferred entry of judgment is granted shall be for no less than 18 months nor longer than three years. Progress reports shall be filed by the probation department with the court as directed by the court.

5)Requires, if the defendant has performed satisfactorily during the period in which DEJ was granted, at the end of that period, the criminal charge or charges to be dismissed. If the defendant does not perform satisfactorily, DEJ may be terminated and the defendant may be sentenced as he or she would for a conviction.

6)States that upon successful completion of a DEJ program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified for employment as a peace officer. A record pertaining to an arrest resulting in successful completion of a DEJ program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

7)Authorizes counties to establish and conduct a preguilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants if so agreed upon in writing by the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender. If the defendant is not performing satisfactorily in the program, the court may reinstate criminal proceedings. If the defendant has performed

satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed.

8)States that in any case in which: (a) a defendant has fulfilled the conditions of probation for the entire period of probation, or (b) has been discharged prior to the termination of the

period of probation, or (c) in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant.

EXISTING LAW: Provides circumstances that allow non-citizens to be deported, which include having been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a state, the United States, or a foreign country relating to a controlled substance as defined, other than a single offense involving possession for one's own use of 30 grams or less of marijuana.

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

COMMENTS: According to the author, "AB 1352 provides a minor expungement procedure to prevent the needless disruption of

thousands of California families. The expungement proposed by this bill does not retroactively change the effect of the person's DEJ disposition under California law. Instead, it will eliminate the disposition as a conviction for federal immigration purposes. It also will make right the injustice inadvertently committed against the immigrant defendants who relied upon PC [Section] 1000.4 in deciding to enter a guilty plea.

"This bill will prevent terrible harm to California families and immigrant communities. The last several years have seen mass deportations from the U.S. [United States]. Of deportations based on criminal conviction, the largest number has been for minor, non-trafficking drug offenses. This especially affects California, the nation's most immigrant-rich state, where one out of two children lives in a household headed by at least one foreign born person (and the great majority of the children are U.S. citizens). Deportation of a parent devastates a family emotionally and economically and can drain state resources as U.S. citizen children go into foster care, homes go into foreclosure, and remaining citizen family seek public benefits."

Analysis Prepared by:
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AB 1352: Deferred entry of judgment: withdrawal of plea

SUMMARY

This bill will, in certain circumstances, expunge the record of an individual who has completed deferred entry of judgment (DEJ) requirements.

BACKGROUND

California has long had special rehabilitative statutes for persons charged with a minor drug offense, such as possession of paraphernalia or a small amount of a drug for personal use. On January 1, 1997 the state changed from having a pre-trial diversion statute to the current DEJ statue, which requires a guilty plea. Penal Code Section 1000.4(1) essentially states that the entire event never occurred if the person successfully completes DEJ requirements, allowing the accused to state, legally, that they had never been arrested or convicted of the crime for which they completed DEJ requirements.

With this understanding, thousands of immigrant defendants have agreed to plead guilty and successfully fulfilled all DEJ requirements. Unfortunately, under federal immigration law the guilty plea and the DEJ requirements created a damaging drug "conviction." Even though California dismissed the charges under federal law, the conviction remains for immigration purposes.

As a result, rather than having no consequences at all, the DEJ drug "conviction" has led to mandatory ICE detention, deportation, permanent banishment, and permanent separation from family, including U.S. citizen dependent parents, spouses, and children.

According to Penal Code Section 1000.4(a), "an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate."

THIS BILL

This bill will allow a defendant who entered a plea of guilty or *nolocontendere* under deferred entry of judgment to withdraw their plea if the following conditions are met:

- The plea was entered on or after January 1, 1997
- DEJ was successfully completed
- The charges were dismissed
- The entry of judgment may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, which includes causing a noncitizen defendant to potentially be deported

The proposed expungement does not retroactively change DEJ's effect under California law. Under Penal Code Section 1000.4, a person who successfully completes DEJ already has no conviction or arrest record. Withdrawing the guilty plea will provide no more and no less protection under California law than what already exists. Instead, this is a technical plea withdrawal specifically made to meet federal requirements.

SUPPORT

- ACLU (Co-sponsor)
- CHIRLA (Co-sponsor)
- Drug Policy Alliance (Co-sponsor)
- Immigrant Legal Resource Center (Co-sponsor)
- NCLR (Co-sponsor)
- MALDEF (Co-sponsor)
- African Advocacy Network
- Asian Amemricans Advancing Justice – Asian Law Caucus
- Asian Americans Advancing Justice – L.A.
- Asian Law Alliance
- California Attorneys for Criminal Justice
- California Immigrant Policy Center
- California Partnership

- California Public Defenders Association
- California Rural Legal Assistance Foundation
- Californians for Safety and Justice
- Californians United for a Responsible Budget
- Central American Resource Center – Los Angeles
- Chinese for Affirmative Action
- CIVIC
- Community United Against Violence
- Congregations Building Community
- Del Sol Group
- Dolores Street Community Services
- Faith in Action Kern County
- Harvey Milk LGBT Democratic Club
- Human Rights Watch
- Immigration Action Group
- Institute for Justice
- Justice Not Nails
- LARRP
- Lawyers' Committee for Civil Rights of the San Francisco Bay Area
- Legal Services for Prisoners with Children
- MAAC
- Mujeres Unidas y Activas
- National Association of Social Workers
- National Day Laborer Organizing Network
- National Immigration Law Center
- Pangea Legal Services
- PICO California
- Placer People of Faith Together
- Presente.org
- Progressive Christians Uniting

FOR MORE INFORMATION

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STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
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DATE	May 29, 2015
TO	Board Members
FROM	Marc Johnson Policy Coordinator
SUBJECT	SB 800 (Senate committee on Business, Professions and Economic Development) Healing Arts; version as amended April 20, 2015

Issue: SB 800 (Senate Committee on Business, Professions and Economic Development (BPED) is a bill introduced in the Legislature and most recently amended on April 20, 2015. This bill makes several non-controversial minor, non-substantive, or technical changes to various provisions pertaining to the health-related regulatory Boards of the Department of Consumer Affairs. Specific to the Board is a statutory change which removes Canada as a domestic equivalent to the United States in regards to training and clinical experience.

Current Status: Passed out of the Senate Appropriations committee on May 11th on consent calendar. It is currently on the Senate floor on the consent calendar.

Background: SB 800, along with SB 799 (Senate BPED), is one of two "committee bills" intended to consolidate a number of non-controversial provisions related to various regulatory programs and professions governed by the business and professions code. Most of the provisions in these bills are considered minor and non-substantive. These bills are introduced every legislative session by the committee. This is the bill vehicle for the proposed bill that the Board approved that would change the status of Canadian Acupuncture training programs to be considered foreign training programs. This change would allow graduates from Canadian Acupuncture Training programs to apply as foreign applicants to take the California Acupuncture Licensure Examination (CALE).

Currently, Canada is not included in BPC 4938 (c) as a foreign training location. As a result, Canadian applicants must meet either subsection (1) graduate from Board approved training program or (2) graduate from Board approved tutorial program. Since the Board does not extend its school approval to Canadian training programs, in fact, none of the Canadian acupuncture training programs would satisfy subsection (1). Applicants could take Board approved tutorials, but those would be in addition to their program training in Canada.

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Discussion and Implementation: Under current law, exam applicants for the CALE who have taken an Acupuncture training program in Canada are not able to apply as foreign applicants, tutorial candidates or as approved school graduates under the current regulations. Currently, there is no path for Canadian acupuncture graduates to apply for California licensure because they are unable to graduate from a California Board approved school and they are not considered “foreign” for purposes of our licensure requirements.

This proposed change would streamline and clarify the Board’s admission of students from Canada and help to strengthen public safety and maintain educational standards by assuring students would meet the same requirements as other foreign candidates. It would also remove what in effect excludes all Canadians from applying for licensure in California.