Status of Legislation Discussed at the April 8, 2014 Govt. Affairs Committee Meeting

OPPOSE:

- AB 2165 (Patterson) – Professions and Vocations: licenses
  - This bill would require boards within DCA to complete the application review process and issue a license to applicants who have satisfied all licensure requirements within 45 days of the application filing date and require boards to offer a licensing examination at least six times per year, unless the board uses a national exam.

- SB 218 (Yee) – California Traditional Chinese Medicine traumatolgist certification
  - This bill would establish the non-profit California Traditional Chinese Medicine Traumatology Council (Council) who would be charged with developing educational and training standards for applicants and authorize the Council to issue certificates to qualified applicants as well as discipline certificate holders for violations.

- SB 981 (Huff) – Regulations: review process
  - This bill would require state agencies to review each regulation adopted prior to January 1, 2014 and provide a report of the findings to the Legislature on or before January 1, 2016, and every 5 years thereafter.
  - .

NEUTRAL:

- AB 1711 (Cooley) – Administrative Procedures Act: economic impact assessment
  - This bill would specify that the Economic Impact Assessment shall be included in the initial statement of reasons for all non-major rulemaking actions and direct the Dept. of Finance to prepare instructions for agencies to use in preparing the assessment.

- AB 2058 (Wilk) – Open Meetings
  - This bill would clarify the Bagley-Keene Act by specifying that all standing committees are subject to the transparency of open meeting regulations, regardless of the size of its membership.

WATCH:

- SB 790 (Gomez) – Child abuse: reporting
  - This bill would require all mandated reports to individually report suspected or known instances of child abuse or neglect, unless they are a healthcare provider.

- SB 1159 (Lara) – Professions and vocations: license applicants: federal tax identification number
  - This bill would require applicants for professional licensure, other than a partnership, to provide a federal taxpayer identification number or social security

number on their application for licensure and require licensing entities to report individuals to the Franchise Tax Board who fail to provide such information.

DEFER POSITION TO BOARD:

- SB 1256 (Mitchell) – Medical services: credit
  - This bill would prohibit healing arts licensees, or their employees, from establishing a line of credit extended by a third party for a patient without first providing written notice and a written treatment plan.

Board of Chiropractic Examiners
Bill Analysis

Bill Number: AB 1711
Author: Assembly Member Ken Cooley
Bill Version: Amended April 3, 2014
Subject: Administrative Procedures Act: economic impact assessment
Sponsor: Office of Administrative Law (OAL)

STATUS OF BILL: 03/26/14 Passed Assembly Committee on Accountability and Administrative Review (11-0) 2 Abstain, Amended and Re-referred to Appropriations Committee

SUMMARY:

- This bill would specify that the Economic Impact Assessment shall be included in the Initial Statement of Reasons for all non-major rulemaking actions.

EXISTING LAW:

- Establishes the OAL to administer the Administrative Procedure Act (APA) and ensure state agency regulations are clear, necessary and legally valid, and available to the public.
- The APA governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of regulatory actions by the OAL.
- The Chiropractic Initiative Act provides the Board with the power to adopt rules and regulations necessary for the performance of its work, the enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

THIS BILL WOULD:

- Require state agencies who propose non-major rulemaking actions (impact of less than $50 million) to include the Economic Impact Assessment in the Initial Statement of Reasons (ISOR).
- Allow OAL to refuse to publish a notice of proposed rulemaking action if a state agency fails to include the Economic Impact Assessment in the ISOR or if the Economic Impact Analysis is not in compliance with Government Code section 11346.3(b).
- Provide the public with an opportunity to comment on the Economic Impact Assessment.
- Require the Department of Finance to adopt and update instructions in the State Administrative Manual regarding methods a state agency would use in making determinations and estimates of fiscal or economic impact including:

1. Guidelines governing the methods and types of data or assumptions that may be used to calculate the estimate of cost or savings to public agencies.
2. The types of direct or indirect costs and savings that should be taken into account.
3. The criteria to be used to determine whether the cost of a regulation must be funded by the state.
4. The format the state agency must use in preparing the estimate of the cost or savings to state and local agencies, school districts, and federal funding of state programs as a result of the proposed regulation, and an estimate of economic impact that will result from the regulation.

- Exempt the Dept. of Finance from rulemaking provisions when taking action to adopt and update instructions to a state agency on the preparation of an economic impact estimate or assessment of a proposed regulation.

BACKGROUND:

The APA requires state agencies proposing major rulemaking proposals (proposals having an economic impact greater than $50 million) to include an Economic Impact Assessment in the Initial Statement of Reasons; thereby allowing the public an opportunity to provide comments. The APA also requires state agencies proposing non-major rulemaking proposals to provide an Economic Impact Assessment in the rulemaking record, but fails to specify when it should be prepared by the state agency or where it should be located within the rulemaking record.

According to the author, this bill will improve transparency during the rulemaking process by providing the public with an opportunity to see the economic impact of a proposed regulation at the onset of the rulemaking process and provide public comment.

FISCAL IMPACT:

This bill will not create a fiscal impact upon the BCE. The Economic Impact Assessment is currently created and included in all rulemaking proposals. This bill simply clarifies where the Economic Impact Assessment should appear within the rulemaking file.

SUPPORT & OPPOSITION:

Support: Office of Administrative Law

Opposition: None on record

ARGUMENTS:

Pro:

- This bill will provide the public with additional information on proposed rulemaking actions and provide an opportunity for public comment on the economic impact of the proposed action.
- This bill provides uniformity for rulemaking proposals as it clarifies when and where the Economic Impact Assessment should appear within the rulemaking record.

Con:

- None

STAFF RECOMMENDED POSITION:

NEUTRAL – This bill does not create a fiscal or workload impact upon the BCE. This bill provides clarification to state agencies on preparation of rulemaking records, while providing the public with additional information to assess and provide input at the onset of rulemaking proposals.

AMENDED IN ASSEMBLY APRIL 3, 2014

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 1711

Introduced by Assembly Member Cooley

February 13, 2014

An act to amend Sections ~~11346.2 and 11346.3~~ *11346.2, 11346.3, and 11357* of~~, and to add Section 11358 to,~~ the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as amended, Cooley. Administrative Procedures Act: economic impact assessment.

Existing law requires every state agency subject to the Administrative Procedure Act to provide an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. The act requires the initial statement of reasons to include a standardized regulatory impact analysis prepared by each agency that proposes to adopt, amend, or repeal any major regulation, as defined, on or after November 1, 2013.

The act also requires every state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, to prepare an economic impact assessment that makes specified assessments.

The bill would require an economic impact assessment to be included in the initial statement of reasons.

Existing law requires the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative

Manual prescribing the methods that an agency is required to use in making a determination that a regulation imposes a local mandate and an estimate of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed, as specified, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

The bill would ~~also~~ *instead* require the Department of Finance to adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that an agency would be required to use in ~~preparing the economic impact assessment, as specified.~~ *making the determinations and estimates of fiscal or economic impact required by specified provisions of the act. The bill would also exempt from the rulemaking provisions of the act any action by the Department of Finance to adopt and update, as necessary, instructions to a state agency on the preparation of an economic impact estimate or assessment of a proposed regulation.*

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

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

1 SECTION 1. Section 11346.2 of the Government Code is
2 amended to read:
3 11346.2. Every agency subject to this chapter shall prepare,
4 submit to the office with the notice of the proposed action as
5 described in Section 11346.5, and make available to the public
6 upon request, all of the following:
7 (a) A copy of the express terms of the proposed regulation.
8 (1) The agency shall draft the regulation in plain, straightforward
9 language, avoiding technical terms as much as possible, and using
10 a coherent and easily readable style. The agency shall draft the
11 regulation in plain English.
12 (2) The agency shall include a notation following the express
13 terms of each California Code of Regulations section, listing the
14 specific statutes or other provisions of law authorizing the adoption
15 of the regulation and listing the specific statutes or other provisions
16 of law being implemented, interpreted, or made specific by that
17 section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. These benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) (A) For a regulation that is not a major regulation, the economic impact assessment required by subdivision (b) of Section 11346.3.

(B) For a major regulation proposed on or after November 1, 2013, the standardized regulatory impact analysis required by subdivision (c) of Section 11346.3.

(3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(4) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed

regulation. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.

(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives or describe unreasonable alternatives.

(5) (A) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(B) (i) If a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

(ii) The model codes adopted pursuant to Section 18928 of the Health and Safety Code shall be exempt from the requirements of this subparagraph. However, if an interested party has made a request in writing to the agency, at least 30 days before the submittal of the initial statement of reasons, to examine a specific section for purposes of estimating the cost of compliance and the potential benefits for that section, and including the related assumptions used to determine the estimates, then the agency shall comply with the requirements of this subparagraph with regard to that requested section.

(6) A department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) This section shall be inoperative from January 1, 2012, until January 1, 2014.

SEC. 2. Section 11346.3 of the Government Code is amended to read:

11346.3. (a) A state agency proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

(3) An economic impact assessment prepared pursuant to this subdivision for a proposed regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall be prepared in accordance with subdivision (b), and shall be included in the initial statement of reasons as required by Section 11346.2. An economic assessment prepared pursuant to this subdivision for a major regulation proposed on or after November 1, 2013, shall be prepared in accordance with subdivision (c), and shall be included in the initial statement of reasons as required by Section 11346.2.

(b) (1) A state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the state.

(B) The creation of new businesses or the elimination of existing businesses within the state.

(C) The expansion of businesses currently doing business within the state.

(D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from a state agency for the purpose of completing the assessment may come from existing state publications.

(c) (1) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, shall prepare a standardized regulatory impact analysis in the manner prescribed by the Department of Finance pursuant to Section 11346.36. The standardized regulatory impact analysis shall address all of the following:

(A) The creation or elimination of jobs within the state.

(B) The creation of new businesses or the elimination of existing businesses within the state.

(C) The competitive advantages or disadvantages for businesses currently doing business within the state.

(D) The increase or decrease of investment in the state.

(E) The incentives for innovation in products, materials, or processes.

(F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

(2) This subdivision shall not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the analysis may be derived from existing state, federal, or academic publications.

(d) Any administrative regulation adopted on or after January 1, 1993, that requires a report shall not apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

(e) Analyses conducted pursuant to this section are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices, not reassess statutory policy. The baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that are equally effective in achieving the purpose of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

(f) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, and that has prepared a standardized regulatory impact analysis pursuant to subdivision (c), shall submit that analysis to the Department of Finance upon completion. The department shall comment, within 30 days of receiving that analysis, on the extent to which the analysis adheres to the regulations adopted pursuant to Section 11346.36. Upon receiving the comments from the department, the agency may update its analysis to reflect any comments received from the department and shall summarize the comments and the

response of the agency along with a statement of the results of the updated analysis for the statement required by paragraph (10) of subdivision (a) of Section 11346.5.

~~SEC. 3. Section 11358 is added to the Government Code, to read:~~

~~11358. (a) The Department of Finance shall adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that an agency subject to this chapter shall use in preparing the economic impact assessment required by subdivision (b) of Section 11346.3. The instructions shall include, but need not be limited to, the following:~~

~~(1) Guidelines governing the types of data or assumptions, or both, that may be used, and the methods that shall be used, to calculate the estimate of the economic impact mandated by the regulation for which the estimate is being prepared.~~

~~(2) The types of direct or indirect economic impacts that should be taken into account in preparing the estimate.~~

~~(3) The format the agency preparing the estimate shall follow in summarizing and reporting its economic impact assessment upon businesses and individuals.~~

~~(b) The Department of Finance may review any economic impact assessment prepared pursuant to this section for content including, but not limited to, the data and assumptions used in its preparation.~~

SEC. 3. Section 11357 of the Government Code is amended to read:

11357. (a) The Department of Finance shall adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that ~~any~~ *an* agency subject to this chapter shall use in making the ~~determination required by paragraph (5) and the estimate required by paragraph (6) of subdivision (a) of Section~~ *determinations and the estimates of fiscal or economic impact required by Sections 11346.2, 11346.3, and* 11346.5. The instructions shall include, but need not be limited to, the following:

(1) Guidelines governing the types of data or assumptions, or both, that may be used, and the methods that shall be used, to calculate the estimate of the cost or savings to public agencies mandated by the regulation for which the estimate is being prepared.

(2) The types of direct or indirect costs and savings that should be taken into account in preparing the estimate.

(3) The criteria that shall be used in determining whether the cost of a regulation must be funded by the state pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4.

(4) The format the agency preparing the estimate shall follow in summarizing and reporting its estimate of the cost or savings to state and local agencies, school districts, and in federal funding of state programs that will result from the regulation *and its estimate of the economic impact that will result from the regulation.*

(b) ~~Any~~ *An* action by the Department of Finance to adopt and update, as necessary, instructions to any state or local agency for the preparation, development, or administration of the state budget, *or instructions to a state agency on the preparation of an economic impact estimate or assessment of a proposed regulation,* including any instructions included in the State Administrative Manual, shall be exempt from this chapter.

(c) The Department of Finance may review ~~any~~ *an* estimate prepared pursuant to this section for content including, but not limited to, the data and assumptions used in its preparation.

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Board of Chiropractic Examiners
Bill Analysis

Bill Number: AB 790
Author: Assembly Member Jimmy Gomez
Bill Version: Amended June 4, 2013
Subject: Child abuse: reporting
Sponsor: California Police Chiefs Association

STATUS OF BILL: Amended by author 06/04/13, held in Senate Appropriations Suspense File.

SUMMARY:

This bill would require all mandated reporters to individually report suspected or known instances of child abuse, unless they are in a healthcare setting, where one healthcare provider would be designated to make the report on behalf of the healthcare team.

EXISTING LAW:

- The Child Abuse and Neglect Reporting Act. (CANRA) enumerates 44 categories of persons as "mandated reporters" who are required to file reports of suspected child abuse or neglect to specified law enforcement agencies or county welfare and probation departments.
- Provides that when two or more mandated reporters jointly have knowledge of a known or suspected act of child abuse or neglect, and when there is agreement among the team, the telephone report may be made by one person designated by the reporting team.

THIS BILL WOULD:

- Narrow the provision of law allowing a "team" of mandated reporters to select one member to file the report, to apply only to health providers in a healthcare setting.
- Require the person designated to file a report on behalf of the healthcare team to provide the names of all other members on the reporting healthcare team but provides that the mandated reporter will not be subject to criminal penalties or other sanctions for an accidental or inadvertent failure to include one or more names of persons on the reporting team.
- Define a "healthcare provider" as any person licensed or certified pursuant to Division 2 (commencing with section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act.

BACKGROUND:

According to the author, Penal Code section 11666 is intended to guarantee that all cases of suspected child abuse or neglect are reported to a Child Protective Agency by mandated reporters; however, there is conflicting language within the statute that provides an unnecessary opportunity for suspected child abuse or neglect to go unreported.

The author believes that this bill will help victims of child abuse or neglect by requiring mandated reporters to individually file such reports, unless they are a member of a healthcare team.

FISCAL IMPACT:

There is no fiscal impact to the BCE as a result of this bill.

SUPPORT & OPPOSITION:

Support:
California Police Chiefs Association
California Narcotic Officers Association
American Federation of State, County and Municipal Employees

Opposition:
CA Public Defenders Association
CA Association of Marriage and Family Therapists

ARGUMENTS:

Pro:

- This bill will increase the number and timeliness of reports of abuse or neglect by mandated reporters and possibly reduce the likelihood that a non-healthcare mandated reporter could conceal their involvement or details of abuse or neglect due to their involvement in a personal relationship with the child.

Con:

- The California Association of Marriage and Family Therapists argues that requiring a report from each individual who receives the same information about the same mandated report scenario is duplicative and inefficient for both the mandated reporter(s) and the county and community departments.

STAFF RECOMMENDED POSITION:

NEUTRAL – This bill does not impose a fiscal impact upon the BCE and clarifies the duties of mandated reporters.

AMENDED IN SENATE JUNE 4, 2013

AMENDED IN SENATE JUNE 3, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 790

Introduced by Assembly Member Gomez

February 21, 2013

An act to amend Section 11166 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 790, as amended, Gomez. Child abuse: reporting.

The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Existing law further requires the mandated reporter to make an initial report by telephone to the agency immediately or as soon as is practicably possible, and to prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident.

Existing law additionally provides that, when 2 or more mandated reporters have joint knowledge of suspected child abuse or neglect, they may select a member of the team by mutual agreement to make and sign a single report. Any member who has knowledge that the member designated to report has failed to do so is required to thereafter make the report.

This bill would limit these latter provisions to mandated reporters who are health care providers, thereby requiring every mandated reporter who is not a health care provider and who has knowledge of suspected child abuse or neglect to make an individual report. The bill would require the person who files a single report on behalf of multiple health care providers who are mandated reporters to include the names of ~~other mandated reporters, if known, who have knowledge of known or suspected instances of child abuse or neglect~~ *the other members of the reporting team*, as specified. The bill would provide that a person making the report would not be subject to criminal penalties or other sanctions for failing to include one or more names of those persons if his or her failure to include those names is accidental or inadvertent.

Because this bill would expand the definition of a crime, it would impose a state-mandated 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:

1 SECTION 1. Section 11166 of the Penal Code is amended to
2 read:
3 11166. (a) Except as provided in subdivision (d), and in
4 Section 11166.05, a mandated reporter shall make a report to an
5 agency specified in Section 11165.9 whenever the mandated
6 reporter, in his or her professional capacity or within the scope of
7 his or her employment, has knowledge of or observes a child whom
8 the mandated reporter knows or reasonably suspects has been the
9 victim of child abuse or neglect. The mandated reporter shall make
10 an initial report by telephone to the agency immediately or as soon
11 as is practicably possible, and shall prepare and send, fax, or
12 electronically transmit a written followup report within 36 hours
13 of receiving the information concerning the incident. The mandated
14 reporter may include with the report any nonprivileged
15 documentary evidence the mandated reporter possesses relating
16 to the incident.

(1) For purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the State Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other

capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) (1) Any commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practically possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

(2) Any commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity

or employment, any representation of information, data, or an image, including, but not limited, to any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or material are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (41) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, "sexual conduct" means any of the following:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(B) Penetration of the vagina or rectum by any object.

(C) Masturbation for the purpose of sexual stimulation of the viewer.

(D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(E) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the

same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, "any other person" includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

(h) (1) When two or more health care providers, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report. The person who makes the report pursuant to this subdivision shall provide the names of all ~~other mandated reporters, if known, who have knowledge of known or suspected instances of child abuse or neglect~~ *the other members of the reporting team*, but he or she shall not be subject to criminal penalties or other sanctions for failing to include one or more names of those persons if his or her failure to do so is accidental or inadvertent.

(2) For purposes of this subdivision, a "health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, *or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act*.

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of

1 receiving the information concerning the incident to any agency
2 to which it makes a telephone report under this subdivision.
3 SEC. 2. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

O

Board of Chiropractic Examiners
Bill Analysis

Bill Number: AB 2058
Author: Assembly Member Scott Wilk
Bill Version: Amended April 9, 2014
Subject: Open Meetings
Sponsor: Author

STATUS OF BILL: 04/08/14 Passed Comm. on Governmental Organization (19-0); re-referred to Comm. on Appropriations; 4/9/14 read 2nd time, amended and referred to Comm. on Appropriations.

SUMMARY:

This bill would clarify the Bagley-Keene Act by specifying that all standing committees are subject to the transparency of open meeting regulations, regardless of the size of its membership.

EXISTING LAW:

- The Ralph M. Brown Act governs the procedures for public meetings held by local governments.
- The Bagley-Keene Open Meeting Act governs the procedures for public meetings held by state agencies.

THIS BILL WOULD:

- Align the definitions of a state body in the Ralph M. Brown Act and the Bagley-Keene Open Meeting Act.
- Require all standing committees, regardless of the size of composition, which have a continuing subject matter, jurisdiction, or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body to comply with the open meeting requirements.

BACKGROUND:

According to the author, the Government Code contains two parallel open meeting statutes: the Ralph M. Brown Act for local governments and the Bagley-Keene Open Meeting Act for state government. In 1993, the Ralph M. Brown Act was amended to remove the loophole which allowed for standing committees to hold closed-door meetings as long as their membership did not contain more than two members and did not vote to take action on items. This same loophole still exists in the Bagley-Keene Open Meeting Act.

This bill will close this loophole and make the Bagley-Keene Open Meeting Act consistent with the requirements of the Ralph M. Brown Act.

FISCAL IMPACT:

This bill would not impose a fiscal impact upon the Board as BCE committees are currently comprised of 3 members and all meetings are properly noticed as required by the Bagley-Keene Open Meeting Act.

SUPPORT & OPPOSITION:

Support: None on record

Opposition:
Board of Accountancy

ARGUMENTS:

Pro:

- This bill will ensure that the public is made aware of all meetings held by standing committees, regardless of their size of membership.
- This bill will remove ambiguity between the Ralph M. Brown Act and the Bagley-Keene Open Meeting Act.
- This bill will ensure that contents of the Bagley-Keene Open Meeting Act are consistent with the Legislative intent to require government to conduct business visibly and transparently.

Con:

- This bill may impose a fiscal impact for state agencies that currently have committees composed of less than three members by requiring staff time and funds to create and prepare the notices for mailing and postage.
- The Board of Accountancy (CBA) argues 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 one or two members are already vetted and voted upon in a publically noticed meeting of the whole committee or board. 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.

STAFF RECOMMENDED POSITION:

NEUTRAL – This bill would not have a significant impact upon the BCE as the Board is currently in compliance with the notice requirements set forth in the Bagley-Keene Open Meeting Act.

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 2058

Introduced by Assembly Member Wilk
(Coauthors: Assembly Members Hagman and Harkey)
~~(Coauthor: Senator DeSaulnier)~~
(Coauthors: Senators DeSaulnier, Gaines, and Vidak)

February 20, 2014

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 2058, 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 any meeting of a state body, subject to certain conditions and exceptions.

This bill would modify the definition of "state body" to exclude an advisory body with less than 3 individuals, except for certain standing committees. ~~This bill would also make legislative findings and declarations in this regard.~~

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) (Bagley-Keene Act) to a two-member standing advisory committee of a state body. A two-member standing 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, irrespective of its size, if a member of the state body sits on the committee and the committee receives funds from the state body. For this type of two-member standing advisory committee, this bill is declaratory of existing law.~~

~~(b) A two-member standing committee of a state body, even if operating solely in an advisory capacity, already is a "state body," as defined in subdivision (b) of Section 11121 of the Government Code, irrespective of its composition, if it exercises any authority of a state body delegated to it by that state body. For this type of two-member standing advisory committee, this bill is declaratory of existing law.~~

~~(c) All two-member standing advisory committees of a local body are subject to open meeting requirements under the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) (Brown Act). It is the intent of the Legislature in this act to reconcile language in the Brown Act and Bagley-Keene Act with respect to all two-member standing advisory committees, including, but not limited to, those described in subdivisions (a) and (b).~~

~~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. ~~Advisory bodies~~ *An advisory body* created to consist of fewer than three individuals ~~are~~ *is* not a state body, except that *a* standing ~~committees~~ *committee* of a state body, irrespective of ~~their~~ *its* composition, which ~~have~~ *has* a continuing subject matter jurisdiction, or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body ~~are~~ *is a* state ~~bodies~~ *body* 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.

~~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 of the meetings of public bodies pursuant to Section 3 of Article 1 of the California Constitution, it is necessary that act take effect immediately.

O

Board of Chiropractic Examiners
Bill Analysis

Bill Number: AB 2165
Author: Assembly Member Jim Patterson
Bill Version: Amended April 10, 2014
Subject: Professions and vocations: licenses
Sponsor: Author

STATUS OF BILL: Read second time in Assembly Committee on B.P.& C.P and amended on 04/10/14; re-referred to Assembly Committee on B.P&C.P; hearing cancelled by author.

SUMMARY:

This bill would require boards within DCA to complete the application review process and issue a license to applicants who have satisfied all licensure requirements within 45 days of the application filing date and require boards to offer a licensing examination at least six times per year, unless the board uses a national exam.

EXISTING LAW:

- The Chiropractic Initiative Act provides the Board with the power to adopt rules and regulations necessary for the performance of its work, the enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

THIS BILL WOULD:

- Require boards within DCA to complete the application review process and issue a license to qualified applicants within 45 days following the filing date of an application for licensure.
- Clarify that submission of all documents required for licensure, regardless of whether they are to be submitted by the applicant or another person or entity, must be received by the board before an applicant can be deemed to have satisfied all licensure requirements.
- Require boards who offer examinations for licensure to offer the examination to eligible applicants at least 6 times per year, unless the board uses a national examination.
- Authorize a person who has completed the education requirements for licensure to immediately apply and sit for the professional examination for licensure regardless of whether an application for licensure is pending with the board for which the person seeks licensure.

BACKGROUND:

According to the author, professional and vocational applicants are currently experiencing extraordinary delays in application processing times. Applicants, who apply to some boards that require applicants to take examinations for licensure, face delays in processing their application to be cleared for the examination, then face additional delays waiting to take the exam, receive results and finally receive their license. The author reports that some applicants have remained unemployed for up to six months while waiting for the application process to be completed.

The author believes that this bill will ensure that applicants who are ready for licensure upon graduation from accredited schools or approved programs will not be further delayed from employment by unnecessary application processing times.

FISCAL IMPACT:

The amendments to this bill may impose a significant impact upon the BCE; however, the proposed language is unclear to determine the full extent of the impact. The BCE requires successful completion of two examinations by applicants for licensure (National Board of Chiropractic Examiners (NBCE) and the California Jurisprudence examination). For our purposes, it is unclear whether proposed subsection (d) pertains to the NBCE examination, the California Jurisprudence examination, or both. If this subsection is intended to include the California Jurisprudence examination, the BCE will need to draft legislation and amend and/or promulgate regulations to amend the current license application process, create a separate application for immediate entrance to this exam, and impose a processing fee. All of the steps above are cost prohibitive to the BCE and the licensee.

SUPPORT & OPPOSITION:

Support:
Board of Pharmacy (support if amended)

Opposition: None on record

ARGUMENTS:

Pro:

- This bill will assist applicants for licensure in gaining employment in a more expedient timeframe.

Con:

- The language in this bill is unclear. This bill requires boards to issue a license to applicants who have satisfied all requirements for licensure under the applicable licensing act within 45 days from the date the application was filed. The

timeframe given is unreasonable as an applicant for licensure with the BCE has not met all requirements for licensure until they have submitted and completed the following:

1. Submit an Application for a Chiropractic License with $100 processing fee and specified documentation of training, diplomas, citation arrest history, etc.
2. The BCE must receive official transcripts directly from the National Board of Chiropractic Examiners showing successful completion of the professional examination, Parts I, II, III, IV and Physiotherapy. (Can take several weeks to receive)
3. The BCE must receive official transcripts directly from all chiropractic colleges attended by the applicant. (Can take several weeks to receive)
4. The BCE must receive certified court documents of all citations/arrests. (Can take several weeks to receive)
5. The BCE must receive fingerprint clearances from the FBI/DOJ. (Can take up to 8 weeks to receive for applicants in state. Out of state applicants have a longer processing time).
6. Once the Board has determined that the applicant has met all of the requirements above, the applicant is scheduled for the California Jurisprudence exam, which is offered every weekday. The applicant receives their results on the same date the exam is taken.
7. Applicant is given up to one year to submit the letter showing they passed the California Jurisprudence exam with a $100 license fee to receive their license. **At this point, the BCE considers the applicant to have satisfied the requirements for licensure and the license can be issued.**

- Although the language was amended to clarify that an application cannot be deemed complete until it receives all documentation from the applicant and outside agencies, the 45 day timeframe for issuance of a license from the date the application is received conflicts with standard timeframes for submission of documents from outside agencies. For example, DOJ and FBI clearances require a 6-8 week processing timeframe for in-state applicants and a longer processing timeframe for out-of-state applicants. The examples provided in the proposed language refer only to verifications of coursework, training and clinical experience, but does not mention criminal background history received from the DOJ and FBI.
- This bill is unclear in specifying a processing timeframe for issuance of a license to applicants who satisfy all requirements for licensure after the prescribed 45-day timeframe has passed.
- The BCE does not have a backlog in processing licensing applications. However, the typical processing time for an application is approximately 12 to 16 weeks due to the length of time it takes to receive all documents needed from the applicant and outside sources to qualify the applicant for the California Jurisprudence examination and receive the Jurisprudence examination results and licensing fee from the applicant.

- Many licensing boards require more than one examination (licensing exam which evaluates the applicant's proficiency in the profession and a CA law exam to evaluate their knowledge of the laws and regulations that guide their profession in the state of California. Both are necessary to ensure public protection. It is unclear whether this bill is referring solely to the professional examination (NBCE), which applicants take prior to applying for licensure with the BCE, and/or the California Jurisprudence Examination, which applicants take after receiving approval of their application for licensure and eligibility requirements.
- If this bill pertains to the California Jurisprudence examination, the fiscal and workload impact to the board would be significant and cost prohibitive to the BCE and applicants.
- If this bill pertains to the California Jurisprudence examination, the current process would need to be significantly changed and likely create delays in the licensure process due to creating a separate process solely for admittance to this examination prior to evaluation of the application for licensure.
- The efficacy and validity of the California Jurisprudence examination could be compromised by allowing applicants who are not qualified for a license to sit for this examination.
- Mandating an application processing timeframe, <u>from the receipt of application</u>, which is shorter than and inconsistent with processing times for receipt of documentation required from outside sources (i.e. DOJ and FBI) would make the proposed 45-day timeframe apply to a very small percentage of applications, thereby defeating the intent of this bill.
- This bill assumes all boards and bureaus have similar basic requirements and procedures for licensure.
- The Pharmacy Board argues that the bill does not specify whether the requirement is 45 calendar days or working days and also fails to describe what happens if the 45 day timeframe is not met by the agency. The Pharmacy board recommends an amendment to specify 45 working days (not including holidays).

STAFF RECOMMENDED POSITION:

OPPOSE– The BCE supports the intent of this bill; however, the processing timeframe mandated in this bill conflicts with processing times to receive documentation from outside sources and the BCE's licensing procedures for determination of a "complete application".

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 2165

Introduced by Assembly Member Patterson

February 20, 2014

An act to add Section 101.8 to the Business and Professions Code, relating to ~~licensing~~ *professions and vocations*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2165, as amended, Patterson. Professions and vocations: licenses.

Under existing law, boards within the Department of Consumer Affairs license and regulate persons practicing various healing arts, professions, vocations, and businesses. Existing law requires these boards to establish eligibility and application requirements, including examinations, to license, certificate, or register each applicant who successfully satisfies applicable requirements.

This bill would require each board, *as defined,* to complete within 45 days the application review process with respect to each person who has filed with the board an application for issuance of a license, and to issue, within ~~that~~ *those* 45 days, a license to an applicant who *has* successfully satisfied all licensure requirements, *as specified.* The bill *would* also ~~requires~~ *require* each board to offer each examination the board provides for ~~the applicant's passage of which is required for~~ licensure, a minimum of 6 times per year, *unless the board uses a national examination. The bill would also authorize a person who has satisfied the educational requirements of the licensing act of which he or she seeks licensure to immediately apply for and take the professional examination required for licensure regardless of whether his or her*

application for licensure is then pending with the board for which he or she seeks licensure.

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

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

1 SECTION 1. Section 101.8 is added to the Business and
2 Professions Code, to read:
3 101.8. (a) Notwithstanding any other law, every board, as
4 defined in Section 22, within 45 days following the filing date of
5 an application with the board for issuance of a license, as defined
6 in Section 23.7, to engage in the business or profession regulated
7 by that board, the board shall do both of the following:
8 (1) Complete the application review process.
9 (2) If the applicant has satisfied all of the requirements for
10 licensure under the applicable licensing act, issue the applicant the
11 applicable license.
12 *(b) For purposes of paragraph (2) of subdivision (a), an*
13 *applicant has satisfied all of the requirements for licensure under*
14 *the applicable licensing act only if all of the documents required*
15 *by the licensing board for licensure have been submitted to the*
16 *board, regardless of whether those documents are to be submitted*
17 *by the applicant with his or her application or separately by any*
18 *other person or entity, such as for purposes of, among other things,*
19 *verification of completion of the applicant's coursework, training,*
20 *or clinical experience, if required under the applicable licensing*
21 *act.*
22 ~~(b)~~
23 *(c)* Every board that offers an examination that an applicant is
24 required to complete successfully for licensure, shall offer that
25 examination a minimum of six times per year, *unless the board*
26 *uses a national examination.*
27 *(d) Notwithstanding any other law, a person who has satisfied*
28 *the educational requirements of the licensing act of which he or*
29 *she seeks licensure, such as graduation from a state-approved or*
30 *state-accredited school of which graduation is required by the*
31 *applicable licensing act, may immediately apply for and take the*
32 *professional examination required for licensure, regardless of*

1 *whether his or her application for licensure is then pending with*
2 *the board for which he or she seeks licensure.*

O

Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 218
Author: Senator Leland Yee
Bill Version: Amended August 5, 2013
Subject: California traditional Chinese medicine traumatologist certification
Sponsor: American Traditional Chinese Medical Traumatologist Association

STATUS OF BILL: Amended 08/05/13, referred to Assembly B.P. & C.P.

SUMMARY:

This bill would establish the non-profit California Traditional Chinese Medicine Traumatology Council (Council) who would be charged with developing educational and training standards for applicants and authorize the Council to issue certificates to qualified applicants as well as discipline certificate holders for violations.

EXISTING LAW:

- Establishes the Massage Therapy Council and defines their responsibilities and duties to regulate Certified Massage Therapists.
- The Acupuncture Licensure Act provides the Acupuncture Board with the power to adopt rules and regulations necessary to enable the Board to carry into effect the provisions of law relating to the practice of Acupuncture.
- The Chiropractic Initiative Act provides the Board with the power to adopt rules and regulations necessary for the performance of its work, the enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

THIS BILL WOULD:

- Define a California Certified Traditional Chinese Medicine traumatologist as a person who has been certified by the council to perform traumatology.
- Define California traditional Chinese medicine traumatology as a range of treatments to address both acute and chronic musculoskeletal conditions through stimulation of acupressure points.
- Define traumatology techniques as including, but not limited to, kneading, rolling, pressing, rubbing, pushing, holding, and lifting the areas between each of the joints to open the body's defensive chi and stimulate the energy movement in the meridians.
- Establish the California Traditional Chinese Medicine Traumatology Council as a non-profit, 501(c)(3), organization for purposes of developing training and

educational standards of applicants, issuing certificates to qualified applicants and disciplining certificate holders for violations.

- Establish the composition of the Council to five members: two representatives from clinical traumatology settings, one representative from the Medical Board of California, and two representatives from the California Medical Association.
- Prohibit California Certified Traditional Chinese Medicine Traumatologists from practicing within the scope of medicine or chiropractic.
- Prohibit an individual who is not qualified to receive the title and certificate from the Council from holding himself or herself out as a California Certified Traditional Chinese Medicine Traumatologist.
- Require the Council to issue certificates to applicants who are at least 18 years of age; are not subject to denial for reasons including false statements, convictions, acts of dishonesty, or grounds for suspension or denial under the BPC; passes a written examination developed by the Council; and who completes and furnishes proof of required education and training.

BACKGROUND:

Traumatology is considered a subset of traditional Chinese medicine, and, according to the author, has been practiced in an unlicensed fashion in California for roughly 150 years. Currently, no government body oversees traumatology's level of education, training and experience. The California Acupuncture Board estimates there are 150 practitioners of traumatology in this state, although it is unknown how many of these practitioners would seek a certification, or if applicants might come from other states or countries. According to the author, placing this practice under a non-profit's oversight will assure public protection through the development of a standard level of experience, training and care.

FISCAL IMPACT:

This bill may have a fiscal impact upon the BCE. The traumatology scope of practice sounds like it overlaps with the practice chiropractic. This bill would not establish regulation over truamatologists who choose not to obtain certification; therefore, it is possible that the BCE may receive consumer complaints regarding non-certified traumatologists. This would require time and resources from our compliance and field operations staff. Exact costs would depend on the seriousness of the alleged violation(s).

SUPPORT & OPPOSITION:

Support:
American Traditional Chinese Medical Traumatologist Association (sponsor)
Alhambra Medical University
American Association of Chu Pui Kok Chong Tong
American Association of Acupuncture & Traditional Chinese Medicine
American Chinese Cultural Exchange & Trading Association

Andrew University Berkeley
Association of Traditional Medical Doctors
California Acupuncture Medical Association
California Acupuncture Oriental Medicine Association
California Chinese Quangxi Association
California Chiropractic Association
Cantonese Association of Oakland
Chee Kung Tong Association
Chin Ying Chong Association
Chinese American Association of Commerce
Chinese Athletic Association of San Francisco
Chinese Consolidated Benevolent Association
Chinese Medicine Society of America
Council of Acupuncture & Oriental Medicine Associations
Guangxi Chinling Association Oakland of U.S.A.
Hip Sing Association
Hop Sing Association
Hop Wo Benevolent Association
Hoy-Sun Ning Yung Benevolent Association in America
Kong Chow Benevolent Association
Kwok Shing Hong Company
Mar's Family Association
Ng Family Benevolent Association
Sam Yick Benevolent Association of Western U.S.A.
Sam Yup Benevolent Association
San Francisco Lodge Chinese American Citizens Alliance
Soo Yuen Benevolent Association
Sue Hing Benevolent Association
Suey Sing Association
Tom Family Benevolent Association
Unified Association
United Acupuncture Association
Vietnam Chinese Mutual Aid and Friendship Association of Oakland
Vietnam Chinese United Association of U.S.A.
Vietnamese Acupuncture & Oriental Medicine Association Institute
Vietnam Chinese Mutual Aid and Community Center
Wong Family Benevolent Association
World Federation of Chinese Organizations From Vietnam
Wu Yi Friendship Association
Yeong Wo Benevolent Association
Ying On Association
898 small businesses and private individuals

Opposition:
Academy of Chinese Medicine
Association of Korean Asian Medicine & Acupuncture of California

California Acupuncture Board
California Acupuncture Coalition
California Certified Acupuncturists Association
California Chamber for History of Chinese Medicine
California State Oriental Medical Association
Japanese Acupuncture Association of California
New England School of Acupuncture
Research Institute of Chinese Medicine
United California Practitioners of Chinese Medicine
2160 small businesses & private individuals

ARGUMENTS:

Pro:

- This bill will assure public protection through the development of a standard level of experience, training and care.

Con:

- The necessity of this bill is unclear. Certification for traumatologists is voluntary and only prohibits the use of the title "California Certified Traditional Chinese Medicine Traumatologist" by traumatologists who do not elect to obtain a certificate from the Council.
- Voluntary certification provides limited protection to the public. Those without certificates could continue to provide traumatology services that are otherwise legal, as long as the practitioners do not claim to be certified. The traumatology practices covered by this bill would be limited to acupressure.
- Although the bill prohibits certified traumatologists from providing treatments governed by the BCE, the definitions of traumatology practice and techniques appear to describe those used within the scope of chiropractic.
- The California Acupuncture Coalition believes this bill will confuse and endanger consumers. The proposed certification title utilizes the terms "Chinese medicine" and "traditional Chinese medicine." Both terms are essentially synonymous with full-scope, full-training acupuncture and Asian medicine professionals. These terms are internationally recognized by entities such as the World Health Organization and the National Institutes of Health. Use of these terms in conjunction with a substandard certification will confuse consumers, potentially misleading consumers into believing that certificate holders possess significantly deeper and broader levels of training than would be required under this bill."
- Although certified traumatologists would be limited to acupressure, traumatology curriculum exceeds this scope by requiring training in Chinese herbs and formulas. Additionally, this bill would permit uncertified traumatologists to treat patients within their full scope of training without any oversight.

STAFF RECOMMENDED POSITION:

OPPOSE – The BCE questions the necessity of this bill given the small population of individuals practicing traumatology in California, as well as the fact that certification for this profession is voluntary. Furthermore, the scope and techniques appear to overlap with the scope of chiropractic which raises public safety concerns regarding training and competency of these individuals.

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 13, 2013

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL No. 218

Introduced by Senator Yee

February 11, 2013

An act to ~~amend Sections 4935, 4955, 4955.1, 4955.2, 4956, 4960.2, 4961, 4965, 4966, 4967, and 4969 of, to add Section 4964.5 to, and to add Article 3 (commencing with Section 4950) to Chapter 12 of Division 2 of,~~ *add and repeal Chapter 12.5 (commencing with Section 4979.1) of Division 2 of* the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Yee. Healing ~~arts.~~ *arts: California traditional Chinese medicine traumatologist certification.*

Existing law establishes various boards that license and regulate healing arts practitioners, including physicians and surgeons, chiropractors, physical therapists, and massage therapists. Existing law provides for the voluntary certification of certain practitioners, including the voluntary certification of massage therapists by the California Massage Therapy Council, a nonprofit organization. Existing law prescribes specified educational and other requirements for an applicant to obtain a massage therapy certificate.

This bill would establish the California Traditional Chinese Medicine Traumatology Council as a nonprofit organization to provide for the development of standards for and certification of the practice of California traditional Chinese medicine traumatologists, as defined. The bill would require the council to issue a certificate to practice as a California traditional Chinese medicine traumatologist to an applicant who meets certain training and clinical experience requirements, passes a written examination, and pays a fee. The bill would require the council to develop, and report to the Legislature by January 1, 2016, its standards for approving education programs; evaluating the education, training, and clinical experience of applicants; the written examination; and a continuing education program. The bill would make the meetings and deliberations of the council subject to the open meeting requirements and public hearing requirements that apply to state bodies.

This bill would prohibit treatment that constitutes the practice of medicine or chiropractic procedures, as defined.

This bill would also make it an unfair business practice to use the title of "California certified traditional Chinese medicine traumatologist" without meeting these certification requirements and would specify the circumstances and methods for disciplining a certificate holder.

~~Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board and makes it responsible for enforcing and administering the act, including licensing persons who meet specified licensure requirements. Under the act, licensees are titled "acupuncturists," and are authorized to perform designated activities pursuant to their license. The unlawful practice of acupuncture, as specified, is a crime.~~

~~This bill would, commencing May 1, 2014, require the board to issue a certificate to practice as a traditional Chinese medicine traumatologist to an applicant who meets certain education, training, and clinical experience requirements and pays a reasonable fee, as determined by the board. This bill would require the board to establish the California Traditional Chinese Medicine Traumatology Committee to provide advice and carry out specified duties, including investigation and evaluation of whether an applicant meets those education, training, and clinical experience requirements.~~

~~The bill would set forth procedures for the renewal of an unexpired or expired certificate to perform traditional Chinese medicine~~

~~traumatology and would require the board to establish reasonable fees in that regard.~~

~~This bill would make it an unfair business practice to use the title of "certified traditional Chinese medicine traumatologist" without meeting these certification requirements and would authorize the board to suspend or revoke a certificate for unprofessional conduct, certain fraudulent acts, or specified crimes committed by the certificate holder. The bill would also make it a crime to use the title of "certified traditional Chinese medicine traumatologist" without meeting these certification requirements and to fraudulently buy or sell a certificate for traditional Chinese medicine traumatology, thereby imposing 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~~ *no*.

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

1 *SECTION 1. Chapter 12.5 (commencing with Section 4979.1)*
2 *is added to Division 2 of the Business and Professions Code, to*
3 *read:*
4
5 *CHAPTER 12.5. CALIFORNIA TRADITIONAL CHINESE MEDICINE*
6 *TRAUMATOLOGY*
7
8 *4979.1. As used in this chapter:*
9 *(a) "California certified traditional Chinese medicine*
10 *traumatologist" means a person who has been certified by the*
11 *California Traditional Chinese Medicine Traumatology Council*
12 *to perform California traditional Chinese medicine traumatology.*
13 *(b) "Council" means the California Traditional Chinese*
14 *Medicine Traumatology Council.*
15 *(c) "California traditional Chinese medicine traumatology"*
16 *includes a range of treatments to address both acute and chronic*
17 *musculoskeletal conditions through stimulation of acupressure*
18 *points. Techniques include, but are not limited to, brushing,*

kneading, rolling, pressing, rubbing, pushing, holding, and lifting the areas between each of the joints to open the body's defensive chi and stimulate the energy movement in the meridians.

4979.3. (a) The California Traditional Chinese Medicine Traumatology Council shall be established as a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, for the purpose of developing standards for, and certifying the practice of, California traditional Chinese medicine traumatology. The council may commence activities as authorized by this section after submitting a request to the Internal Revenue Service seeking the exemption.

(b) (1) The council shall consist of five members, composed of two representatives from the clinical settings of traumatology, one representative from the Medical Board of California, and two representatives from the California Medical Association.

(2) Representatives from the clinical settings of traumatology shall be selected by professional societies, associations, or other entities, whose memberships are comprised solely of practitioners of California traditional Chinese medicine traumatology.

(3) To qualify, a professional society, association, or entity shall have a dues-paying membership in California of at least 30 individuals for the last three years and shall have bylaws that require its members to comply with a code of ethics.

(c) The meetings and deliberations of the council shall be subject to the provisions 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). All hearings shall be subject to the provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(d) No member of the council shall serve a term of longer than four years.

4979.4. (a) The council shall issue the title and certificate for California certified traditional Chinese medicine traumatology to any person who makes an application on a form developed by the council, and meets all of the following requirements:

(1) Is at least 18 years of age.

(2) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

(3) Passes a written examination developed and administered by the council that tests the applicant's ability, competency, and knowledge in the practice of California traditional Chinese medicine traumatology.

(4) Completes and furnishes evidence of either the following:

(A) In the case of an applicant who has completed education and training outside the United States or Canada, the applicant shall furnish documented evidence of education, training, and at least eight years of clinical experience in traditional Chinese medicine traumatology that meets the standards established by the council pursuant to subdivision (c).

(B) In the case of an applicant who has completed education and training inside the United States or Canada, the applicant shall furnish a certificate in traditional Chinese medicine traumatology upon completion of a curriculum in the subject. The curriculum for these applicants shall provide for adequate instruction in all of the following subjects:

(i) Human anatomy and physiology.

(ii) Pathology.

(iii) Western diagnosis on traumatological injury.

(iv) Clinical management and medical ethics.

(v) Basic theory of traditional Chinese medicine.

(vi) Comparison of traditional Chinese medicine and western medicine.

(vii) Meridian and acupoints.

(viii) Basic traditional Chinese medicine diagnosis.

(ix) Basic theory of traditional Chinese medicine traumatology.

(x) Traditional Chinese medicine diagnosis on traumatology.

(xi) Hands on skills of traditional Chinese medicine traumatology I and II.

(xii) Chinese herbs and formulas for traumatology.

(xiii) Traditional Chinese medicine traumatology case study.

(xiv) One thousand hours in a clinical internship on traditional Chinese medicine traumatology.

(b) Documentation required pursuant to paragraph (4) of subdivision (a) may include degrees, certificates, transcripts, and proof of academic or clinical residency. The council shall investigate all of the documentation provided by the applicant and verify its authenticity to evaluate whether an applicant meets the

certification standards, including the level of experience and training to sufficiently qualify for the traumatology certification.

(c) Certification granted pursuant to this section shall be renewed every two years.

(d) The council shall develop, and report to the Legislature by January 1, 2016, all of the following:

(1) The standards for approval of educational and clinical training programs pursuant to paragraph (4) of subdivision (a).

(2) The standards for evaluating the education, training, and clinical experience of an applicant pursuant to paragraph (4) of subdivision (a).

(3) The written examination pursuant to paragraph (3) of subdivision (a).

(4) A continuing education program for California certified traditional Chinese medicine traumatologists.

4979.5. (a) A California certified traditional Chinese medicine traumatologist shall not practice medicine, as defined in Section 2052.

(b) A California certified traditional Chinese medicine traumatologist shall not practice within the scope of activities regulated by the State Board of Chiropractic Examiners.

4979.6. (a) An applicant for California traditional Chinese medicine traumatology certification shall file an application for a certificate for California traditional Chinese medicine traumatology with the council.

(b) An individual who is not qualified to receive the title and certificate under this section shall not hold himself or herself out as a California certified traditional Chinese medicine traumatologist.

4979.7. (a) It shall be the responsibility of a certificate holder to notify the council of his or her home address, as well as the address of any business establishment where he or she regularly practices California traditional Chinese medicine traumatology, whether as an employee or as an independent contractor. A certificate holder shall notify the council within 30 days of changing either his or her home address or the address at which he or she practices.

(b) A certificate holder shall include the name under which he or she is certified and his or her certificate number in all

advertising and shall display his or her original certificate at his or her place of business.

(c) A certificate holder, upon request at the location where he or she practices, shall provide the name under which he or she is certified and the certificate number to a member of the public, the council, or a member of law enforcement or a local government agency.

4979.8. (a) An applicant for certification as a California traditional Chinese medicine traumatologist shall pay an application fee and a renewal fee, to be set by the council in an amount not to exceed the amount required to cover the reasonable cost of administering the program.

(b) Moneys received under this section shall be utilized by the council to pay for the costs associated with administering this chapter.

(c) The council shall make a breakdown of the costs associated with administering this chapter available on an Internet Web site.

4979.9. It is an unfair business practice for any person to hold himself or herself out as a California certified traditional Chinese medicine traumatologist or use the title of "California certified traditional Chinese medicine traumatologist" without meeting the requirements of this chapter.

4979.10. (a) It is a violation of this chapter for a certificate holder to commit, and the council may deny an application for a certificate or suspend or revoke a certificate for, any of the following:

(1) Unprofessional conduct, including, but not limited to, denial of licensure or certification, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another entity. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.

(2) Procuring a certificate by fraud, misrepresentation, or mistake.

(3) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule or bylaw adopted by the council.

(4) Conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime.

(5) Impersonating an applicant or acting as a proxy for an applicant in any part of the application process or any part of satisfying the standards set by the council referred to under this chapter for the issuance of a certificate.

(6) Impersonating a California certified traditional Chinese medicine traumatologist, or permitting or allowing an uncertified person to use a certificate.

(7) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.

(8) Committing any act punishable as a sexually related crime.

(b) The council shall investigate within 30 days any consumer complaints against a practitioner who is certified pursuant to this chapter. The council shall establish an Internet Web site where consumers may file complaints, including a web-based complaint form.

(c) No certificate holder or certificate applicant may be disciplined or denied a certificate pursuant to subdivision (a) except according to procedures satisfying the requirements of this section.

(d) A certificate applicant denial or certificate holder discipline shall be done in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (e) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the certificate denial or certificate holder discipline are considered.

(e) A procedure is fair and reasonable when the procedures in Section 4979.11 are followed, or if all of the following apply:

(1) The provisions of the procedure have been set forth in the articles or bylaws of the council, or copies of those provisions are sent annually to all the members as required by the articles or bylaws.

(2) The procedure provides for the giving of 15 days' prior notice of the certificate denial or certificate holder discipline and the reasons therefor.

(3) The procedure provides an opportunity for the certificate applicant or certificate holder to be heard, orally or in writing, not less than five days before the effective date of the certificate denial or certificate holder discipline by a person or body authorized to decide that the proposed certificate denial or certificate holder discipline not take place.

(f) Notice required under this section may be given by any method reasonably calculated to provide actual notice. Notice given by mail must be given by first-class or certified mail sent to the last address of the certificate applicant or certificate holder shown on the council's records.

(g) An action challenging a certificate denial or certificate holder discipline, including a claim alleging defective notice, shall be commenced within one year after the date of the certificate denial or certificate holder discipline. If the action is successful, the court may order relief, including reinstatement, that it finds equitable under the circumstances.

(h) A certificate denial or certificate holder discipline based upon substantive grounds that violates contractual or other rights of the member or is otherwise unlawful is not made valid by compliance with this section.

4979.11. (a) The council may discipline a certificate holder by any, or a combination, of the following methods:

(1) Placing the certificate holder on probation.

(2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.

(3) Revoking the certificate.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the council, as authorized by this chapter or its bylaws, deems proper.

(b) The council may issue an initial certificate on probation, with specific terms and conditions, to an applicant.

(c) (1) Notwithstanding any other law, if the council receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of any offense described in Section 4979.12 of this code, the council shall take all of the following actions:

(A) Immediately suspend, on an interim basis, the certificate of that certificate holder.

(B) Notify the certificate holder within 10 business days at the address last filed with the council that the certificate has been suspended, and the reason for the suspension.

(C) Notify within 10 business days any business that the council has in its records as employing the certificate holder that the certificate has been suspended.

(2) Upon notice to the council that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The council shall provide notice to the certificate holder within 10 business days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be notified of the reinstatement within 10 business days.

(d) Notwithstanding any other law, if the council receives clear and convincing evidence that a certificate holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder, the council may immediately suspend the certificate of that certificate holder. A decision to immediately suspend a certificate pursuant to this subdivision shall be based on clear and convincing evidence and the council shall also consider any available credible mitigating evidence before making a decision to suspend a certificate. Written statements by any person shall not be considered by the council when determining whether to immediately suspend a certificate unless made under penalty of perjury. If the council suspends the certificate of a certificate holder in accordance with this subdivision, the council shall take all of the following additional actions:

(1) Notify the certificate holder, at the address last filed with the council, within 10 business days by a method providing delivery confirmation, that the certificate has been suspended, the reason

for the suspension, and that the certificate holder has the right to request a hearing pursuant to paragraph (3).

(2) Notify by electronic mail or any other means consistent with the notice requirements of this chapter, within 10 business days, any business that the council has in its records as employing or contracting with the certificate holder, and the California city or county permitting authority that has jurisdiction over any business that the council has in its records as employing or contracting with the certificate holder, that the certificate has been suspended.

(3) A certificate holder whose certificate is suspended pursuant to this subdivision shall have the right to request, in writing, a hearing to challenge the factual basis for the suspension. If the holder of the suspended certificate requests a hearing on the suspension, the hearing shall be held within 30 days after receipt of the request. A holder whose certificate is suspended based on paragraph (1) shall be subject to revocation or other discipline in accordance with subdivision (a).

~~SECTION 1. Section 4935 of the Business and Professions Code is amended to read:~~

~~4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter, to hold himself or herself out as practicing or engaging in the practice of acupuncture, or to hold himself or herself out as a certified traditional Chinese medicine traumatologist or use the title of "certified traditional Chinese medicine traumatologist" without meeting the requirements of this chapter.~~

~~(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture or a certificate for traditional Chinese medicine traumatology, or to violate the provisions of this chapter.~~

~~(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2~~

~~(commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.~~

~~(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "Asian medicine," "oriental medicine," "traditional Chinese medicine," or any combination of those words, phrases, or abbreviations of those words or phrases, by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine, or by representing that he or she is trained, experienced, or an expert in the field of traditional Chinese medicine traumatology.~~

~~(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:~~

~~(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or~~

~~(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.~~

~~SEC. 2. Article 3 (commencing with Section 4950) is added to Chapter 12 of Division 2 of the Business and Professions Code, to read:~~

~~Article 3. California Traditional Chinese Medicine Traumatologist~~

~~4950. As used in this article:~~

~~(a) "California certified traditional Chinese medicine traumatologist" means a person who has been certified by the California Traditional Chinese Medicine Traumatology Committee to perform traditional Chinese medicine traumatology.~~

~~(b) "Committee" means, notwithstanding Section 4925, the California Traditional Chinese Medicine Traumatology Committee.~~

~~(e) "Traditional Chinese medicine traumatology" includes a range of treatments to address both acute and chronic musculoskeletal conditions through stimulation of acupressure points. Techniques include, but are not limited to, brushing, kneading, rolling, pressing, rubbing, pushing, holding, and lifting the areas between each of the joints to open the body's defensive chi and stimulate the energy movement in the meridians.~~

~~4950.1. (a) (1) On or before March 1, 2014, the board shall establish the California Traditional Chinese Medicine Traumatology Committee within the board. The committee shall consist of the following five members appointed by the board:~~

~~(A) One representative from the California Medical Association.~~

~~(B) One representative from the California Orthopaedic Association.~~

~~(C) One representative from the Medical Board of California.~~

~~(D) Two representatives from a traditional Chinese medicine traumatology clinical setting. These representatives shall be selected by professional societies, associations, or other entities, whose memberships are comprised solely of practitioners of traditional Chinese medicine traumatology. To qualify as a professional society or association, an entity shall have a dues paying membership in the state of at least 30 individuals for the last three years and shall have bylaws that require its members to comply with a code of ethics.~~

~~(2) Members of the committee shall serve for a term of four years.~~

~~(b) The board, in implementing this article, shall give specific consideration to the recommendations of the committee.~~

~~(c) (1) Pursuant to Section 4950.2, the committee shall meet and confer to determine an applicant's qualifications, as prescribed in Section 4950.2, including the level of experience and training needed to qualify for California traditional Chinese medicine traumatology certification.~~

~~(2) The committee shall advise the board on any other issues pursuant to this article.~~

~~4950.2. (a) The committee shall investigate all of the documentation provided by the applicant and verify its authenticity to evaluate whether an applicant meets the certification standards, including the level of education, experience, and training to~~

~~sufficiently qualify for the traumatology certification, and shall report its findings and determination to the board.~~

~~(b) Commencing May 1, 2014, the board shall issue a certificate for certified traditional Chinese medicine traumatology to any person who makes an application to the board and meets all of the following requirements:~~

~~(1) Is at least 18 years of age.~~

~~(2) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).~~

~~(3) Furnishes satisfactory evidence of education, training, and clinical experience that meets one of the following standards:~~

~~(A) Passed an examination and received a certificate from an institution of higher education in traditional Chinese medicine traumatology for completing a curriculum in the subject. The curriculum for all applicants shall provide for adequate instruction in each of the following subjects:~~

~~(i) Human anatomy and physiology.~~

~~(ii) Pathology.~~

~~(iii) Western diagnosis on traumatological injury.~~

~~(iv) Clinical management and medical ethics.~~

~~(v) Basic theory of traditional Chinese medicine.~~

~~(vi) Comparison of traditional Chinese medicine and western medicine.~~

~~(vii) Meridian and acupoints.~~

~~(viii) Basic traditional Chinese medicine diagnosis.~~

~~(ix) Basic theory of traditional Chinese medicine traumatology.~~

~~(x) Traditional Chinese medicine diagnosis on traumatology.~~

~~(xi) Hands on Skills of Traditional Chinese Medicine Traumatology I.~~

~~(xii) Hands on Skills of Traditional Chinese Medicine Traumatology II.~~

~~(xiii) Chinese herbs and formulas for traumatology.~~

~~(xiv) Traditional Chinese medicine traumatology case study.~~

~~(xv) One thousand hours in a clinical internship on traditional Chinese medicine traumatology.~~

~~(B) In the case of an applicant who completed an apprenticeship as a traditional Chinese medicine traumatologist for 10 years prior to January 1, 2014, furnishes satisfactory evidence of completing education, training, and at least 10 years clinical experience in traditional Chinese medicine traumatology.~~

~~(C) In the case of an applicant who has completed education and training outside of the United States or Canada, furnishes satisfactory evidence of completing education, training, and at least 10 years clinical experience in traditional Chinese medicine traumatology.~~

~~4950.3. (a) (1) An applicant for traditional Chinese medicine traumatology certification shall file an application for that certificate with the board.~~

~~(2) When submitting his or her application to the board, the applicant shall pay an application fee in a reasonable amount determined by the board, established in accordance with subdivision (d).~~

~~(b) (1) A certified traditional Chinese medicine traumatologist shall renew his or her certificate every five years.~~

~~(2) An expired certificate may be renewed at any time within three years after its expiration. The holder of the certificate shall pay all accrued and unpaid renewal fees, plus a delinquency fee, established in accordance with to subdivision (d).~~

~~(c) (1) The committee shall issue a duplicate or replacement engraved wall certificate or a duplicate or replacement renewal receipt or pocket certificate, upon request.~~

~~(2) The board shall charge a reasonable fee, established in accordance with subdivision (d), to process a request for the reissuance of a certificate under this subdivision.~~

~~(d) The board shall adopt a schedule of fees, pursuant to this section, in amounts that are sufficient to recover all reasonable costs incurred by the board, including any startup costs, under this article.~~

~~(e) Moneys received under this section shall be deposited in the Acupuncture Fund for the purposes of carrying out this article.~~

~~4950.4. It is an unfair business practice for any person to hold himself or herself out as a certified traditional Chinese medicine traumatologist or to use the title of "certified traditional Chinese medicine traumatologist" without meeting the requirements of this article.~~

~~4950.5. (a) A California certified traditional Chinese medicine traumatologist shall not practice medicine, as provided in Section 2052.~~

~~(b) A California certified traditional Chinese medicine traumatologist shall not practice within the scope of activities regulated by the State Board of Chiropractic Examiners.~~

~~SEC. 3. Section 4955 of the Business and Professions Code is amended to read:~~

~~4955. The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist or the certificate of any traditional Chinese medicine traumatologist if he or she is guilty of unprofessional conduct. As used in this section, "licensee" includes a certified traditional Chinese medicine traumatologist.~~

~~Unprofessional conduct shall include, but not be limited to, the following:~~

~~(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture or traumatology with safety to the public.~~

~~(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist or certified traditional Chinese medicine traumatologist, the record of conviction being conclusive evidence thereof.~~

~~(c) False or misleading advertising.~~

~~(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.~~

~~(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens~~

~~in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.~~

~~The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of bloodborne infectious diseases.~~

~~(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.~~

~~(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.~~

~~(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist, certified traditional Chinese medicine traumatologist, or any professional health care licensee.~~

~~(i) Any action or conduct that would have warranted the denial of the acupuncture license or the traumatology certificate.~~

~~(j) The violation of any law or local ordinance on a licensee's business premises by a licensee's employee or a person who is working under the licensee's professional license or business permit, that is substantially related to the qualifications, functions, or duties of the licensee. These violations shall subject the licensee who employed the individuals, or under whose acupuncturist license or traumatology certificate the employee is working, to disciplinary action.~~

~~(k) The abandonment of a patient by the licensee without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.~~

~~(*l*) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture or as an individual certified in traditional Chinese medicine traumatology.~~

~~SEC. 4. Section 4955.1 of the Business and Professions Code is amended to read:~~

~~4955.1. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist or certificate of any certified traditional Chinese medicine traumatologist if he or she is guilty of committing a fraudulent act, including, but not limited to, the following:~~

~~(a) Securing a license by fraud or deceit.~~

~~(b) Committing a fraudulent or dishonest act as an acupuncturist or certified traditional Chinese medicine traumatologist.~~

~~(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist or certified traditional Chinese medicine traumatologist.~~

~~(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.~~

~~(e) Failing to maintain adequate and accurate records relating to the provision of services to his or her patients.~~

~~SEC. 5. Section 4955.2 of the Business and Professions Code is amended to read:~~

~~4955.2. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist or certified traditional Chinese medicine traumatologist if he or she is guilty of committing any one of the following:~~

~~(a) Gross negligence.~~

~~(b) Repeated negligent acts.~~

~~(c) Incompetence.~~

~~SEC. 6. Section 4956 of the Business and Professions Code is amended to read:~~

~~4956. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge that is substantially related to the qualifications, functions, or duties of an acupuncturist or certified traditional Chinese medicine traumatologist is deemed to be a conviction within the meaning of this chapter.~~

~~The board may order a license or certificate suspended or revoked, or may deny a license or certificate, or may impose probationary conditions upon a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing~~

~~the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.~~

~~SEC. 7. Section 4960.2 of the Business and Professions Code is amended to read:~~

~~4960.2. The board in all cases of revocation shall certify the fact of the revocation, under the seal of the board, to the business licensing entity of the cities or counties in which the license of the acupuncturist or the certificate of the traditional Chinese medicine traumatologist has been revoked. The record of the revocation made by the county or city clerk shall be sufficient evidence of the revocation, and of the regularity of all proceedings of the board in the matter of the revocation.~~

~~SEC. 8. Section 4961 of the Business and Professions Code is amended to read:~~

~~4961. (a) Every person who is now or hereafter licensed to practice acupuncture or certified to practice traditional Chinese medicine traumatology in this state shall register, on forms prescribed by the board, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee or certificate holder has no place of practice, he or she shall notify the board of that fact. A person licensed or certified by the board shall register within 30 days after the date of his or her licensure or certification.~~

~~(b) A licensee or certificate holder shall post his or her license or certificate in a conspicuous location in his or her place of practice at all times. If an acupuncturist or certified traditional Chinese medicine traumatologist has more than one place of practice, he or she shall obtain from the board a duplicate license or certificate for each additional location and post the duplicate license or certificate at each location.~~

~~(c) Any licensee or certificate holder that changes the location of his or her place of practice shall register each change within 30 days of making that change. If a licensee or certificate holder fails to notify the board of any change in the address of a place of practice within the time prescribed by this section, the board may deny renewal of licensure or certification. An applicant for renewal of licensure or certification shall specify in his or her application whether or not there has been a change in the location of his or~~

her place of practice and, if so, the date of that change. The board may accept that statement as evidence of the change of address.

SEC. 9. Section 4964.5 is added to the Business and Professions Code, immediately following Section 4964, to read:

4964.5. The provisions of this article apply to both licensed acupuncturists and certified traditional Chinese medicine traumatologists.

SEC. 10. Section 4965 of the Business and Professions Code is amended to read:

4965. (a) (1) A license to practice acupuncture issued pursuant to this chapter 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.

(2) The board shall establish and administer a birth date renewal program for purposes of this subdivision.

(3) To renew an unexpired license, the holder shall apply for renewal on a form provided by the board and pay the renewal fee fixed by the board.

(b) A certificate for traditional Chinese medicine traumatology issued pursuant to this chapter shall expire five years after the date of issuance, if not renewed. To renew an unexpired certificate, the holder shall apply for renewal on a form provided by the board and pay the renewal fee set forth in Section 4950.3.

SEC. 11. Section 4966 of the Business and Professions Code is amended to read:

4966. (a) Except as provided in Section 4969, a license to practice acupuncture that has expired may be renewed at any time within three years after its expiration by filing an application for renewal on a form provided by the board, paying all accrued and unpaid renewal fees, and providing proof of completing continuing education requirements. If the license is not renewed prior to its expiration, the acupuncturist, as a condition precedent to renewal, shall also pay the prescribed delinquency fee.

(b) Except as provided in Section 4969, a certificate for traditional Chinese medicine traumatology that has expired may be renewed at any time within three years after its expiration by filing an application for renewal on a form provided by the board, and paying all accrued and unpaid renewal fees. If the certificate is not renewed prior to its expiration, the traditional Chinese

~~medicine traumatologist, as a condition precedent to renewal, shall also pay a delinquency fee, set in accordance with Section 163.5.~~

~~(c) Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date the delinquency fee is paid, whichever occurs last. If so renewed, the license or certificate shall continue in effect through the expiration date provided in Section 4965, after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.~~

~~SEC. 12. Section 4967 of the Business and Professions Code is amended to read:~~

~~4967. A person who fails to renew his or her license or certificate within three years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license or certificate if he or she meets all of the following requirements:~~

~~(a) Has not committed any acts or crimes constituting grounds for denial of licensure or certification under Division 1.5 (commencing with Section 475).~~

~~(b) If an acupuncturist takes and passes the examination, if any, which would be required of him or her if an initial application for licensure was being made, or, if an acupuncturist or certified traditional Chinese medicine traumatologist otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice as an acupuncturist or certified traditional Chinese medicine traumatologist.~~

~~(c) Pays all of the fees that would be required if an initial application for licensure or certification was being made.~~

~~(d) The board may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license to practice acupuncture is issued without an examination pursuant to this section.~~

~~SEC. 13. Section 4969 of the Business and Professions Code is amended to read:~~

~~4969. (a) A suspended license or certificate is subject to expiration and shall be renewed as provided in this article, but the renewal does not entitle the acupuncturist or certified traditional Chinese medicine traumatologist, while the license or certificate remains suspended, and until it is reinstated, to engage in the practice of acupuncture or traditional Chinese medicine~~

~~traumatology, or in any other activity or conduct in violation of the order or judgment by which the license or certificate was suspended.~~

~~(b) A revoked license or certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the former licensee or certificate holder, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license or certificate was reinstated, plus the delinquency fee, if any, accrued at the time of its expiration.~~

~~SEC. 14. 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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Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 981
Author: Senator Bob Huff
Bill Version: Amended April 10, 2014
Subject: Regulations: review process
Sponsor: Author

STATUS OF BILL: Heard in Governmental Organization 4/22/14; failed passage (5:5, 1 abstain); re-referred to Comm. on Appropriations

SUMMARY:

This bill would require state agencies to review each regulation adopted prior to January 1, 2014 and provide a report of the findings to the Legislature on or before January 1, 2016, and every 5 years thereafter.

EXISTING LAW:

- The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of regulatory actions by the Office of Administrative Law (OAL).
- The Chiropractic Initiative Act provides the Board with the power to adopt rules and regulations necessary for the performance of its work, the enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

THIS BILL WOULD:

- Require state agencies to review each regulation adopted prior to January 1, 2014.
- Require state agencies to submit a report of their regulations to the Legislature which includes the approval date, purpose, statutory authority, identification of impacted sectors, direct costs by sector, determination of duplicity, relevancy, and whether regulations should be changed to become more effective or less burdensome.
- Require state agencies to consult with affected parties to develop the report.
- Require state agencies to submit the completed report to the Legislature on or before January 1, 2016.
- Set a repeal date of this provision on January 1, 2020, unless repealed or extended through legislation enacted prior to January 1, 2010.
- Require state agencies, on or before January 1, 2021, and at least every five years thereafter, to review each regulation which is at least 20 years old and has not been reviewed within the prior 10 years.

- Require state agencies to submit a report of their regulations to the Legislature which includes the approval date, purpose, statutory authority, identification of impacted sectors, direct costs by sector, determination of duplicity, relevancy, and whether regulations should be changed to become more effective or less burdensome.
- Require state agencies to submit the completed report to the Legislature on an annual basis.

BACKGROUND:

The author argues that the 2013 Bureau of Labor Statistics ranked California as the 5th worst state in unemployment and correlates this ranking with the impact of California's excessive, duplicative and onerous laws on businesses. The Office of Administrative Law (OAL) is charged with reviewing and approving regulations from agencies which have complied with requirements set forth in the Administrative Procedure Act, but does not review the cost information to assess accuracy.

According to the author, this bill will reduce burdensome and duplicative regulations thereby improving the economy by welcoming new businesses and investments to California.

FISCAL IMPACT:

The fiscal impact to the BCE is significant. This provision would require the BCE to review a total of 97 regulations and consult with affected parties (approximately 13,000 licensees, BCE approved chiropractic schools and professional associations). The BCE is not adequately staffed to absorb this workload. It is estimated that the amount of work associated with these provisions would require the BCE to hire a consultant or a half-time AGPA devoted specifically to the initial review and report compilation at an approximate cost of $65,356 (salary+benefits). In 2012, the BCE attempted to adopt regulations to require licensees to provide the BCE with e-mail addresses; however, this proposal was withdrawn due to advisement of the BCE's legal counsel. Without e-mail as a viable option, the BCE would potentially be required to invite all 13,500 licensees to participate in this endeavor via USPS mail, at a cost ranging between $6500 and $13,800 for mailing, printing and labor for a single meeting notice. It is anticipated that multiple meetings would have to be scheduled and noticed to affected parties, thereby increasing the costs to the BCE. Ongoing costs for subsequent reviews would likely be more due to increases in civil service salaries and postage rates.

SUPPORT & OPPOSITION:

Support:

Board of Pharmacy (support if amended)

Opposition: None on record

ARGUMENTS:

Pro:

- This bill may reduce duplicative and unnecessary regulations affecting California businesses.

Con:

- These provisions are burdensome to the resources and finances of the BCE due to limited budget and staff.
- These provisions are unnecessary for the BCE as most of the regulations adopted by the Board were promulgated to clarify the Chiropractic Initiative Act, which was adopted in 1922 and has remained unchanged.
- It is unclear whether the "adoption date" required in the report to the Legislature means the date the provision was initially adopted or each adopted amendment to a regulation that occurred thereafter. If each adopted rulemaking package is required to be reported, the workload and costs to comply with these provisions will increase significantly as the exact number of rulemaking packages this Board has promulgated is currently unknown. Further, locating rulemaking documents approved in the early 1900's may prove to be challenging.
- The author contends that OAL does not verify the accuracy of costs submitted in the rulemaking package. While this may be the case, all rulemaking packages which have an economic impact must be submitted to the Department of Finance for review and approval prior to submission to OAL for final approval.
- Many of the BCE's recent rulemaking packages were promulgated to comply with new legislative mandates.
- The Board of Pharmacy argues that the workload associated with this bill is too cumbersome for state agencies. Further, healthcare boards are subject to an in depth review via the Sunset Review process by the Legislature, which requires boards to report all proposed regulations initiated since the previous Sunset Review. The Board of Pharmacy suggests the bill be amended to exempt health care boards who are subject to Sunset Review from the requirements of this bill.

STAFF RECOMMENDED POSITION:

OPPOSE – This bill would create a significant fiscal impact to the BCE in costs for labor, mailing and printing as well as workload and is unnecessary as most of the BCE's regulations were adopted to clarify an unchanging Act or comply with new legislative mandates.

AMENDED IN SENATE APRIL 10, 2014

SENATE BILL No. 981

Introduced by Senator Huff
(Coauthor: Senator Gaines)
(Coauthors: Assembly Members Hagman, Harkey, Jones, and Olsen)

February 11, 2014

An act to add Section 11349.11 to, and to add and repeal Section 11349.10 of, the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

SB 981, as amended, Huff. Regulations: review process.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies.

This bill would require each agency to review each regulation adopted prior to January 1, 2014, and to develop a report with prescribed information to be submitted to the Legislature on or before January 1, 2016. The bill would also require each agency, on or before January 1, 2021, and at least every 5 years thereafter, to conduct additional reviews of regulations that have been in effect for at least 20 years, as specified, and to submit an annual report to the Legislature that identifies the regulations reviewed during that year and the associated findings.

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

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

1 SECTION 1. Section 11349.10 is added to the Government
2 Code, to read:

11349.10. (a) Each agency shall review each regulation adopted prior to January 1, 2014. The review shall be developed into a report that includes, but is not limited to, the following information for each regulation:

(1) The date that the office approved the regulation.

(2) The purpose.

(3) The statutory authority.

(4) The identification of impacted sectors.

(5) The direct costs by sector.

(6) Whether the regulation is duplicative of other regulations.

(7) Whether the regulation is still relevant.

(8) Whether the regulation needs to be updated in order to become ~~more effective or~~ less burdensome *or more effective*.

(b) The agency shall consult with parties affected by the regulation in developing the report.

(c) The agency shall submit the report to the Legislature pursuant to Section 9795 on or before January 1, 2016.

(d) To the extent that an agency is a component member of another agency, the member agency shall submit a copy of its report to the highest ranking agency head prior to submitting the report to the Legislature as required by this section. The agency head shall review the reports for each component agency for the purpose of identifying duplicative or conflicting regulations between departments.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 11349.11 is added to the Government Code, to read:

11349.11. (a) On or before January 1, 2021, and at least every five years thereafter, each agency shall review each regulation that is at least 20 years old and has not been reviewed within the last 10 years. The review shall be developed into a report that shall be submitted to the Legislature and includes, but is not limited to, the following information for each regulation:

(1) The date that the office approved the regulation.

(2) The purpose.

(3) The statutory authority.

(4) The identification of impacted sectors.

(5) The direct costs by sector.

1 (6) Whether the regulation is duplicative of other regulations.
2 (7) Whether the regulation is still relevant.
3 (8) Whether the regulation needs to be updated in order to
4 become more effective or less burdensome.
5 (b) Each agency shall submit an annual report to the Legislature
6 pursuant to Section 9795 that identifies the regulations reviewed
7 during the previous year and the associated findings.

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SB 1159 (Lara) Bill Analysis

To be handed out at board meeting

AMENDED IN SENATE APRIL 7, 2014

SENATE BILL No. 1159

Introduced by Senator Lara

February 20, 2014

An act to amend Section ~~494~~ *30* of the Business and Professions Code, *and to amend Section 19528 of the Revenue and Taxation Code,* relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Lara. Professions and vocations: license ~~suspension or restriction.~~ *applicants: federal tax identification number.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other ~~entities~~ *licensing bodies*. Existing law ~~authorizes a board or an administrative law judge to, upon petition, issue an interim order suspending a licensee or imposing license restrictions if the petition demonstrates that the licensee has engaged in specified violations of law or has been convicted of a crime related to the licensed activity and permitting the licensee to continue to practice would endanger the public~~ *requires those licensing bodies to require a licensee, at the time of issuance of the license, to provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all other licensees. Existing law requires those licensing bodies to report to the Franchise Tax Board any licensee who fails to provide the federal employer identification number or social security number, and subjects the licensee to a penalty for failing to provide the information after notification, as specified.*

This bill would ~~make technical, nonsubstantive changes to that provision~~ *require those licensing bodies to require an applicant other*

than a partnership to provide either a federal tax identification number or social security number, if one has been issued to the applicant, and would require the licensing bodies to report to the Franchise Tax Board, and subject a licensee to a penalty, for failure to provide that information, as described above. The bill would make other conforming changes.

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

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

1 *SECTION 1. Section 30 of the Business and Professions Code*
2 *is amended to read:*
3 30. (a) Notwithstanding any other law, any board, as defined
4 in Section 22, and the State Bar and the Bureau of Real Estate shall
5 at the time of issuance of ~~the~~ *an initial or renewal* license require
6 that the ~~licensee~~ *applicant* provide its federal employer
7 identification number, if the ~~licensee~~ *applicant* is a partnership, or
8 ~~his or her~~ *the applicant's federal taxpayer identification number*
9 *or* social security number, *if one has been issued,* for all ~~others~~
10 *other applicants*.
11 (b) Any ~~licensee~~ *applicant* failing to provide the federal
12 *employer* identification ~~number~~ *number,* or *the federal taxpayer*
13 *identification number or* social security number, *if one has been*
14 *issued to the individual,* shall be reported by the licensing board
15 to the Franchise Tax ~~Board and, if failing~~ *Board. If the applicant*
16 *fails* to provide *that information* after notification pursuant to
17 paragraph (1) of subdivision (b) of Section 19528 of the Revenue
18 and Taxation Code, *the applicant* shall be subject to the penalty
19 provided in paragraph (2) of subdivision (b) of Section 19528 of
20 the Revenue and Taxation Code.
21 (c) In addition to the penalty specified in subdivision (b), a
22 licensing board ~~may~~ *shall* not process ~~any~~ *an* application for an
23 ~~original~~ *initial* license unless the applicant ~~or licensee~~ provides its
24 federal employer identification number, or *federal taxpayer*
25 *identification number or* social security number, *if one has been*
26 *issued to the individual,* where requested on the application.
27 (d) A licensing board shall, upon request of the Franchise Tax
28 Board, furnish to the Franchise Tax Board the following
29 information with respect to every licensee:

(1) Name.
(2) Address or addresses of record.
(3) Federal employer identification number if the ~~entity~~ *licensee* is a partnership, or *the licensee's federal taxpayer identification number or* social security number, *if one has been issued to the individual,* for all ~~others~~ *other licensees*.
(4) Type of license.
(5) Effective date of license or a renewal.
(6) Expiration date of license.
(7) Whether license is active or inactive, if known.
(8) Whether license is new or a renewal.
(e) For the purposes of this section:
(1) "Licensee" means ~~any~~ *a person or* entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.
(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.
(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Bureau of Real Estate.
(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.
(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.
(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code~~, the social security number and~~ *a* federal employer identification number, *federal taxpayer identification number, or social security number* furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.
(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided

in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the ~~social security account number or~~ federal employer identification number, *federal taxpayer identification number, or social security number* for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the *federal taxpayer identification number or* social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a *federal taxpayer identification number or* social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other ~~provision of~~ law, any board, as defined in Section 22, and the State Bar and the Bureau of Real Estate shall at the time of issuance of the license require that each licensee provide the *federal taxpayer identification number or* social security number, *if any has been issued to the licensee,* of each individual listed on the license and any person who qualifies the license. For the purposes of this subdivision, "licensee" means any entity that is issued a license by any board, as defined in Section 22, the State Bar, the Bureau of Real Estate, and the Department of Motor Vehicles.

SEC. 2. Section 19528 of the Revenue and Taxation Code is amended to read:

19528. (a) Notwithstanding any other ~~provision of~~ law, the Franchise Tax Board may require any board, as defined in Section 22 of the Business and Professions Code, and the State Bar, the Bureau of Real Estate, and the Insurance Commissioner (hereinafter referred to as licensing board) to provide to the Franchise Tax Board the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number ~~(if the entity is a partnership) or social security number (for all others)~~, *if the licensee is a partnership, or the licensee's federal taxpayer identification number or social security number, if any has been issued, of all other licensees*.

(4) Type of license.

(5) Effective date of license or renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or renewal.

(b) The Franchise Tax Board may do the following:

(1) Send a notice to any licensee failing to provide the *federal employer* identification number, *federal taxpayer identification number,* or social security number as required by subdivision (a) of Section 30 of the Business and Professions Code and subdivision (a) of Section 1666.5 of the Insurance Code, describing the information that was missing, the penalty associated with not providing it, and that failure to provide the information within 30 days will result in the assessment of the penalty.

(2) After 30 days following the issuance of the notice described in paragraph (1), assess a one hundred dollar ($100) penalty, due and payable upon notice and demand, for any licensee failing to provide either its federal employer identification number (if the licensee is a partnership) or his or her social security number (for all others) as required in Section 30 of the Business and Professions Code and Section 1666.5 of the Insurance Code.

(c) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished to the Franchise Tax Board pursuant to Section 30 of the Business and Professions Code or Section 1666.5 of the Insurance Code shall not be deemed to be a public record and shall not be open to the public for inspection.

~~SECTION 1. Section 494 of the Business and Professions Code is amended to read:~~

~~494. (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending a licensee or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include~~

~~affidavits that demonstrate, to the satisfaction of the board, both of the following:~~

~~(1) The licensee has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.~~

~~(2) Permitting the licensee to continue to engage in the licensed activity, or permitting the licensee to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.~~

~~(b) An interim order provided for in this section shall not be issued without notice to the licensee unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.~~

~~(c) Except as provided in subdivision (b), the licensee shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licensee shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licensee shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licensee waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.~~

~~(d) At the hearing on the petition for an interim order, the licensee may do all of the following:~~

~~(1) Be represented by counsel.~~

~~(2) Have a record made of the proceedings, copies of which shall be available to the licensee upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.~~

~~(3) Present affidavits and other documentary evidence.~~

~~(4) Present oral argument.~~

~~(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the~~

~~evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.~~

~~(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licensee files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.~~

~~(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.~~

~~(h) The board may, in its sole discretion, delegate the hearing on a petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).~~

~~(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against a licensee, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licensee was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.~~

~~If the interim order issued by the agency provides for anything less than a complete suspension of the licensee from his or her business or profession, and the licensee violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licensee and proof of violation, modify or expand the interim order.~~

~~(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.~~

~~(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.~~

~~(*l*) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.~~

~~(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not apply to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.~~

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Board of Chiropractic Examiners
Bill Analysis

Bill Number: SB 1256
Author: Senator Holly Mitchell
Bill Version: Introduced February 21, 2014
Subject: Medical services: credit
Sponsor: Consumer Federation of California

STATUS OF BILL: Referred to Committee on Judiciary; hearing set for April 22, 2014. (no update)

SUMMARY:

This bill would prohibit healing arts licensees, or their employees, from establishing a line of credit extended by a third party for a patient without first providing written notice and a written treatment plan.

EXISTING LAW:

- The Business and Professions Code prohibits healing arts licensees from referring a person for certain health care services if the licensee has a financial interest with the person or entity that receives the referral.
- Business and Profession Code section 654.3 sets forth requirements for dentists before establishing a credit card or loan, through a third party lender, to a patient.

THIS BILL WOULD:

- Define a "licensee" as an individual, firm, partnership, association, corporation, limited liability company, or cooperative association licensed under Division 2 or under any initiative act or division referred to in Division 2.
- Define a "licensee's office" as an office of a licensee in solo practice or an office in which services or goods are personally provided by the licensees or employees in that office, or personally by independent contractors in that office.
- Define "open-end credit" as credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions.
- Prohibit a licensee from charging treatment or costs to an open-end credit, that is extended by a third party, and that is arranged for, or established in, a licensee's office, before the date upon which the treatment is rendered or costs incurred without providing the patient a list of the treatment and services to be rendered with estimated costs detailing which treatments or services are being charged in advance.
- Require a licensee to refund costs for treatment or services which have not been rendered to the lender for any payment received through credit established through a third party at the licensee's office within 15 business days of a patient's request.

- Require a licensee to provide the patient with a prescribed disclosure regarding credit for medical services and obtain the patient's signature prior to arranging for a third party line of credit.
- Require the licensee to provide the patient with a written treatment plan including estimated costs for each treatment or service, the patient's out of pocket costs not covered by insurance, prior to arranging for a third party line of credit.
- Prohibit a licensee from arranging a third party line of credit for a patient who primarily communicates in a language other than English and is one of the Medi-Cal threshold languages, unless the written notice provided by this bill is provided in that same language.
- Prohibit a licensee from arranging for a third party line of credit for a patient who has been administered anesthesia, conscious sedation or nitrous oxide.
- Allows a patient who suffers damage as a result of the use or employment of a method by a person who willfully violates these provisions to seek relief.

BACKGROUND:

According to the author, medical credit cards resemble other credit cards; however, there are very important differences to consider; medical credit cards are solicited and offered by medical providers, not by banks or creditors.

Marketing credit cards to consumers when they are most vulnerable, such as when they are in pain or needing a recommended treatment for which they are unable to afford, makes the solicitor an advisor to that patient, often clouding the patients understanding of the loan or credit being offered. The relationship between doctor and their patient is very different from the relationship between a bank, or creditor, and a consumer. Many of these medical lines of credit offer deferred interest with terms that approve high interest rates and retroactive penalty fees

In 2009, AB 171 (Jones) was enacted and governs the arrangement of medical credit cards or loans in dental offices, which helped to protect patients from misleading information about medical credit cards and payment plans arranged by their dental office. The author believes that this bill will provide some basic protection to healthcare consumers and safeguards them from being misled into establishing credit limits they cannot afford.

FISCAL IMPACT:

The BCE does not anticipate a fiscal impact as a result of this bill. In fact, this proposal may decrease the number of complaints received by the board regarding third party lines of credit offered by doctors of chiropractic.

SUPPORT & OPPOSITION:

Support:
Consumer Federation of California (Sponsor)

Opposition:
None on record

ARGUMENTS:

Pro:

- This bill will provide consistency regarding lines of credit offered by healthcare licensees under Division 2 and dentists.
- This bill will protect healthcare consumers from deceitful practices related to third party lines of credit offered by their healthcare provider.
- Establishing full disclosure and guidelines for offering lines of credit to patients by healthcare providers may reduce the number of complaints received by the Board.
- This bill may prevent patients who are most vulnerable, due to age, limited English skills, low-income, or pain threshold from opening lines of credit for healthcare services they cannot afford.
- This bill will protect patients by prohibiting the establishment of lines of credit while they are under the influence of a general anesthesia.
- This bill would provide patients with a method of seeking relief from damage suffered by deceitful practices by a health care provider in offering third party lines of credit for their services or treatment.
- This bill will ensure that patients are aware that they are taking out a line of credit with a credit card company rather than with their healthcare provider.

Con:

- The administrative burdens this proposal places on licensees to create forms and establish procedures may make some healthcare providers opt to forego offering third party lines of credit to their patients.

STAFF RECOMMENDED POSITION:

SUPPORT

SENATE BILL No. 1256

Introduced by Senator Mitchell

February 21, 2014

An act to add Section 654.4 to the Business and Professions Code, relating to health care services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1256, as introduced, Mitchell. Medical services: credit.

Existing law prohibits a healing arts licensee, including physicians and surgeons, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners, from referring a person for certain health care services if the licensee has a financial interest, as defined, with the person or entity that receives the referral. Existing law provides specified exemptions from this prohibition. Under existing law, a violation of the provisions governing referrals is a crime.

Existing law prohibits a dentist, or an employee or agent of that dentist, from arranging for or establishing credit extended by a 3rd party for a patient without first providing a written notice and a written treatment plan, as specified. Existing law prohibits a dentist, or employee or agent of a dentist, from charging treatment not yet rendered or costs not yet incurred to an open-end credit extended by a 3rd party that is arranged for or established in the dental office without first providing the patient with specified information regarding the treatment and services to be rendered and ensuring the patient's receipt of the treatment plan. A person who willfully violates these provisions is subject to specified civil liability.

This bill would similarly prohibit a healing arts licensee, or an employee or agent of that licensee, from arranging for or establishing credit extended by a 3rd party for a patient without first providing a written notice and a written treatment plan, and would prohibit that

arrangement or establishment of credit with regard to a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide. The bill would prohibit a healing arts licensee, or employee or agent of a licensee, from charging treatment not yet rendered or costs not yet incurred to an open-end credit extended by a 3rd party that is arranged for or established in the licensee's office without first providing the patient with specified information regarding the treatment and services to be rendered and ensuring the patient's receipt of the treatment plan. The bill would require a healing arts licensee to refund to the lender any payment received for treatment that has not been rendered or costs that have not been incurred, as specified, within 15 business days upon the patient's request. The bill would provide that a person who willfully violates these provisions is subject to specified civil liability.

Because a violation of these provisions 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:

1 SECTION 1. Section 654.4 is added to the Business and
2 Professions Code, to read:
3 654.4. (a) For purposes of this section, the following
4 definitions shall apply:
5 (1) "Licensee" means an individual, firm, partnership,
6 association, corporation, limited liability company, or cooperative
7 association licensed under this division or under any initiative act
8 or division referred to in this division.
9 (2) "Licensee's office" means either of the following:
10 (A) An office of a licensee in solo practice.
11 (B) An office in which services or goods are personally provided
12 by the licensee or by employees in that office, or personally by
13 independent contractors in that office, in accordance with law.

Employees and independent contractors shall be licensed or certified when licensure or certification is required by law.

(3) "Open-end credit" means credit extended by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the amount of credit that may be extended to the debtor during the term of the plan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

(4) "Patient" includes, but is not limited to, the patient's parent or other legal representative.

(b) It is unlawful for a licensee to charge treatment or costs to an open-end credit, that is extended by a third party and that is arranged for, or established in, a licensee's office, before the date upon which the treatment is rendered or costs are incurred, without first providing the patient a list of the treatment and services to be rendered, the estimated costs of the treatment and services, and which treatment and services are being charged in advance of rendering or incurring of costs, and ensuring that the patient has received the treatment plan required by subdivision (e).

(c) A licensee shall, within 15 business days of a patient's request, refund to the lender any payment received through credit extended by a third party that is arranged for, or established in, a licensee's office for treatment that has not been rendered or costs that have not been incurred.

(d) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit extended by a third party for a patient without first providing the following written notice, on one page in at least 14-point type, and obtaining a signature from the patient:

"Credit for Medical Services

The attached application and information is for a credit card/line of credit or loan to help you finance your medical treatment. You should know that:

You are applying for a ____ credit card/line of credit or a ____ loan for $____.

You do not have to apply for the credit card/line of credit or loan. You may pay your medical provider for treatment in another manner.

This credit card/line of credit or loan is not a payment plan with the provider's office; it is credit with [name of company issuing the credit card/line of credit or loan]. Your medical provider does not work for this company.

Before applying for this credit card/line of credit or loan, you have the right to a written treatment plan from your medical provider that includes the anticipated treatment to be provided and the estimated costs of each service.

If you are approved for a credit card/line of credit, your medical provider can only charge treatment and laboratory costs to that credit card/line of credit when you get the treatment or the medical provider incurs costs unless your medical provider has first given you a list of treatments that you are paying for in advance and the cost for each treatment or service.

You have the right to receive a credit to your credit card/line of credit or loan account refunded for any costs charged to the credit card/line of credit or loan for treatment that has not been rendered or costs that your medical provider has not incurred. Your medical provider must refund the amount of the charges to the lender within 15 business days of your request, after which the lender will credit your account.

Please read carefully the terms and conditions of this credit card/line of credit or loan, including any promotional offers.

You may be required to pay interest rates on the amount charged to the credit card/line of credit or the amount of the loan. If you miss a payment or do not pay on time, you may have to pay a penalty on the entire cost of your procedure and/or a higher interest rate.

If you do not pay the money that you owe the company that provides you with a credit card/line of credit or loan, your missed payments can appear on your credit report and could hurt your credit rating. You could also be sued.

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[Patient's Signature]"

(e) A licensee shall give a patient a written treatment plan prior to arranging for or establishing credit extended by a third party. The treatment plan shall include each anticipated service to be provided and the estimated cost of each service. If a patient is covered by a private or government medical benefit plan or medical insurance, from which the licensee takes assignment of benefits, the treatment plan shall indicate the patient's private or government-estimated share of cost for each service. If the licensee does not take assignment of benefits from a patient's medical benefit plan or insurance, the treatment plan shall indicate that the treatment may or may not be covered by a patient's medical benefit or insurance plan, and that the patient has the right to confirm medical benefit or insurance information from the patient's plan, insurer, or employer before beginning treatment.

(f) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit extended by a third party for a patient with whom the licensee, or an employee or agent of that licensee, communicates primarily in a language other than English that is one of the Medi-Cal threshold languages, unless the written notice information required by subdivision (d) is also provided in that language.

(g) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit that is extended by a third party for a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide.

(h) A patient who suffers any damage as a result of the use or employment by any person of a method, act, or practice that willfully violates this section may seek the relief provided by Chapter 4 (commencing with Section 1780) of Title 1.5 of Part 4 of Division 3 of the Civil Code.

(i) The rights, remedies, and penalties established by this article are cumulative, and shall not supersede the rights, remedies, or penalties established under other laws.

SEC. 2. 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

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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