

Agenda Item #24.A.1.



BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY · GOVERNOR EDMUND G. BROWN JR.
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DATE: August 3, 2016

TO: Board Members

FROM: 
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Executive Officer

SUBJECT: 2016 Legislation

Below is a list of bills of interest to the Board to discuss, and adopt or modify positions on the bills.

Assembly Bills

AB12
AB611
AB750
AB840
AB923
AB1033
AB1165
AB2859

Senate Bills

SB390
SB779
SB780
SB1155
SB1194
SB1195

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
ASSEMBLY BILLS 2015-2016
August 5, 2016

BILL #	AUTHOR	SUBJECT	RECOMMENDED POSITION	COMMITTEE POSITION	BILL STATUS
AB12	Cooley	State government: administrative regulations: review	WATCH		Senate APPR
AB611	Dahle	Controlled substances: prescriptions: reporting	SUPPORT	WATCH	Assembly B&P
AB750	Low	Business and professions: retired category: licenses			Assembly APPR
AB840	Ridley-Thomas	Nurses and certified nurse assistants: overtime	SUPPORT	WATCH	Senate APPR
AB923	Steinorth	Respiratory care practitioners		WATCH	Senate Rules
AB1033	Garcia	Economic impact assessment: small business definition		WATCH	Assembly
AB1165	Ridley-Thomas	Vocational nursing: secondary and post-secondary education	WATCH	SUPPORT	Assembly B&P
AB2859	Low	Professions and vocations: retired category: licenses	WATCH	WATCH	Senate APPR

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
SENATE BILLS 2015-2016
August 5, 2016

BILL #	AUTHOR	SUBJECT	RECOMMENDED. POSITION	COMMITTEE POSITION	BILL STATUS
SB390	Bates	Home health agencies: skilled nursing services	WATCH		Senate Health
SB779	Hall	Skilled nursing facilities: certified nurse assistant staffing	SUPPORT		Senate APPR
SB780	Mendoza	Psychiatric technicians and psychiatric technician assistants: overtime	SUPPORT	WATCH	Assembly APPR
SB1155	Morrell	Professions and vocations: licenses: military service	SUPPORT	SUPPORT	Assembly APPR
SB1194	Hill	Psychology: Board of Psychology Personnel			Assembly APPR
SB1195	Hill	Professions and vocations: board actions	WATCH		Senate Rules

AMENDED IN SENATE AUGUST 19, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 12

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

December 1, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would, until January 1, 2019, require each state agency to, on or before January 1, 2018, review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified.

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

4
5 CHAPTER 3.6. REGULATORY REFORM

6
7 Article 1. Findings and Declarations

8
9 11366. The Legislature finds and declares all of the following:

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

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

20 (c) At a time when the state’s economy is slowly recovering,
21 unemployment and underemployment continue to affect all
22 Californians, especially older workers and younger workers who
23 received college degrees in the last seven years but are still awaiting
24 their first great job, and with state government improving but in
25 need of continued fiscal discipline, it is important that state
26 agencies systematically undertake to identify, publicly review, and
27 eliminate overlapping, inconsistent, duplicative, or out-of-date
28 regulations, both to ensure they more efficiently implement and
29 enforce laws and to reduce unnecessary and outdated rules and
30 regulations.

31
32 Article 2. Definitions

33
34 11366.1. For the purposes of this chapter, the following
35 definitions shall apply:

36 (a) “State agency” means a state agency, as defined in Section
37 11000, except those state agencies or activities described in Section
38 11340.9.

1 (b) “Regulation” has the same meaning as provided in Section
2 11342.600.

3
4 Article 3. State Agency Duties
5

6 11366.2. On or before January 1, 2018, each state agency shall
7 do all of the following:

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

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

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

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

23 (e) Notify the appropriate policy and fiscal committees of each
24 house of the Legislature of the revisions to regulations that the
25 state agency proposes to make at least 30 days prior to initiating
26 the process under Article 5 (commencing with Section 11346) of
27 Chapter 3.5 or Section 100 of Title 1 of the California Code of
28 Regulations.

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

34 (2) The report shall be submitted in compliance with Section
35 9795 of the Government Code.

36 11366.3. (a) On or before January 1, 2018, each agency listed
37 in Section 12800 shall notify a department, board, or other unit
38 within that agency of any existing regulations adopted by that
39 department, board, or other unit that the agency has determined
40 may be duplicative, overlapping, or inconsistent with a regulation

1 adopted by another department, board, or other unit within that
2 agency.

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

14 11366.4. An agency listed in Section 12800 shall notify a state
15 agency of any existing regulations adopted by that agency that
16 may duplicate, overlap, or be inconsistent with the state agency's
17 regulations.

18 11366.45. This chapter shall not be construed to weaken or
19 undermine in any manner any human health, public or worker
20 rights, public welfare, environmental, or other protection
21 established under statute. This chapter shall not be construed to
22 affect the authority or requirement for an agency to adopt
23 regulations as provided by statute. Rather, it is the intent of the
24 Legislature to ensure that state agencies focus more efficiently and
25 directly on their duties as prescribed by law so as to use scarce
26 public dollars more efficiently to implement the law, while
27 achieving equal or improved economic and public benefits.

28
29 Article 4. Chapter Repeal
30

31 11366.5. This chapter shall remain in effect only until January
32 1, 2019, and as of that date is repealed, unless a later enacted
33 statute, that is enacted before January 1, 2019, deletes or extends
34 that date.

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

AMENDED IN ASSEMBLY MARCH 24, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 611

Introduced by Assembly Member Dahle

February 24, 2015

An act to amend Section 11165.1 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 611, as amended, Dahle. Controlled substances: prescriptions: reporting.

Existing law requires certain health care practitioners and pharmacists to apply to the Department of Justice to obtain approval to access information contained in the Controlled Substance Utilization Review and Evaluation System (CURES) Prescription Drug Monitoring Program (PDMP) regarding the controlled substance history of a patient under his or her care. Existing law requires the Department of Justice, upon approval of an application, to provide the approved health care practitioner or pharmacist the history of controlled substances dispensed to an individual under his or her care. Existing law authorizes an application to be denied, or a subscriber to be suspended, for specified reasons, including, among others, a subscriber accessing information for any reason other than caring for his or her patients.

This bill would also authorize an individual designated to investigate a holder of a professional license to apply to the Department of Justice to obtain approval to access information contained in the CURES PDMP

regarding the controlled substance history of an applicant or a licensee for the purpose of investigating the alleged substance abuse of a licensee. The bill would, upon approval of an application, require the department to provide to the approved individual the history of controlled substances dispensed to the licensee. The bill would clarify that only a subscriber who is a health care practitioner or a pharmacist may have an application denied or be suspended for accessing subscriber information for any reason other than caring for his or her patients. The bill would also specify that an application may be denied, or a subscriber may be suspended, if a subscriber who has been designated to investigate the holder of a professional license accesses information for any reason other than investigating the holder of a professional license.

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 11165.1 of the Health and Safety Code
2 is amended to read:
3 11165.1. (a) (1) (A) (i) A health care practitioner authorized
4 to prescribe, order, administer, furnish, or dispense Schedule II,
5 Schedule III, or Schedule IV controlled substances pursuant to
6 Section 11150 shall, before January 1, 2016, or upon receipt of a
7 federal Drug Enforcement Administration (DEA) registration,
8 whichever occurs later, submit an application developed by the
9 Department of Justice to obtain approval to access information
10 online regarding the controlled substance history of a patient that
11 is stored on the Internet and maintained within the Department of
12 Justice, and, upon approval, the department shall release to that
13 practitioner the electronic history of controlled substances
14 dispensed to an individual under his or her care based on data
15 contained in the CURES Prescription Drug Monitoring Program
16 (PDMP).
17 (ii) A pharmacist shall, before January 1, 2016, or upon
18 licensure, whichever occurs later, submit an application developed
19 by the Department of Justice to obtain approval to access
20 information online regarding the controlled substance history of
21 a patient that is stored on the Internet and maintained within the
22 Department of Justice, and, upon approval, the department shall
23 release to that pharmacist the electronic history of controlled

1 substances dispensed to an individual under his or her care based
2 on data contained in the CURES PDMP.

3 (iii) (I) An individual designated by a board, bureau, or
4 program within the Department of Consumer Affairs to investigate
5 a holder of a professional license may, for the purpose of
6 investigating the alleged substance abuse of a licensee, submit an
7 application developed by the Department of Justice to obtain
8 approval to access information online regarding the controlled
9 substance history of a licensee that is stored on the Internet and
10 maintained within the Department of Justice, and, upon approval,
11 the department shall release to that individual the electronic history
12 of controlled substances dispensed to the licensee based on data
13 contained in the CURES PDMP. ~~An application for an individual
14 designated by a board, bureau, or program that does not regulate
15 health care practitioners authorized to prescribe, order, administer,
16 furnish, or dispense Schedule II, Schedule III, or Schedule IV
17 controlled substances pursuant to Section 11150~~ The application
18 shall contain facts demonstrating the probable cause to believe the
19 licensee has violated a law governing controlled substances.

20 (II) *This clause does not require an individual designated by a
21 board, bureau, or program within the Department of Consumer
22 Affairs that regulates health care practitioners to submit an
23 application to access the information stored within the CURES
24 PDMP.*

25 (B) An application may be denied, or a subscriber may be
26 suspended, for reasons which include, but are not limited to, the
27 following:

- 28 (i) Materially falsifying an application for a subscriber.
- 29 (ii) Failure to maintain effective controls for access to the patient
30 activity report.
- 31 (iii) Suspended or revoked federal DEA registration.
- 32 (iv) Any subscriber who is arrested for a violation of law
33 governing controlled substances or any other law for which the
34 possession or use of a controlled substance is an element of the
35 crime.
- 36 (v) Any subscriber described in clause (i) or (ii) of subparagraph
37 (A) accessing information for any other reason than caring for his
38 or her patients.

1 (vi) Any subscriber described in clause (iii) of subparagraph
2 (A) accessing information for any other reason than investigating
3 the holder of a professional license.
4 (C) Any authorized subscriber shall notify the Department of
5 Justice within 30 days of any changes to the subscriber account.
6 (2) A health care practitioner authorized to prescribe, order,
7 administer, furnish, or dispense Schedule II, Schedule III, or
8 Schedule IV controlled substances pursuant to Section 11150 or
9 a pharmacist shall be deemed to have complied with paragraph
10 (1) if the licensed health care practitioner or pharmacist has been
11 approved to access the CURES database through the process
12 developed pursuant to subdivision (a) of Section 209 of the
13 Business and Professions Code.
14 (b) Any request for, or release of, a controlled substance history
15 pursuant to this section shall be made in accordance with guidelines
16 developed by the Department of Justice.
17 (c) In order to prevent the inappropriate, improper, or illegal
18 use of Schedule II, Schedule III, or Schedule IV controlled
19 substances, the Department of Justice may initiate the referral of
20 the history of controlled substances dispensed to an individual
21 based on data contained in CURES to licensed health care
22 practitioners, pharmacists, or both, providing care or services to
23 the individual.
24 (d) The history of controlled substances dispensed to an
25 individual based on data contained in CURES that is received by
26 an authorized subscriber from the Department of Justice pursuant
27 to this section shall be considered medical information subject to
28 the provisions of the Confidentiality of Medical Information Act
29 contained in Part 2.6 (commencing with Section 56) of Division
30 1 of the Civil Code.
31 (e) Information concerning a patient's controlled substance
32 history provided to an authorized subscriber pursuant to this section
33 shall include prescriptions for controlled substances listed in
34 Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code
35 of Federal Regulations.

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 750

Introduced by Assembly Member Low

February 25, 2015

An act to add Section 463 to the Business and Professions Code, relating to business and professions.

LEGISLATIVE COUNSEL'S DIGEST

AB 750, as amended, Low. Business and professions: retired category: licenses.

Existing law provides for numerous boards, bureaus, commissions, or programs within the Department of Consumer Affairs that administer the licensing and regulation of various businesses and professions. Existing law authorizes any of the boards, bureaus, commissions, or programs within the department, except as specified, to establish by regulation a system for an inactive category of license for persons who are not actively engaged in the practice of their profession or vocation. Under existing law, the holder of an inactive license is prohibited from engaging in any activity for which a license is required. Existing law defines "board" for these purposes to include, unless expressly provided otherwise, a bureau, commission, committee, department, division, examining committee, program, and agency.

This bill would additionally authorize any of the boards, bureaus, commissions, or programs within the department to establish by regulation a system for a retired category of license for persons who are not actively engaged in the practice of their profession or vocation,

and would prohibit the holder of a retired license from engaging in any activity for which a license is required, unless regulation specifies the criteria for a retired licensee to practice his or her profession. The bill would authorize a board upon its own determination, and would require a board upon receipt of a complaint from any person, to investigate the actions of any licensee, including, among others, a person with a license that is retired or inactive.

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 463 is added to the Business and
 2 Professions Code, to read:
 3 463. (a) Any of the boards, bureaus, commissions, or programs
 4 within the department may establish, by regulation, a system for
 5 a retired category of licensure for persons who are not actively
 6 engaged in the practice of their profession or vocation.
 7 (b) The regulation shall contain the following:
 8 (1) The holder of a retired license issued pursuant to this section
 9 shall not engage in any activity for which a license is required,
 10 unless the board, by regulation, specifies the criteria for a retired
 11 licensee to practice his or her profession or vocation.
 12 (2) The holder of a retired license shall not be required to renew
 13 that license.
 14 (3) In order for the holder of a retired license issued pursuant
 15 to this section to restore his or her license to an active status, the
 16 holder of that license shall meet all the following:
 17 (A) Pay a fee established by regulation.
 18 (B) ~~Not have~~ *Certify, in a manner satisfactory to the board, that*
 19 *he or she has not* committed an act or crime constituting grounds
 20 for denial of licensure.
 21 (C) Comply with the fingerprint submission requirements
 22 established by regulation.
 23 (D) If the board requires completion of continuing education
 24 for renewal of an active license, complete continuing education
 25 equivalent to that required for renewal of an active license, unless
 26 a different requirement is specified by the board.
 27 (E) Complete any other requirements as specified by the board
 28 by regulation.

1 (c) A board may upon its own determination, and shall upon
2 receipt of a complaint from any person, investigate the actions of
3 any licensee, including a person with a license that either restricts
4 or prohibits the practice of that person in his or her profession or
5 vocation, including, but not limited to, a license that is retired,
6 inactive, canceled, revoked, or suspended.

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ASSEMBLY BILL

No. 840

Introduced by Assembly Member Ridley-Thomas

February 26, 2015

An act to add Section 19851.2 to the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 840, as introduced, Ridley-Thomas. Nurses and certified nurse assistants: overtime.

The State Civil Service Act generally requires the workweek of state employees to be 40 hours, and the workday of state employees to be 8 hours. Under the act, it is the policy of the state to avoid the necessity for overtime work whenever possible.

This bill, commencing January 1, 2017, would prohibit a nurse or Certified Nursing Assistant (CNA), as defined, employed by the State of California in a specified type of facility from being compelled to work in excess of the regularly scheduled workweek or work shift, except under certain circumstances. The bill would authorize a nurse or CNA to volunteer or agree to work hours in addition to his or her regularly scheduled workweek or work shift, but the refusal to accept those additional hours would not constitute patient abandonment or neglect or be grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the nurse or CNA.

This bill would make a related statement of legislative intent.

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. It is the intent of the Legislature to ensure that
 2 there is a process that management and supervisors in a state health
 3 care facility are required to follow to avoid on-the-spot mandatory
 4 overtime of any nurse or certified nursing assistant (CNA) whose
 5 regularly scheduled work shift is complete, and to prevent
 6 circumstances where an employee is stopped at the gate of, for
 7 example, a Department of Corrections and Rehabilitation and
 8 California Correctional Health Care Services facility, and is
 9 instructed to return to work at the end of the employee’s regularly
 10 scheduled work shift. It is the intent of the Legislature to prohibit
 11 a state facility that employs nurses or CNAs from using mandatory
 12 overtime as a scheduling tool, or as an excuse for fulfilling an
 13 operational need that results from a management failure to properly
 14 staff those state facilities.

15 SEC. 2. Section 19851.2 is added to the Government Code, to
 16 read:

17 19851.2. (a) As used in this section:

18 (1) “Nurse” means all classifications of registered nurses
 19 represented by State Bargaining Unit 17, or the Licensed
 20 Vocational Nurse classifications represented by State Bargaining
 21 Unit 20.

22 (2) “CNA” means all Certified Nursing Assistant classifications
 23 represented by State Bargaining Unit 20.

24 (3) “Facility” means any facility that provides clinically related
 25 health services that is operated by the Division of Correctional
 26 Health Care Services of the Department of Corrections and
 27 Rehabilitation, the Department of Corrections and Rehabilitation,
 28 the State Department of State Hospitals, the Department of Veteran
 29 Affairs, or the State Department of Developmental Services in
 30 which a nurse or CNA works as an employee of the state.

31 (4) “Emergency situation” means any of the following:

32 (A) An unforeseeable declared national, state, or municipal
 33 emergency.

34 (B) A highly unusual or extraordinary event that is unpredictable
 35 or unavoidable and that substantially affects providing needed
 36 health care services or increases the need for health care services,
 37 which includes any of the following:

38 (i) An act of terrorism.

- 1 (ii) A natural disaster.
- 2 (iii) A widespread disease outbreak.
- 3 (iv) A warden, superintendent, or executive director-declared
- 4 emergency, or severe emergency that necessitates the assistance
- 5 of an outside agency.
- 6 (b) A facility shall not require a nurse or CNA to work in excess
- 7 of a regularly scheduled workweek or work shift. A nurse or CNA
- 8 may volunteer or agree to work hours in addition to his or her
- 9 regularly scheduled workweek or work shift but the refusal by a
- 10 nurse or CNA to accept those additional hours shall not constitute
- 11 either of the following:
 - 12 (1) Grounds for discrimination, dismissal, discharge, or any
 - 13 other penalty or employment decision adverse to the nurse or CNA.
 - 14 (2) Patient abandonment or neglect, except under circumstances
 - 15 provided for in the Nursing Practice Act (Chapter 6 (commencing
 - 16 with Section 2700) of Division 2 of the Business and Professions
 - 17 Code).
- 18 (c) This section shall not apply in any of the following situations:
 - 19 (1) To a nurse or CNA participating in a surgical procedure in
 - 20 which the nurse is actively engaged and whose continued presence
 - 21 through the completion of the procedure is needed to ensure the
 - 22 health and safety of the patient.
 - 23 (2) If a catastrophic event occurs in a facility and both of the
 - 24 following factors apply:
 - 25 (A) The catastrophic event results in such a large number of
 - 26 patients in need of immediate medical treatment that the facility
 - 27 is incapable of providing sufficient nurses or CNAs to attend to
 - 28 the patients without resorting to mandatory overtime.
 - 29 (B) The catastrophic event is an unanticipated and nonrecurring
 - 30 event.
 - 31 (3) If an emergency situation occurs.
- 32 (d) Nothing in this section shall be construed to affect the
- 33 Nursing Practice Act (Chapter 6 (commencing with Section 2700)
- 34 of Division 2 of the Business and Professions Code), the Vocational
- 35 Nursing Practice Act (Chapter 6.5 (commencing with Section
- 36 2840) of Division 2 of the Business and Professions Code), or a
- 37 registered nurse's duty under the standards of competent
- 38 performance.
- 39 (e) Nothing in this section shall be construed to preclude a
- 40 facility from hiring part-time or intermittent employees.

- 1 (f) Nothing in this section shall prevent a facility from providing
- 2 employees with more protections against mandatory overtime than
- 3 the minimum protections established pursuant to this section.
- 4 (g) This section shall become operative on January 1, 2017.

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AMENDED IN SENATE MAY 31, 2016
AMENDED IN SENATE MAY 17, 2016
AMENDED IN ASSEMBLY JANUARY 4, 2016
AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 923

Introduced by Assembly Member Steinorth

February 26, 2015

An act to amend Sections 3750 and 3755 of, and to add Section 3754.8 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 923, as amended, Steinorth. Respiratory care practitioners.

(1) Under the Respiratory Care Practice Act, the Respiratory Care Board of California licenses and regulates the practice of respiratory care and therapy. The act authorizes the board to order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under the act, for any of specified causes. A violation of the act is a crime.

This bill would include among those causes for discipline the employment of an unlicensed person who presents herself or himself as a licensed respiratory care practitioner when the employer should have known the person was not licensed. ~~The bill would also include among those causes for discipline the commission by specified licensees of an act of neglect, endangerment, or abuse involving a person under 18 years of age, a person 65 years of age or older, or a dependent adult, as described, without regard to whether the person is a patient. The bill~~

would also include among those causes for discipline the provision of false statements or information on any form provided by the board or to any person representing the board during an investigation, probation monitoring compliance check, or any other enforcement-related action when the individual knew or should have known the statements or information was false.

The bill would provide that the expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice respiratory care, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, does not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee, or to render a decision to suspend or revoke the license.

(2) Under the act the board may take action against a respiratory care practitioner who is charged with unprofessional conduct which includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision for which the board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license. The act provides that engaging in repeated acts of unprofessional conduct is a crime.

This bill would expand the definition of unprofessional conduct to include any act of abuse towards a patient and any act of administering unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques. Because this bill would change the definition of a crime, it would impose a state-mandated local program.

(3) 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 3750 of the Business and Professions
- 2 Code is amended to read:

1 3750. The board may order the denial, suspension, or revocation
2 of, or the imposition of probationary conditions upon, a license
3 issued under this chapter, for any of the following causes:

- 4 (a) Advertising in violation of Section 651 or Section 17500.
- 5 (b) Fraud in the procurement of any license under this chapter.
- 6 (c) Employing an unlicensed person who presents herself or
7 himself as a licensed respiratory care practitioner when the
8 employer knew or should have known the person was not licensed.
- 9 (d) Conviction of a crime that substantially relates to the
10 qualifications, functions, or duties of a respiratory care practitioner.
11 The record of conviction or a certified copy thereof shall be
12 conclusive evidence of the conviction.
- 13 (e) Impersonating or acting as a proxy for an applicant in any
14 examination given under this chapter.
- 15 (f) Negligence in his or her practice as a respiratory care
16 practitioner.
- 17 (g) Conviction of a violation of this chapter or of Division 2
18 (commencing with Section 500), or violating, or attempting to
19 violate, directly or indirectly, or assisting in or abetting the
20 violation of, or conspiring to violate this chapter or Division 2
21 (commencing with Section 500).
- 22 (h) The aiding or abetting of any person to violate this chapter
23 or any regulations duly adopted under this chapter.
- 24 (i) The aiding or abetting of any person to engage in the unlawful
25 practice of respiratory care.
- 26 (j) The commission of any fraudulent, dishonest, or corrupt act
27 that is substantially related to the qualifications, functions, or duties
28 of a respiratory care practitioner.
- 29 (k) Falsifying, or making grossly incorrect, grossly inconsistent,
30 or unintelligible entries in any patient, hospital, or other record.
- 31 (l) Changing the prescription of a physician and surgeon, or
32 falsifying verbal or written orders for treatment or a diagnostic
33 regime received, whether or not that action resulted in actual patient
34 harm.
- 35 (m) Denial, suspension, or revocation of any license to practice
36 by another agency, state, or territory of the United States for any
37 act or omission that would constitute grounds for the denial,
38 suspension, or revocation of a license in this state.
- 39 (n) (1) Except for good cause, the knowing failure to protect
40 patients by failing to follow infection control guidelines of the

1 board, thereby risking transmission of bloodborne infectious
2 diseases from licensee to patient, from patient to patient, and from
3 patient to licensee. In administering this subdivision, the board
4 shall consider referencing the standards, regulations, and guidelines
5 of the State Department of Health *Care Services* developed
6 pursuant to Section 1250.11 of the Health and Safety Code and
7 the standards, regulations, and guidelines pursuant to the California
8 Occupational Safety and Health Act of 1973 (Part 1 (commencing
9 with Section 6300) of Division 5 of the Labor Code) for preventing
10 the transmission of HIV, hepatitis B, and other bloodborne
11 pathogens in health care settings. As necessary, the board shall
12 consult with the California Medical Board, the Board of Podiatric
13 Medicine, the Dental Board of California, the Board of Registered
14 Nursing, and the Board of Vocational Nursing and Psychiatric
15 Technicians, to encourage appropriate consistency in the
16 implementation of this subdivision.

17 (2) The board shall seek to ensure that licensees are informed
18 of the responsibility of licensees and others to follow infection
19 control guidelines, and of the most recent scientifically recognized
20 safeguards for minimizing the risk of transmission of bloodborne
21 infectious diseases.

22 (o) Incompetence in his or her practice as a respiratory care
23 practitioner.

24 (p) A pattern of substandard care or negligence in his or her
25 practice as a respiratory care practitioner, or in any capacity as a
26 health care worker, consultant, supervisor, manager or health
27 facility owner, or as a party responsible for the care of another.

28 ~~(q) If the licensee is a mandated reporter or is required to report
29 under Article 2 (commencing with Section 11160) or Article 2.5
30 (commencing with Section 11164) of Title 1 of Part 4 of the Penal
31 Code. The commission of an act of neglect, endangerment, or
32 abuse involving a person under 18 years of age, a person 65 years
33 of age or older, or a dependent adult as described in Section 368
34 of the Penal Code, without regard to whether the person is a patient.~~

35 ~~(r)~~

36 (q) Providing false statements or information on any form
37 provided by the board or to any person representing the board
38 during an investigation, probation monitoring compliance check,
39 or any other enforcement-related action when the individual knew
40 or should have known the statements or information was false.

1 SEC. 2. Section 3754.8 is added to the Business and Professions
2 Code, to read:

3 3754.8. The expiration, cancellation, forfeiture, or suspension
4 of a license, practice privilege, or other authority to practice
5 respiratory care by operation of law or by order or decision of the
6 board or a court of law, the placement of a license on a retired
7 status, or the voluntary surrender of the license by a licensee shall
8 not deprive the board of jurisdiction to commence or proceed with
9 any investigation of, or action or disciplinary proceeding against,
10 the licensee, or to render a decision to suspend or revoke the
11 license.

12 SEC. 3. Section 3755 of the Business and Professions Code is
13 amended to read:

14 3755. (a) The board may take action against a respiratory care
15 practitioner who is charged with unprofessional conduct in
16 administering, or attempting to administer, direct or indirect
17 respiratory care in any care setting. Unprofessional conduct
18 includes, but is not limited to, the following:

19 (1) Repeated acts of clearly administering directly or indirectly
20 inappropriate respiratory care procedures, protocols, therapeutic
21 regimens, or diagnostic testing or monitoring techniques.

22 (2) Any act of administering unsafe respiratory care procedures,
23 protocols, therapeutic regimens, or diagnostic testing or monitoring
24 techniques.

25 (3) Any act of abuse towards a patient.

26 (4) A violation of any provision of Section 3750.

27 (b) The board may determine unprofessional conduct involving
28 any and all aspects of respiratory care performed by anyone
29 licensed as a respiratory care practitioner.

30 (c) Any person who engages in repeated acts of unprofessional
31 conduct shall be guilty of a misdemeanor and shall be punished
32 by a fine of not more than one thousand dollars (\$1,000), or by
33 imprisonment for a term not to exceed six months, or by both that
34 fine and imprisonment.

35 SEC. 4. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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AMENDED IN SENATE MAY 2, 2016
AMENDED IN SENATE FEBRUARY 8, 2016
AMENDED IN ASSEMBLY JANUARY 4, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1033

Introduced by Assembly Member Eduardo Garcia

February 26, 2015

An act to amend Section 11346.3 of the Government Code, relating to state agency regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1033, as amended, Eduardo Garcia. Economic impact assessment: small business definition.

Existing law, the Administrative Procedure Act, governs, among other things, the procedures for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires a state agency proposing to adopt, amend, or repeal specific administrative regulations to assess the potential for adverse economic impact on California business enterprises and individuals and to prepare an economic impact assessment, as specified, that addresses, among other things, the creation or elimination of jobs within the state.

This bill ~~would~~ *would, with certain exceptions*, authorize a state agency, when preparing the economic impact assessment, to use a consolidated definition of small business to determine the number of small businesses within the economy, a specific industry sector, or geographic region, and would define “small business” for that purpose

as a business that is independently owned and operated, not dominant in its field of operation, and has fewer than 100 employees.

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

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

1 SECTION 1. Section 11346.3 of the Government Code is
2 amended to read:

3 11346.3. (a) A state agency proposing to adopt, amend, or
4 repeal any administrative regulation shall assess the potential for
5 adverse economic impact on California business enterprises and
6 individuals, avoiding the imposition of unnecessary or unreasonable
7 regulations or reporting, recordkeeping, or compliance
8 requirements. For purposes of this subdivision, assessing the
9 potential for adverse economic impact shall require agencies, when
10 proposing to adopt, amend, or repeal a regulation, to adhere to the
11 following requirements, to the extent that these requirements do
12 not conflict with other state or federal laws:

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

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

24 (3) An economic impact assessment prepared pursuant to this
25 subdivision for a proposed regulation that is not a major regulation
26 or that is a major regulation proposed prior to November 1, 2013,
27 shall be prepared in accordance with subdivision (b), and shall be
28 included in the initial statement of reasons as required by Section
29 11346.2. An economic assessment prepared pursuant to this
30 subdivision for a major regulation proposed on or after November
31 1, 2013, shall be prepared in accordance with subdivision (c), and
32 shall be included in the initial statement of reasons as required by
33 Section 11346.2.

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

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

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

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

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

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

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

19 (4) (A) For purposes of conducting the economic impact
20 assessment pursuant to this subdivision, a state agency may use
21 the consolidated definition of small business in subparagraph (B)
22 in order to determine the number of small businesses within the
23 economy, a specific industry sector, or geographic region. The
24 state agency shall clearly identify the use of the consolidated small
25 business definition in its rulemaking package.

26 (B) For the exclusive purpose of undertaking the economic
27 impact assessment, a “small business” means a business that is all
28 of the following:

29 (i) Independently owned and operated.

30 (ii) Not dominant in its field of operation.

31 (iii) Has fewer than 100 employees.

32 (C) *Subparagraph (A) shall not apply to a regulation adopted*
33 *by the Department of Insurance that applies to an insurance*
34 *company.*

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

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

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

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

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

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

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

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

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

19 (d) Any administrative regulation adopted on or after January
20 1, 1993, that requires a report shall not apply to businesses, unless
21 the state agency adopting the regulation makes a finding that it is
22 necessary for the health, safety, or welfare of the people of the
23 state that the regulation apply to businesses.

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

37 (f) Each state agency proposing to adopt, amend, or repeal a
38 major regulation on or after November 1, 2013, and that has
39 prepared a standardized regulatory impact analysis pursuant to
40 subdivision (c), shall submit that analysis to the Department of

1 Finance upon completion. The department shall comment, within
2 30 days of receiving that analysis, on the extent to which the
3 analysis adheres to the regulations adopted pursuant to Section
4 11346.36. Upon receiving the comments from the department, the
5 agency may update its analysis to reflect any comments received
6 from the department and shall summarize the comments and the
7 response of the agency along with a statement of the results of the
8 updated analysis for the statement required by paragraph (10) of
9 subdivision (a) of Section 11346.5.

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ASSEMBLY BILL

No. 1165

Introduced by Assembly Member Ridley-Thomas

February 27, 2015

An act to add Section 2880.5 to the Business and Professions Code, relating to nursing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1165, as introduced, Ridley-Thomas. Vocational nursing: secondary and post-secondary education.

Existing law, the Vocational Nursing Practice Act, establishes the Board of Vocational Nursing and Psychiatric Technicians and sets forth the qualification requirements and duties of members of the board. These duties include, protection of the public, the evaluation of applicants for licensing as a vocational nurse, and the issuing of licenses to practice as a vocational nurse. Existing law requires the board to prepare and maintain a list of approved schools of vocational nursing in the state.

This bill would state that the board has the sole responsibility to assess and recommend approval for schools of vocational nursing and psychiatric technician education programs in the state. The bill would require the board to enter into a memorandum of understanding with the Bureau for Private Postsecondary Education to delineate the powers of the board to review and approve schools of vocational nursing and psychiatric technicians and the powers of the bureau to protect the interest of students attending institutions governed by the California Private Postsecondary Education Act of 2009. The bill would subject all approved schools of vocational nursing to specified fees for deposit into the Vocational Nursing and Psychiatric Technicians Fund. The bill

would specify that only a nursing school approved by the board may accept applications to its vocational nursing and psychiatric technician program and would make it unlawful for anyone to conduct a school of vocational nursing and psychiatric technicians unless the school has been approved by the board. The bill would also deem it “unprofessional conduct” for a registered nurse, vocational nurse, or psychiatric technician to violate or attempt to violate, either directly or indirectly, or to assist or abet the violation of these provisions.

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 2880.5 is added to the Business and
2 Professions Code, to read:
3 2880.5. (a) In support of the mission of the Board of
4 Vocational Nursing and Psychiatric Technicians on nursing
5 education, the board has the sole responsibility to assess and
6 recommend approval for schools of vocational nursing and
7 psychiatric technician education programs in the State of California
8 as one several core functions.
9 (b) The board shall select and approve secondary or
10 post-secondary schools of vocational nursing and psychiatric
11 technicians.
12 (c) The board shall have a memorandum of understanding with
13 the Bureau for Private Postsecondary Education to delineate the
14 powers of the board to review and approve schools of vocational
15 nursing and psychiatric technicians and the powers of the bureau
16 to protect the interest of students attending institutions governed
17 by the California Private Postsecondary Education Act of 2009,
18 Chapter 8 (commencing with Section 94800) of Part 59 of Division
19 10 of Title 3 of the Education Code.
20 (d) An institution of higher education or a private postsecondary
21 school of nursing approved by the board shall remit to the board
22 for deposit in the Vocational Nursing and Psychiatric Technicians
23 Fund the following fees, in accordance with the following schedule:
24 (1) The fee for an initial approval of a school of vocational
25 nurses and psychiatric technicians shall be five thousand dollars
26 (\$5,000).

1 (2) The fee for continuing approval of a school of vocational
2 nurses and psychiatric technicians established after January 1,
3 2016 shall be three thousand five hundred dollars (\$3,500).

4 (3) The processing fee for authorization of a substantive change
5 to an approval of a school of vocational nurses and psychiatric
6 technicians shall be five hundred dollars (\$500).

7 (e) If the board determines that there is a surplus revenue
8 equal to two years of operating costs, and the annual cost of
9 providing oversight and review of a school of vocational nurses
10 and psychiatric technicians, as required by this article, is less than
11 the amount of any fees required to be paid by that institution
12 pursuant to this article, the board may decrease the fees applicable
13 to that institution to an amount that is proportional to the boards
14 cost association with that institution.

15 (f) It is unlawful for anyone to conduct a school of vocational
16 nurses and psychiatric technicians unless the school has been
17 approved by the board.

18 (g) If the board has reasonable belief, either by complaint or
19 otherwise, that a school is allowing students to apply for its
20 vocational nursing and psychiatric technician program and that
21 the program does not have the approval of the board, the board
22 shall immediately order the school to cease and desist from offering
23 students the ability to enroll in its nursing program. The board
24 shall also notify the Bureau for Private Postsecondary Education
25 and the Attorney General's office that the school is offering
26 students the ability to enroll in a nursing program that does not
27 have the approval of the board.

28 (h) It shall be unprofessional conduct for any registered nurse,
29 vocational nurse or psychiatric technician to violate or attempt to
30 violate, either directly or indirectly, or to assist or abet the violation
31 of this section.

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AMENDED IN SENATE JUNE 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2859

Introduced by Assembly Member Low

February 19, 2016

An act to add Section 463 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2859, as amended, Low. Professions and vocations: retired category: licenses.

Existing law provides for numerous boards, bureaus, commissions, or programs within the Department of Consumer Affairs that administer the licensing and regulation of various businesses and professions. Existing law authorizes any of the boards, bureaus, commissions, or programs within the department, except as specified, to establish by regulation a system for an inactive category of license for persons who are not actively engaged in the practice of their profession or vocation. Under existing law, the holder of an inactive license is prohibited from engaging in any activity for which a license is required. Existing law defines "board" for these purposes to include, unless expressly provided otherwise, a bureau, commission, committee, department, division, examining committee, program, and agency.

This bill would additionally authorize any of the ~~boards, bureaus, commissions, or programs~~ *boards* within the department to establish by regulation a system for a retired category of license for persons who are not actively engaged in the practice of their profession or ~~vocation, and vocation~~. *The bill would require that regulation to include specified provisions, including that a retired license be issued to a person with*

either an active license or an inactive license that was not placed on inactive status for disciplinary reasons. The bill also would prohibit the holder of a retired license from engaging in any activity for which a license is required, unless regulation specifies the criteria for a retired licensee to practice his or her profession. The bill would authorize a board upon its own determination, and would require a board upon receipt of a complaint from any person, to investigate the actions of any licensee, including, among others, a person with a license that is retired or inactive. The bill would not apply to a board that has other statutory authority to establish a retired license.

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 463 is added to the Business and
- 2 Professions Code, to read:
- 3 463. (a) Any of the ~~boards, bureaus, commissions, or programs~~
- 4 *boards* within the department may establish, by regulation, a
- 5 system for a retired category of licensure for persons who are not
- 6 actively engaged in the practice of their profession or vocation.
- 7 (b) The regulation shall contain the following:
- 8 (1) *A retired license shall be issued to a person with either an*
- 9 *active license or an inactive license that was not placed on inactive*
- 10 *status for disciplinary reasons.*
- 11 ~~(1)~~
- 12 (2) The holder of a retired license issued pursuant to this section
- 13 shall not engage in any activity for which a license is required,
- 14 unless the board, by regulation, specifies the criteria for a retired
- 15 licensee to practice his or her profession or vocation.
- 16 ~~(2)~~
- 17 (3) The holder of a retired license shall not be required to renew
- 18 that license.
- 19 ~~(3)~~
- 20 (4) In order for the holder of a retired license issued pursuant
- 21 to this section to restore his or her license to an active status, the
- 22 holder of that license shall meet all the following:
- 23 (A) Pay a fee established by statute or regulation.

1 (B) Certify, in a manner satisfactory to the board, that he or she
2 has not committed an act or crime constituting grounds for denial
3 of licensure.

4 (C) Comply with the fingerprint submission requirements
5 established by regulation.

6 (D) If the board requires completion of continuing education
7 for renewal of an active license, complete continuing education
8 equivalent to that required for renewal of an active license, unless
9 a different requirement is specified by the board.

10 (E) Complete any other requirements as specified by the board
11 by regulation.

12 (c) A board may upon its own determination, and shall upon
13 receipt of a complaint from any person, investigate the actions of
14 any licensee, including a person with a license that either restricts
15 or prohibits the practice of that person in his or her profession or
16 vocation, including, but not limited to, a license that is retired,
17 inactive, canceled, revoked, or suspended.

18 (d) *Subdivisions (a) and (b) shall not apply to a board that has*
19 *other statutory authority to establish a retired license.*

Introduced by Senator BatesFebruary 25, 2015

An act to add Section 1727.8 to the Health and Safety Code, relating to home health agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 390, as introduced, Bates. Home health agencies: skilled nursing services.

Existing law provides for the licensure and regulation by the State Department of Public Health of home health agencies, which are private or public organizations that provide or arrange for the provision of skilled nursing services to persons in their temporary or permanent place of residence. "Skilled nursing services," for purposes of a home health agency, means services provided by a registered nurse or a licensed vocational nurse.

Existing law, the Nursing Practice Act, provides for the licensure and regulation of the practice of nursing by the Board of Registered Nursing.

Existing law, the Vocational Nursing Practice Act, provides for the licensure and regulation of the practice of licensed vocational nursing by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

This bill would require registered nurses and licensed vocational nurses who provide skilled nursing services for a home health agency to perform their duties consistent with the Nursing Practice Act and the Vocational Nursing Practice Act, respectively. The bill would prohibit registered nurses or licensed vocational nurses who otherwise meet the qualifications of the provisions relating to home health agencies from being required to have a minimum period of professional nursing experience prior to providing skilled nursing services for a home health

agency, provided that the nurse has successfully completed specified training. Because a violation of the provisions relating to home health agencies is a misdemeanor, the 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 1727.8 is added to the Health and Safety
2 Code, to read:

3 1727.8. (a) (1) A registered nurse shall perform duties
4 consistent with the Nursing Practice Act (Chapter 6 (commencing
5 with Section 2700) of Division 2 of the Business and Professions
6 Code). A registered nurse shall meet all qualifications established
7 by the home health agency for the services provided and any
8 additional qualifications required by home health agency licensure
9 regulations.

10 (2) Notwithstanding paragraph (1), a registered nurse who
11 otherwise meets the qualifications of this chapter shall not be
12 required to have a minimum period of professional nursing
13 experience prior to providing skilled nursing services for a home
14 health agency, provided that the registered nurse has successfully
15 completed a skills and competency training program, administered
16 by a licensed home health agency. The skills and competency
17 training program shall include at least 80 hours of clinical
18 orientation, didactic, simulation, and hands-on training in the
19 patient’s home.

20 (b) (1) A licensed vocational nurse shall perform duties
21 consistent with the Vocational Nursing Practice Act (Chapter 6.5
22 (commencing with Section 2840) Division 2 of the Business and
23 Professions Code). A licensed vocational nurse shall meet the
24 qualifications established by the home health agency for the
25 services provided and any additional qualifications required by
26 home health agency licensure regulations.

1 (2) Notwithstanding paragraph (1), a licensed vocational nurse
2 who otherwise meets the qualifications of this chapter shall not be
3 required to have a minimum period of professional nursing
4 experience prior to providing skilled nursing services for a home
5 health agency, provided that the licensed vocational nurse has
6 successfully completed a skills and competency training program,
7 administered by a licensed home health agency. The skills and
8 competency training program shall include at least 80 hours of
9 clinical orientation, didactic, simulation, and hands-on training in
10 the patient's home.

11 SEC. 2. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

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AMENDED IN SENATE MAY 4, 2015
AMENDED IN SENATE APRIL 20, 2015

SENATE BILL

No. 779

Introduced by Senator Hall

February 27, 2015

An act to amend Sections 1276.5 and 1276.65 of the Health and Safety Code, and to amend Section 14126.022 of, and to repeal and add Section 14110.7 of, the Welfare and Institutions Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as amended, Hall. Skilled nursing facilities: certified nurse assistant staffing.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health facilities, including skilled nursing facilities. Existing law requires the department to develop regulations that become effective August 1, 2003, that establish staff-to-patient ratios for direct caregivers working in a skilled nursing facility. Existing law requires that these ratios include separate licensed nurse staff-to-patient ratios in addition to the ratios established for other direct caregivers. Existing law also requires every skilled nursing facility to post information about staffing levels in the manner specified by federal requirements. Existing law makes it a misdemeanor for any person to willfully or repeatedly violate these provisions.

This bill would require the department to develop regulations that become effective July 1, 2016, and include a minimum overall staff-to-patient ratio that includes specific staff-to-patient ratios for certified nurse assistants and for licensed nurses that comply with specified requirements. The bill would require the posted information

to include a resident census and an accurate report of the number of staff working each shift and to be posted in specified locations, including an area used for employee breaks. The bill would require a skilled nursing facility to make staffing data available, upon oral or written request and at a reasonable cost, within 15 days of receiving a request. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law generally requires that skilled nursing facilities have a minimum number of nursing hours per patient day of 3.2 hours.

This bill would substitute the term “direct care service hours” for the term “nursing hours” and, commencing July 1, 2016, except as specified, increase the minimum number of direct care service hours per patient day to 4.1.

(3) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions.

Existing law, the Medi-Cal Long-Term Care Reimbursement Act, operative until August 1, 2015, requires the department to make a supplemental payment to skilled nursing facilities based on specified criteria and according to performance measure benchmarks. Existing law requires the department to establish and publish quality and accountability measures, which are used to determine supplemental payments. Existing law requires, beginning in the 2011–12 fiscal year, the measures to include, among others, compliance with specified nursing hours per patient per day requirements.

This bill would also require, beginning in the 2016–17 fiscal year, the measures to include compliance with specified direct care service hour requirements for skilled nursing facilities. ~~The bill would make this provision contingent on the Medi-Cal Long-Term Care Reimbursement Act being operative on January 1, 2016.~~

(4) 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 1276.5 of the Health and Safety Code is
2 amended to read:

3 1276.5. (a) (1) The department shall adopt regulations setting
4 forth the minimum number of equivalent direct care service hours
5 per patient required in intermediate care facilities, subject to the
6 specific requirements of Section 14110.7 of the Welfare and
7 Institutions Code.

8 (2) For the purposes of this subdivision, “direct care service
9 hours” means the number of hours of work performed per patient
10 day by aides, nursing assistants, or orderlies plus two times the
11 number of hours worked per patient day by registered nurses and
12 licensed vocational nurses (except directors of nursing in facilities
13 of 60 or larger capacity) and, in the distinct part of facilities and
14 freestanding facilities providing care for persons with
15 developmental disabilities or mental health disorders by licensed
16 psychiatric technicians who perform direct nursing services for
17 patients in intermediate care facilities, except when the intermediate
18 care facility is licensed as a part of a state hospital.

19 (b) (1) The department shall adopt regulations setting forth the
20 minimum number of equivalent direct care service hours per patient
21 required in skilled nursing facilities, subject to the specific
22 requirements of Section 14110.7 of the Welfare and Institutions
23 Code. However, notwithstanding Section 14110.7 of the Welfare
24 and Institutions Code or any other law, the minimum number of
25 direct care service hours per patient required in a skilled nursing
26 facility shall be 3.2 hours, and, commencing July 1, 2016, shall
27 be 4.1 hours, except as provided in paragraph (2) or Section 1276.9.

28 (2) Notwithstanding Section 14110.7 or any other law, the
29 minimum number of direct care service hours per patient required
30 in a skilled nursing facility that is a distinct part of a facility
31 licensed as a general acute care hospital shall be 3.2 hours, except
32 as provided in Section 1276.9.

33 (3) For the purposes of this subdivision, “direct care service
34 hours” means the number of hours of work performed per patient
35 day by a direct caregiver, as defined in Section ~~1276.65, and, in~~
36 ~~the distinct part of facilities and freestanding facilities providing~~
37 ~~care for persons with developmental disabilities or mental health~~

1 ~~disorders, by licensed psychiatric technicians who perform direct~~
2 ~~nursing services for patients in skilled nursing facilities. 1276.65.~~

3 (c) Notwithstanding Section 1276, the department shall require
4 the utilization of a registered nurse at all times if the department
5 determines that the services of a skilled nursing and intermediate
6 care facility require the utilization of a registered nurse.

7 (d) (1) Except as otherwise provided by law, the administrator
8 of an intermediate care facility/developmentally disabled,
9 intermediate care facility/developmentally disabled habilitative,
10 or an intermediate care facility/developmentally disabled—nursing
11 shall be either a licensed nursing home administrator or a qualified
12 intellectual disability professional as defined in Section 483.430
13 of Title 42 of the Code of Federal Regulations.

14 (2) To qualify as an administrator for an intermediate care
15 facility for the developmentally disabled, a qualified intellectual
16 disability professional shall complete at least six months of
17 administrative training or demonstrate six months of experience
18 in an administrative capacity in a licensed health facility, as defined
19 in Section 1250, excluding those facilities specified in subdivisions
20 (e), (h), and (i).

21 SEC. 2. Section 1276.65 of the Health and Safety Code is
22 amended to read:

23 1276.65. (a) For purposes of this section, the following
24 definitions shall apply:

25 (1) (A) “Direct caregiver” means a registered nurse, as referred
26 to in Section 2732 of the Business and Professions Code, a licensed
27 vocational nurse, as referred to in Section 2864 of the Business
28 and Professions Code, a psychiatric technician, as referred to in
29 Section 4516 of the Business and Professions Code, a certified
30 nurse assistant, as defined in Section 1337, or a ~~certified~~ nurse
31 assistant in an approved training program, as defined in Section
32 1337, while the ~~certified~~ nurse assistant in an approved training
33 program is performing nursing services as described in ~~Section~~
34 ~~Sections~~ 72309, 72311, and 72315 of Title 22 of the California
35 Code of Regulations.

36 (B) “Direct caregiver” also includes (i) a licensed nurse serving
37 as a minimum data set coordinator and (ii) a person serving as the
38 director of nursing services in a facility with 60 or more licensed
39 beds and a person serving as the director of staff development
40 when that person is providing nursing services in the hours beyond

1 those required to carry out the duties of these positions, as long as
2 these direct care service hours are separately documented.

3 (2) “Licensed nurse” means a registered nurse, as referred to in
4 Section 2732 of the Business and Professions Code, a licensed
5 vocational nurse, as referred to in Section 2864 of the Business
6 and Professions Code, and a psychiatric technician, as referred to
7 in Section 4516 of the Business and Professions Code.

8 (3) “Skilled nursing facility” means a skilled nursing facility as
9 defined in subdivision (c) of Section ~~1250, except a skilled nursing~~
10 ~~facility that is a distinct part of a facility licensed as a general acute~~
11 ~~care hospital.~~ 1250.

12 (b) A person employed to provide services such as food
13 preparation, housekeeping, laundry, or maintenance services shall
14 not provide nursing care to residents and shall not be counted in
15 determining ratios under this section.

16 (c) (1) (A) Notwithstanding any other law, the State
17 Department of Public Health shall develop regulations that become
18 effective July 1, 2016, that establish a minimum staff-to-patient
19 ratio for direct caregivers working in a skilled nursing facility. The
20 ratio shall include as a part of the overall staff-to-patient ratio,
21 specific staff-to-patient ratios for licensed nurses and certified
22 nurse assistants.

23 (B) (i) ~~The~~ *For a skilled nursing facility that is not a distinct*
24 *part of a general acute care hospital, the* certified nurse assistant
25 staff-to-patient ratios developed pursuant to subparagraph (A) shall
26 be no less than the following:

27 (I) During the day shift, a minimum of one certified nurse
28 assistant for every six patients, or fraction thereof.

29 (II) During the evening shift, a minimum of one certified nurse
30 assistant for every eight patients, or fraction thereof.

31 (III) During the night shift, a minimum of one certified nurse
32 assistant for every 17 patients, or fraction thereof.

33 (ii) For the purposes of this subparagraph, the following terms
34 have the following meanings:

35 (I) “Day shift” means the 8-hour period during which the
36 facility’s patients require the greatest amount of care.

37 (II) “Evening shift” means the 8-hour period when the facility’s
38 patients require a moderate amount of care.

39 (III) “Night shift” means the 8-hour period during which a
40 facility’s patients require the least amount of care.

1 (2) The department, in developing an overall staff-to-patient
2 ratio for direct caregivers, and in developing specific
3 staff-to-patient ratios for certified nurse assistants and licensed
4 nurses *as* required by this section, shall convert the requirement
5 under Section 1276.5 of this code and Section 14110.7 of the
6 Welfare and Institutions Code for 3.2 direct care service hours per
7 patient day care, and commencing July 1, 2016, *except as specified*
8 *in paragraph (2) of subdivision (b) of Section 1276.5*, for 4.1 direct
9 care service hours per patient day, including a minimum
10 ~~staff-to-patient ratio for certified nurse assistants~~ of 2.8 direct care
11 service hours per patient day *for certified nurse assistants*, and a
12 ~~minimum staff-to-patient ratio for licensed nurses~~ of 1.3 direct
13 care service hours per patient ~~day~~, *day for licensed nurses*, and
14 shall ensure that no less care is given than is required pursuant to
15 Section 1276.5 of this code and Section 14110.7 of the Welfare
16 and Institutions Code. Further, the department shall develop the
17 ratios in a manner that maximizes resident access to care, and takes
18 into account the length of the shift worked. In developing the
19 regulations, the department shall develop a procedure for facilities
20 to apply for a waiver that addresses individual patient needs except
21 that in no instance shall the minimum staff-to-patient ratios be less
22 than the 3.2 direct care service hours per patient day, and,
23 commencing July 1, 2016, *except as specified in paragraph (2) of*
24 *subdivision (b) of Section 1276.5*, be less than the 4.1 direct care
25 service hours per patient day, required under Section 1276.5 of
26 this code and Section 14110.7 of the Welfare and Institutions Code.

27 (d) The staffing ratios to be developed pursuant to this section
28 shall be minimum standards only and shall be satisfied daily.
29 Skilled nursing facilities shall employ and schedule additional staff
30 as needed to ensure quality resident care based on the needs of
31 individual residents and to ensure compliance with all relevant
32 state and federal staffing requirements.

33 (e) No later than January 1, 2018, and every five years thereafter,
34 the department shall consult with consumers, consumer advocates,
35 recognized collective bargaining agents, and providers to determine
36 the sufficiency of the staffing standards provided in this section
37 and may adopt regulations to increase the minimum staffing ratios
38 to adequate levels.

39 (f) (1) In a manner pursuant to federal requirements, effective
40 January 1, 2003, every skilled nursing facility shall post

1 information about resident census and staffing levels that includes
2 the current number of licensed and unlicensed nursing staff directly
3 responsible for resident care in the facility. This posting shall
4 include staffing requirements developed pursuant to this section
5 and an accurate report of the number of direct care staff working
6 during the current shift, including a report of the number of
7 registered nurses, licensed vocational nurses, psychiatric
8 technicians, and certified nurse assistants. The information shall
9 be posted on paper that is at least 8.5 inches by 14 inches and shall
10 be printed in a font of at least 16 point.

11 (2) The information described in paragraph (1) shall be posted
12 daily, at a minimum, in the following locations:

13 (A) An area readily accessible to members of the public.

14 (B) An area used for employee breaks.

15 (C) An area used by residents for communal functions,
16 including, but not limited to, dining, resident council meetings, or
17 activities.

18 (3) (A) Upon oral or written request, every skilled nursing
19 facility shall make direct caregiver staffing data available to the
20 public for review at a reasonable cost. A skilled nursing facility
21 shall provide the data to the requestor within 15 days after receiving
22 a request.

23 (B) For the purpose of this paragraph, “reasonable cost”
24 includes, but is not limited to, a ten-cent (\$0.10) per page fee for
25 standard reproduction of documents that are 8.5 inches by 14 inches
26 or smaller or a retrieval or processing fee not exceeding sixty
27 dollars (\$60) if the requested data is provided on a digital or other
28 electronic medium and the requestor requests delivery of the data
29 in a digital or other electronic medium, including electronic mail.

30 (g) (1) Notwithstanding any other law, the department shall
31 inspect for compliance with this section during state and federal
32 periodic inspections, including, but not limited to, those inspections
33 required under Section 1422. This inspection requirement shall
34 not limit the department’s authority in other circumstances to cite
35 for violations of this section or to inspect for compliance with this
36 section.

37 (2) A violation of the regulations developed pursuant to this
38 section may constitute a class “B,” “A,” or “AA” violation pursuant
39 to the standards set forth in Section 1424.

1 (h) The requirements of this section are in addition to any
2 requirement set forth in Section 1276.5 of this code and Section
3 14110.7 of the Welfare and Institutions Code.

4 (i) In implementing this section, the department may contract
5 as necessary, on a bid or nonbid basis, for professional consulting
6 services from nationally recognized higher education and research
7 institutions, or other qualified individuals and entities not
8 associated with a skilled nursing facility, with demonstrated
9 expertise in long-term care. This subdivision establishes an
10 accelerated process for issuing contracts pursuant to this section
11 and contracts entered into pursuant to this section shall be exempt
12 from the requirements of Chapter 1 (commencing with Section
13 10100) and Chapter 2 (commencing with Section 10290) of Part
14 2 of Division 2 of the Public Contract Code.

15 (j) This section shall not apply to facilities defined in Section
16 1276.9.

17 SEC. 3. Section 14110.7 of the Welfare and Institutions Code
18 is repealed.

19 SEC. 4. Section 14110.7 is added to the Welfare and
20 Institutions Code, to read:

21 ~~14110.7. (a) The director shall adopt regulations increasing~~
22 ~~the minimum number of equivalent direct care service hours per~~
23 ~~patient day required in~~

24 *14110.7. (a) In skilled nursing facilities to 4.1, in facilities,*
25 *the minimum number of equivalent direct care service hours shall*
26 *be 3.2, except as set forth in Section 1276.9 of the Health and*
27 *Safety Code.*

28 *(b) Commencing July 1, 2016, in skilled nursing facilities, except*
29 *those skilled nursing facilities that are a distinct part of a general*
30 *acute care facility, the minimum number of equivalent direct care*
31 *service hours shall be 4.1, except as set forth in Section 1276.9 of*
32 *the Health and Safety Code.*

33 *(c) In skilled nursing facilities with special treatment programs*
34 *to 2.3, in programs, the minimum number of equivalent direct care*
35 *service hours shall be 2.3.*

36 *(d) In intermediate care facilities to 1.1, and in facilities, the*
37 *minimum number of equivalent direct care service hours shall be*
38 *1.1.*

1 (e) ~~In intermediate care facilities/developmentally disabled to~~
2 ~~2.7: disabled, the minimum number of equivalent direct care service~~
3 ~~hours shall be 2.7.~~

4 (b) ~~(1) Commencing January 1, 2000, the minimum number of~~
5 ~~direct care service hours per patient day required in skilled nursing~~
6 ~~facilities shall be 3.2, and, except as provided in paragraph (2),~~
7 ~~commencing July 1, 2016, the minimum number of direct care~~
8 ~~service hours per patient day required in skilled nursing facilities~~
9 ~~shall be 4.1, except as set forth in Section 1276.9 of the Health~~
10 ~~and Safety Code.~~

11 ~~(2) The minimum number of direct care service hours per patient~~
12 ~~day required in skilled nursing facilities that are a distinct part of~~
13 ~~a facility licensed as a general acute care hospital shall be 3.2,~~
14 ~~except as set forth in Section 1276.9 of the Health and Safety Code.~~

15 SEC. 5. Section 14126.022 of the Welfare and Institutions
16 Code is amended to read:

17 14126.022. (a) (1) By August 1, 2011, the department shall
18 develop the Skilled Nursing Facility Quality and Accountability
19 Supplemental Payment System, subject to approval by the federal
20 Centers for Medicare and Medicaid Services, and the availability
21 of federal, state, or other funds.

22 (2) (A) The system shall be utilized to provide supplemental
23 payments to skilled nursing facilities that improve the quality and
24 accountability of care rendered to residents in skilled nursing
25 facilities, as defined in subdivision (c) of Section 1250 of the
26 Health and Safety Code, and to penalize those facilities that do
27 not meet measurable standards.

28 (B) A freestanding pediatric subacute care facility, as defined
29 in Section 51215.8 of Title 22 of the California Code of
30 Regulations, shall be exempt from the Skilled Nursing Facility
31 Quality and Accountability Supplemental Payment System.

32 (3) The system shall be phased in, beginning with the 2010–11
33 rate year.

34 (4) The department may utilize the system to do all of the
35 following:

36 (A) Assess overall facility quality of care and quality of care
37 improvement, and assign quality and accountability payments to
38 skilled nursing facilities pursuant to performance measures
39 described in subdivision (i).

1 (B) Assign quality and accountability payments or penalties
2 relating to quality of care, or direct care staffing levels, wages, and
3 benefits, or both.

4 (C) Limit the reimbursement of legal fees incurred by skilled
5 nursing facilities engaged in the defense of governmental legal
6 actions filed against the facilities.

7 (D) Publish each facility's quality assessment and quality and
8 accountability payments in a manner and form determined by the
9 director, or his or her designee.

10 (E) Beginning with the 2011–12 fiscal year, establish a base
11 year to collect performance measures described in subdivision (i).

12 (F) Beginning with the 2011–12 fiscal year, in coordination
13 with the State Department of Public Health, publish the direct care
14 staffing level data and the performance measures required pursuant
15 to subdivision (i).

16 (b) (1) There is hereby created in the State Treasury, the Skilled
17 Nursing Facility Quality and Accountability Special Fund. The
18 fund shall contain moneys deposited pursuant to subdivisions (g)
19 and (j) to (l), inclusive. Notwithstanding Section 16305.7 of the
20 Government Code, the fund shall contain all interest and dividends
21 earned on moneys in the fund.

22 (2) Notwithstanding Section 13340 of the Government Code,
23 the fund shall be continuously appropriated without regard to fiscal
24 year to the department for making quality and accountability
25 payments, in accordance with subdivision (m), to facilities that
26 meet or exceed predefined measures as established by this section.

27 (3) Upon appropriation by the Legislature, moneys in the fund
28 may also be used for any of the following purposes:

29 (A) To cover the administrative costs incurred by the State
30 Department of Public Health for positions and contract funding
31 required to implement this section.

32 (B) To cover the administrative costs incurred by the State
33 Department of Health Care Services for positions and contract
34 funding required to implement this section.

35 (C) To provide funding assistance for the Long-Term Care
36 Ombudsman Program activities pursuant to Chapter 11
37 (commencing with Section 9700) of Division 8.5.

38 (c) No appropriation associated with this bill is intended to
39 implement the provisions of Section 1276.65 of the Health and
40 Safety Code.

1 (d) (1) There is hereby appropriated for the 2010–11 fiscal year,
2 one million nine hundred thousand dollars (\$1,900,000) from the
3 Skilled Nursing Facility Quality and Accountability Special Fund
4 to the California Department of Aging for the Long-Term Care
5 Ombudsman Program activities pursuant to Chapter 11
6 (commencing with Section 9700) of Division 8.5. It is the intent
7 of the Legislature for the one million nine hundred thousand dollars
8 (\$1,900,000) from the fund to be in addition to the four million
9 one hundred sixty-eight thousand dollars (\$4,168,000) proposed
10 in the Governor’s May Revision for the 2010–11 Budget. It is
11 further the intent of the Legislature to increase this level of
12 appropriation in subsequent years to provide support sufficient to
13 carry out the mandates and activities pursuant to Chapter 11
14 (commencing with Section 9700) of Division 8.5.

15 (2) The department, in partnership with the California
16 Department of Aging, shall seek approval from the federal Centers
17 for Medicare and Medicaid Services to obtain federal Medicaid
18 reimbursement for activities conducted by the Long-Term Care
19 Ombudsman Program. The department shall report to the fiscal
20 committees of the Legislature during budget hearings on progress
21 being made and any unresolved issues during the 2011–12 budget
22 deliberations.

23 (e) There is hereby created in the Special Deposit Fund
24 established pursuant to Section 16370 of the Government Code,
25 the Skilled Nursing Facility Minimum Staffing Penalty Account.
26 The account shall contain all moneys deposited pursuant to
27 subdivision (f).

28 (f) (1) Beginning with the 2010–11 fiscal year, the State
29 Department of Public Health shall use the direct care staffing level
30 data it collects to determine whether a skilled nursing facility has
31 met the direct care service hours per patient per day requirements
32 pursuant to Section 1276.5 of the Health and Safety Code.

33 (2) (A) Beginning with the 2010–11 fiscal year, the State
34 Department of Public Health shall assess a skilled nursing facility,
35 licensed pursuant to subdivision (c) of Section 1250 of the Health
36 and Safety Code, an administrative penalty if the State Department
37 of Public Health determines that the skilled nursing facility fails
38 to meet the direct care service hours per patient per day
39 requirements pursuant to Section 1276.5 of the Health and Safety
40 Code as follows:

1 (i) Fifteen thousand dollars (\$15,000) if the facility fails to meet
2 the requirements for 5 percent or more of the audited days up to
3 49 percent.

4 (ii) Thirty thousand dollars (\$30,000) if the facility fails to meet
5 the requirements for over 49 percent or more of the audited days.

6 (B) (i) If the skilled nursing facility does not dispute the
7 determination or assessment, the penalties shall be paid in full by
8 the licensee to the State Department of Public Health within 30
9 days of the facility's receipt of the notice of penalty and deposited
10 into the Skilled Nursing Facility Minimum Staffing Penalty
11 Account.

12 (ii) The State Department of Public Health may, upon written
13 notification to the licensee, request that the department offset any
14 moneys owed to the licensee by the Medi-Cal program or any other
15 payment program administered by the department to recoup the
16 penalty provided for in this section.

17 (C) (i) If a facility disputes the determination or assessment
18 made pursuant to this paragraph, the facility shall, within 15 days
19 of the facility's receipt of the determination and assessment,
20 simultaneously submit a request for appeal to both the department
21 and the State Department of Public Health. The request shall
22 include a detailed statement describing the reason for appeal and
23 include all supporting documents the facility will present at the
24 hearing.

25 (ii) Within 10 days of the State Department of Public Health's
26 receipt of the facility's request for appeal, the State Department
27 of Public Health shall submit, to both the facility and the
28 department, all supporting documents that will be presented at the
29 hearing.

30 (D) The department shall hear a timely appeal and issue a
31 decision as follows:

32 (i) The hearing shall commence within 60 days from the date
33 of receipt by the department of the facility's timely request for
34 appeal.

35 (ii) The department shall issue a decision within 120 days from
36 the date of receipt by the department of the facility's timely request
37 for appeal.

38 (iii) The decision of the department's hearing officer, when
39 issued, shall be the final decision of the State Department of Public
40 Health.

1 (E) The appeals process set forth in this paragraph shall be
2 exempt from Chapter 4.5 (commencing with Section 11400) and
3 Chapter 5 (commencing with Section 11500), of Part 1 of Division
4 3 of Title 2 of the Government Code. The provisions of Section
5 100171 and 131071 of the Health and Safety Code shall not apply
6 to appeals under this paragraph.

7 (F) If a hearing decision issued pursuant to subparagraph (D)
8 is in favor of the State Department of Public Health, the skilled
9 nursing facility shall pay the penalties to the State Department of
10 Public Health within 30 days of the facility's receipt of the
11 decision. The penalties collected shall be deposited into the Skilled
12 Nursing Facility Minimum Staffing Penalty Account.

13 (G) The assessment of a penalty under this subdivision does not
14 supplant the State Department of Public Health's investigation
15 process or issuance of deficiencies or citations under Chapter 2.4
16 (commencing with Section 1417) of Division 2 of the Health and
17 Safety Code.

18 (g) The State Department of Public Health shall transfer, on a
19 monthly basis, all penalty payments collected pursuant to
20 subdivision (f) into the Skilled Nursing Facility Quality and
21 Accountability Special Fund.

22 (h) Nothing in this section shall impact the effectiveness or
23 utilization of Section 1278.5 or 1432 of the Health and Safety Code
24 relating to whistleblower protections, or Section 1420 of the Health
25 and Safety Code relating to complaints.

26 (i) (1) Beginning in the 2010–11 fiscal year, the department,
27 in consultation with representatives from the long-term care
28 industry, organized labor, and consumers, shall establish and
29 publish quality and accountability measures, benchmarks, and data
30 submission deadlines by November 30, 2010.

31 (2) The methodology developed pursuant to this section shall
32 include, but not be limited to, the following requirements and
33 performance measures:

34 (A) Beginning in the 2011–12 fiscal year:

35 (i) Immunization rates.

36 (ii) Facility acquired pressure ulcer incidence.

37 (iii) The use of physical restraints.

38 (iv) Compliance with the direct care service hours per patient
39 per day requirements pursuant to Section 1276.5 of the Health and
40 Safety Code.

1 (v) Resident and family satisfaction.

2 (vi) Direct care staff retention, if sufficient data is available.

3 (B) Beginning in the 2016–17 fiscal year, compliance with the
4 direct care service hour requirements for skilled nursing facilities
5 established pursuant to Section 1276.65 of the Health and Safety
6 Code and Section 14110.7.

7 (C) If this act is extended beyond the dates on which it becomes
8 inoperative and is repealed, in accordance with Section 14126.033,
9 the department, in consultation with representatives from the
10 long-term care industry, organized labor, and consumers, beginning
11 in the 2013–14 rate year, shall incorporate additional measures
12 into the system, including, but not limited to, quality and
13 accountability measures required by federal health care reform
14 that are identified by the federal Centers for Medicare and Medicaid
15 Services.

16 (D) The department, in consultation with representatives from
17 the long-term care industry, organized labor, and consumers, may
18 incorporate additional performance measures, including, but not
19 limited to, the following:

20 (i) Compliance with state policy associated with the United
21 States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring*
22 (1999) 527 U.S. 581.

23 (ii) Direct care staff retention, if not addressed in the 2012–13
24 rate year.

25 (iii) The use of chemical restraints.

26 (j) (1) Beginning with the 2010–11 rate year, and pursuant to
27 subparagraph (B) of paragraph (5) of subdivision (a) of Section
28 14126.023, the department shall set aside savings achieved from
29 setting the professional liability insurance cost category, including
30 any insurance deductible costs paid by the facility, at the 75th
31 percentile. From this amount, the department shall transfer the
32 General Fund portion into the Skilled Nursing Facility Quality and
33 Accountability Special Fund. A skilled nursing facility shall
34 provide supplemental data on insurance deductible costs to
35 facilitate this adjustment, in the format and by the deadlines
36 determined by the department. If this data is not provided, a
37 facility's insurance deductible costs will remain in the
38 administrative costs category.

39 (2) Notwithstanding paragraph (1), for the 2012–13 rate year
40 only, savings from capping the professional liability insurance cost

1 category pursuant to paragraph (1) shall remain in the General
2 Fund and shall not be transferred to the Skilled Nursing Facility
3 Quality and Accountability Special Fund.

4 (k) Beginning with the 2013–14 rate year, if there is a rate
5 increase in the weighted average Medi-Cal reimbursement rate,
6 the department shall set aside the first 1 percent of the weighted
7 average Medi-Cal reimbursement rate increase for the Skilled
8 Nursing Facility Quality and Accountability Special Fund.

9 (l) If this act is extended beyond the dates on which it becomes
10 inoperative and is repealed, in accordance with Section 14126.033,
11 beginning with the 2014–15 rate year, in addition to the amount
12 set aside pursuant to subdivision (k), if there is a rate increase in
13 the weighted average Medi-Cal reimbursement rate, the department
14 shall set aside at least one-third of the weighted average Medi-Cal
15 reimbursement rate increase, up to a maximum of 1 percent, from
16 which the department shall transfer the General Fund portion of
17 this amount into the Skilled Nursing Facility Quality and
18 Accountability Special Fund.

19 (m) (1) (A) Beginning with the 2013–14 rate year, the
20 department shall pay a supplemental payment, by April 30, 2014,
21 to skilled nursing facilities based on all of the criteria in subdivision
22 (i), as published by the department, and according to performance
23 measure benchmarks determined by the department in consultation
24 with stakeholders.

25 (B) (i) The department may convene a diverse stakeholder
26 group, including, but not limited to, representatives from consumer
27 groups and organizations, labor, nursing home providers, advocacy
28 organizations involved with the aging community, staff from the
29 Legislature, and other interested parties, to discuss and analyze
30 alternative mechanisms to implement the quality and accountability
31 payments provided to nursing homes for reimbursement.

32 (ii) The department shall articulate in a report to the fiscal and
33 appropriate policy committees of the Legislature the
34 implementation of an alternative mechanism as described in clause
35 (i) at least 90 days prior to any policy or budgetary changes, and
36 seek subsequent legislation in order to enact the proposed changes.

37 (2) Skilled nursing facilities that do not submit required
38 performance data by the department’s specified data submission
39 deadlines pursuant to subdivision (i) shall not be eligible to receive
40 supplemental payments.

1 (3) Notwithstanding paragraph (1), if a facility appeals the
2 performance measure of compliance with the direct care service
3 hours per patient per day requirements, pursuant to Section 1276.5
4 of the Health and Safety Code, to the State Department of Public
5 Health, and it is unresolved by the department's published due
6 date, the department shall not use that performance measure when
7 determining the facility's supplemental payment.

8 (4) Notwithstanding paragraph (1), if the department is unable
9 to pay the supplemental payments by April 30, 2014, then on May
10 1, 2014, the department shall use the funds available in the Skilled
11 Nursing Facility Quality and Accountability Special Fund as a
12 result of savings identified in subdivisions (k) and (l), less the
13 administrative costs required to implement subparagraphs (A) and
14 (B) of paragraph (3) of subdivision (b), in addition to any Medicaid
15 funds that are available as of December 31, 2013, to increase
16 provider rates retroactively to August 1, 2013.

17 (n) The department shall seek necessary approvals from the
18 federal Centers for Medicare and Medicaid Services to implement
19 this section. The department shall implement this section only in
20 a manner that is consistent with federal Medicaid law and
21 regulations, and only to the extent that approval is obtained from
22 the federal Centers for Medicare and Medicaid Services and federal
23 financial participation is available.

24 (o) In implementing this section, the department and the State
25 Department of Public Health may contract as necessary, with
26 California's Medicare Quality Improvement Organization, or other
27 entities deemed qualified by the department or the State
28 Department of Public Health, not associated with a skilled nursing
29 facility, to assist with development, collection, analysis, and
30 reporting of the performance data pursuant to subdivision (i), and
31 with demonstrated expertise in long-term care quality, data
32 collection or analysis, and accountability performance measurement
33 models pursuant to subdivision (i). This subdivision establishes
34 an accelerated process for issuing any contract pursuant to this
35 section. Any contract entered into pursuant to this subdivision shall
36 be exempt from the requirements of the Public Contract Code,
37 through December 31, 2013.

38 (p) Notwithstanding Chapter 3.5 (commencing with Section
39 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
40 the following shall apply:

1 (1) The director shall implement this section, in whole or in
2 part, by means of provider bulletins, or other similar instructions
3 without taking regulatory action.

4 (2) The State Public Health Officer may implement this section
5 by means of all facility letters, or other similar instructions without
6 taking regulatory action.

7 (q) Notwithstanding paragraph (1) of subdivision (m), if a final
8 judicial determination is made by any state or federal court that is
9 not appealed, in any action by any party, or a final determination
10 is made by the administrator of the federal Centers for Medicare
11 and Medicaid Services, that any payments pursuant to subdivisions
12 (a) and (m), are invalid, unlawful, or contrary to any provision of
13 federal law or regulations, or of state law, these subdivisions shall
14 become inoperative, and for the 2011–12 rate year, the rate increase
15 provided under subparagraph (A) of paragraph (4) of subdivision
16 (c) of Section 14126.033 shall be reduced by the amounts described
17 in subdivision (j). For the 2013–14 rate year, and for each
18 subsequent rate year, any rate increase shall be reduced by the
19 amounts described in subdivisions (j) to (l), inclusive.

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

29 ~~SEC. 7. Section 5 of this act shall only become operative if the~~
30 ~~Medi-Cal Long-Term Care Reimbursement Act (Article 3.8~~
31 ~~(commencing with Section 14126) of Chapter 7 of Part 3 of~~
32 ~~Division 9 of the Welfare and Institutions Code) is operative on~~
33 ~~January 1, 2016.~~

Introduced by Senator MendozaFebruary 27, 2015

An act to add Section 19851.4 to the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 780, as introduced, Mendoza. Psychiatric technicians and psychiatric technician assistants: overtime.

The State Civil Service Act generally requires the workweek of state employees to be 40 hours, and the workday of state employees to be 8 hours. Under the act, it is the policy of the state to avoid the necessity for overtime work whenever possible.

The Psychiatric Technicians Law provides for the licensure and regulation of psychiatric technicians (PTs) by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

This bill would prohibit a PT or psychiatric technician assistant (PTA) employed by the State of California in a specified type of facility from being compelled to work in excess of the regularly scheduled workweek or work shift, except under certain circumstances. The bill would authorize a PT or PTA to volunteer or agree to work hours in addition to his or her regularly scheduled workweek or work shift, but the refusal to accept those additional hours would not constitute patient abandonment or neglect or be grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the PT or PTA. The bill would require management and supervisors to consider employees in a specified order of priority in order to fulfill the additional staffing needs of a facility.

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. It is the intent of the Legislature to ensure that
 2 there is a process that management and supervisors in a state health
 3 care facility are required to follow to avoid on-the-spot mandatory
 4 overtime of any psychiatric technician (PT) or psychiatric
 5 technician assistant (PTA) whose regularly scheduled work shift
 6 is complete, and to prevent circumstances where an employee is
 7 stopped at the gate of, for example, a Department of Corrections
 8 and Rehabilitation and California Correctional Health Care
 9 Services facility, and is instructed to return to work at the end of
 10 the employee’s regularly scheduled work shift. It is the intent of
 11 the Legislature to prohibit a state facility that employs PTs or PTAs
 12 from using mandatory overtime as a scheduling tool, or as an
 13 excuse for fulfilling an operational need that results from a
 14 management failure to properly staff those state facilities.

15 SEC. 2. Section 19851.4 is added to the Government Code, to
 16 read:

17 19851.4. (a) As used in this section:

18 (1) “Emergency situation” means any of the following:

19 (A) An unforeseeable declared national, state, or municipal
 20 emergency.

21 (B) A highly unusual or extraordinary event that is unpredictable
 22 or unavoidable and that substantially affects providing needed
 23 health care services or increases the need for health care services,
 24 which includes any of the following:

25 (i) An act of terrorism.

26 (ii) A natural disaster.

27 (iii) A widespread disease outbreak.

28 (iv) An emergency declared by a warden, superintendent, or
 29 executive director, or a severe emergency that necessitates the
 30 assistance of an outside agency.

31 (2) “Facility” means any facility that provides clinically related
 32 health services that is operated by the Division of Correctional
 33 Health Care Services of the Department of Corrections and
 34 Rehabilitation, the Department of Corrections and Rehabilitation,
 35 the State Department of State Hospitals, or the State Department
 36 of Developmental Services in which a PT or PTA works as an
 37 employee of the state.

1 (3) “Management or supervisor” means any person or group of
2 persons acting directly or indirectly on behalf of, or in the interest
3 of, the facility, whose duties and responsibilities include facilitating
4 staffing needs.

5 (4) “On call or on standby” means alternative staff who are not
6 currently working on the premises of the facility and who satisfy
7 either of the following criteria:

8 (A) Are compensated for their availability.

9 (B) Have agreed to be available to come to the facility on short
10 notice, if the need arises.

11 (5) “PT” or “PTA” means all classifications of psychiatric
12 technician or psychiatric technician assistant.

13 (b) A facility shall not require a PT or PTA to work in excess
14 of a regularly scheduled workweek or work shift. A PT or PTA
15 may volunteer or agree to work hours in addition to his or her
16 regularly scheduled workweek or work shift but the refusal by a
17 PT or PTA to accept those additional hours shall not constitute
18 either of the following:

19 (1) Grounds for discrimination, dismissal, discharge, or any
20 other penalty or employment decision adverse to the PT or PTA.

21 (2) Patient abandonment or neglect.

22 (c) In order to avoid the use of mandatory overtime as a
23 scheduling tool, management and supervisors shall consider
24 employees to fulfill the additional staffing needs of a facility in
25 the following priority order:

26 (1) First priority shall be given to employees who volunteer or
27 agree to work hours in addition to their regularly scheduled
28 workweek or work shift.

29 (2) Second priority shall be given to individuals who are
30 part-time or intermittent employees.

31 (3) Third priority shall be given to employees who are on call
32 or on standby.

33 (d) This section shall not apply in any of the following
34 situations:

35 (1) To a PT or PTA participating in a surgical procedure in
36 which the nurse is actively engaged and whose continued presence
37 through the completion of the procedure is needed to ensure the
38 health and safety of the patient.

39 (2) If a catastrophic event occurs in a facility and both of the
40 following factors apply:

- 1 (A) The catastrophic event results in such a large number of
- 2 patients in need of immediate medical treatment for which the
- 3 facility is incapable of providing sufficient PTs or PTAs to attend
- 4 to the patients without resorting to mandatory overtime.
- 5 (B) The catastrophic event is an unanticipated and nonrecurring
- 6 event.
- 7 (3) If an emergency situation occurs.
- 8 (e) This section shall not be construed to affect the Psychiatric
- 9 Technicians Law (Chapter 10 (commencing with Section 4500)
- 10 of Division 2 of the Business and Professions Code) or a PT or
- 11 PTA's duty under the standards of competent performance.
- 12 (f) This section shall not be construed to preclude a facility from
- 13 hiring part-time or intermittent employees.
- 14 (g) This section shall not prevent a facility from providing
- 15 employees with more protections against mandatory overtime than
- 16 the minimum protections established pursuant to this section.

AMENDED IN ASSEMBLY JUNE 23, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1155

Introduced by Senator Morrell

February 18, 2016

An act to add Section 114.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as amended, Morrell. Professions and vocations: licenses: military service.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met. Existing law also requires the boards to waive the renewal fees, continuing education requirements, and other renewal requirements, if applicable, of any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard, if certain requirements are met. Existing law requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military. Existing law, on and after July 1, 2016, requires a board within the Department of Consumer Affairs to expedite, and authorizes a board to assist, the initial licensure

process for an applicant who has served as an active duty member of the United States Armed Forces and was honorably discharged.

This bill, on and after January 1, 2018, would require every board within the Department of Consumer Affairs to grant a fee waiver for the application for and the issuance of an initial license to ~~an individual who is an honorably discharged veteran~~. *an applicant who supplies satisfactory evidence, as defined, to the board that the applicant has served as an active duty member of the California National Guard or the United States Armed Forces and was honorably discharged.* The bill would require that a veteran be granted only one fee waiver, except as specified.

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 114.6 is added to the Business and
2 Professions Code, to read:

3 114.6. (a) (1) Notwithstanding any other provision of law,
4 every board within the department shall grant a fee waiver for the
5 application for and issuance of an initial license to ~~an individual~~
6 ~~who is an honorably discharged veteran who served as an active~~
7 ~~duty member of the California National Guard or the United States~~
8 ~~Armed Forces. Under this program, all of the following apply:~~ *an*
9 *applicant who supplies satisfactory evidence to the board that the*
10 *applicant has served as an active duty member of the California*
11 *National Guard or the United States Armed Forces and was*
12 *honorably discharged.*

13 (2) *For purposes of this section, “satisfactory evidence” means*
14 *a completed “Certificate of Release or Discharge from Active*
15 *Duty” (DD Form 214).*

16 (b) *Under this program, all of the following apply:*

17 (a)

18 (1) A veteran shall be granted only one fee waiver, except as
19 specified in ~~subdivision (b)~~. *paragraph (2).* After a fee waiver has
20 been issued by any board within the department pursuant to this
21 section, the veteran is no longer eligible for a waiver.

22 (b)

1 (2) If a board charges a fee for the application for a license and
2 another fee for the issuance of a license, the veteran shall be granted
3 fee waivers for both the application for and issuance of a license.

4 ~~(e)~~

5 (3) The fee waiver shall apply only to an application of and a
6 license issued to an individual veteran and not to an application
7 of or a license issued to an individual veteran on behalf of a
8 business or other entity.

9 ~~(d)~~

10 (4) A waiver shall not be issued for any of the following:

11 ~~(1)~~

12 (A) Renewal of a license.

13 ~~(2)~~

14 (B) The application for and issuance of an additional license, a
15 certificate, a registration, or a permit associated with the initial
16 license.

17 ~~(3)~~

18 (C) The application for an examination.

19 ~~(e)~~

20 (c) This section shall become operative on January 1, 2018.

AMENDED IN SENATE MAY 31, 2016
AMENDED IN SENATE APRIL 21, 2016
AMENDED IN SENATE APRIL 11, 2016

SENATE BILL

No. 1194

Introduced by Senator Hill

February 18, 2016

An act to amend Sections 2909.5, 2913, 2914, 2914.1, ~~2914.2~~ 2914.2, 2915, 2920, and 2933 of, to add Sections 2934.1 and 2988.5 to, and to repeal Section 2947 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1194, as amended, Hill. Psychology: Board of Psychology: personnel.

(1) Existing law, the Psychology Licensing Law (hereafter law), establishes the Board of Psychology to license and regulate the practice of psychology, and authorizes the board to employ all personnel necessary to carry out that law and to employ an executive officer, as specified. These provisions are in effect only until January 1, 2017.

This bill would extend those provisions to January 1, 2021.

(2) The law defines the practice of psychology as rendering or offering to render, for a fee, psychological services involving the application of psychological principles and methods, including the diagnosis, prevention, and treatment of psychological problems and emotional and mental disorders. The law prohibits unlicensed persons from practicing psychology, but authorizes unlicensed persons, including psychological assistants who meet certain requirements and do not provide psychological services to the public, except as an employee of

a licensed psychologist, licensed physician, contract clinic, psychological corporation, or medical corporation, to perform limited psychological functions. *The law also prohibits its provisions from being construed as restricting or preventing specified nonprofit community agency employees from carrying out activities of a psychological nature or using their official employment title, as specified, provided the employees do not render or offer to render psychological services.* The law provides that a violation of any of its provisions is a misdemeanor.

This bill would recast these provisions to authorize an unlicensed person preparing for licensure as a psychologist to perform psychological functions under certain conditions, including registration with the board as a psychological assistant and immediate supervision by a licensed psychologist or physician and surgeon who is board certified in psychiatry, as specified. The bill would prohibit a psychological assistant from providing psychological services to the public except as a supervisee. *The bill would expand the prohibition on construing the law's provisions as restricting or preventing specified activities of nonprofit community agency employees by making this prohibition contingent on the employees' not rendering or offering to render psychological services to the public.* By changing the definition of a crime, this bill would create a state-mandated local program.

(3) The law conditions the issuance of a psychology license upon an applicant having received any of certain kinds of doctorate degrees, from an accredited educational institution. The law requires, with certain exceptions, the board to issue renewal licenses for psychology only to those applicants who have completed 36 hours of approved continuing education in the preceding two years. Existing law prescribes a biennial license renewal fee of not more than \$500. Existing law also requires a person applying for relicensure or for reinstatement to an active license to certify under penalty of perjury that he or she is in compliance with the continuing education requirements. Existing law requires continuing education instruction to be completed within the state or be approved for credit by the American Psychological Association or its equivalent.

This bill would revise and recast the doctorate degree requirements for licensure to include, until January 1, 2020, a doctorate degree from an unaccredited institution that is approved for operation by a specified entity. The bill would replace the term “continuing education” with “continuing professional development,” define “continuing professional development,” require a person applying for renewal or reinstatement to certify compliance with these requirements under penalty of perjury,

require continuing professional courses to be approved by organizations approved by the board, as specified, and authorize the board to grant exemptions from, or extensions for compliance with, these requirements.

This bill would authorize the board to issue a retired license to a licensed psychologist if the psychologist has applied to the board for a retired license and pays a fee of not more than \$75. The bill would also prohibit the holder of a retired license from engaging in the practice of psychology in the same manner as an active licensee. Because a violation of this prohibition would be a crime, the bill would impose a state-mandated local program.

(4) The law authorizes the board to appoint qualified persons to give the whole or any portion of any examination provided for in the law, to be designated as commissioners on examination.

This bill would repeal this authorization.

This bill would authorize the board to post on its Internet Web site the prescribed information regarding all current and former licensees.

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 2909.5 of the Business and Professions
2 Code is amended to read:
3 2909.5. This chapter shall not be construed as restricting or
4 preventing activities of a psychological nature or the use of the
5 official title of the position for which persons were employed on
6 the part of persons who meet the educational requirements of
7 subdivision (b) of Section 2914 and who have one year or more
8 of the supervised professional experience referenced in subdivision
9 (c) of Section 2914, if they are employed by nonprofit community
10 agencies that receive a minimum of 25 percent of their financial
11 support from any federal, state, county, or municipal governmental
12 organizations for the purpose of training and providing services,
13 provided those persons are performing those activities as part of
14 the duties for which they were employed, are performing those

1 activities solely within the confines of or under the jurisdiction of
 2 the organization in which they are employed and do not render or
 3 offer to render psychological services, *services to the public*, as
 4 defined in Section 2903. Those persons shall be registered by the
 5 agency with the board at the time of employment and shall be
 6 identified in the setting as a “registered psychologist.” Those
 7 persons shall be exempt from this chapter for a maximum period
 8 of 30 months from the date of registration.

9 ~~SECTION 1.~~

10 *SEC. 2.* Section 2913 of the Business and Professions Code is
 11 amended to read:

12 2913. A person other than a licensed psychologist may perform
 13 psychological functions in preparation for licensure as a
 14 psychologist only if all of the following conditions are met:

15 (a) The person shall register himself or herself with the board
 16 as a “psychological assistant.” This registration shall be renewed
 17 annually in accordance with regulations adopted by the board.

18 (b) The person (1) has completed a master’s degree in
 19 psychology or education with the field of specialization in
 20 psychology or counseling psychology, or (2) has been admitted to
 21 candidacy for a doctoral degree in psychology or education with
 22 the field of specialization in psychology or counseling psychology,
 23 after having satisfactorily completed three or more years of
 24 postgraduate education in psychology and having passed
 25 preliminary doctoral examinations, or (3) has completed a doctoral
 26 degree that qualifies for licensure under Section 2914.

27 (c) (1) The psychological assistant is at all times under the
 28 immediate supervision, as defined in regulations adopted by the
 29 board, of a licensed psychologist, or a licensed physician and
 30 surgeon who is certified in psychiatry by the American Board of
 31 Psychiatry and Neurology, who shall be responsible for insuring
 32 that the extent, kind, and quality of the psychological services that
 33 the psychological assistant performs are consistent with his or her
 34 training and experience and be responsible for the psychological
 35 assistant’s compliance with this chapter and regulations.

36 (2) A licensed psychologist or board certified psychiatrist shall
 37 not supervise more than three psychological assistants at any given
 38 time. No psychological assistant may provide psychological
 39 services to the public except as a supervisee pursuant to this
 40 section.

1 (d) The psychological assistant shall comply with regulations
2 that the board may, from time to time, duly adopt relating to the
3 fulfillment of requirements in continuing education.

4 ~~SEC. 2.~~

5 *SEC. 3.* Section 2914 of the Business and Professions Code is
6 amended to read:

7 2914. Each applicant for licensure shall comply with all of the
8 following requirements:

9 (a) Is not subject to denial of licensure under Division 1.5
10 (commencing with Section 475).

11 (b) Possess an earned doctorate degree (1) in psychology, (2)
12 in educational psychology, or (3) in education with the field of
13 specialization in counseling psychology or educational psychology.
14 Except as provided in subdivision (h), this degree or training shall
15 be obtained from an accredited university, college, or professional
16 school. The board shall make the final determination as to whether
17 a degree meets the requirements of this section.

18 (c) (1) On or after January 1, 2020, possess an earned doctorate
19 degree in psychology, in educational psychology, or in education
20 with the field of specialization in counseling psychology or
21 educational psychology from a college or institution of higher
22 education that is accredited by a regional accrediting agency
23 recognized by the United States Department of Education. Until
24 January 1, 2020, the board may accept an applicant who possesses
25 a doctorate degree in psychology, educational psychology, or in
26 education with the field of specialization in counseling psychology
27 or educational psychology from an institution that is not accredited
28 by an accrediting agency recognized by the United States
29 Department of Education, but is approved to operate in this state
30 by the Bureau for Private Postsecondary Education.

31 (2) No educational institution shall be denied recognition as an
32 accredited academic institution solely because its program is not
33 accredited by any professional organization of psychologists, and
34 nothing in this chapter or in the administration of this chapter shall
35 require the registration with the board by educational institutions
36 of their departments of psychology or their doctoral programs in
37 psychology.

38 (3) An applicant for licensure trained in an educational
39 institution outside the United States or Canada shall demonstrate
40 to the satisfaction of the board that he or she possesses a doctorate

1 degree in psychology that is equivalent to a degree earned from a
2 regionally accredited university in the United States or Canada.
3 These applicants shall provide the board with a comprehensive
4 evaluation of the degree performed by a foreign credential
5 evaluation service that is a member of the National Association
6 of Credential Evaluation Services (NACES), and any other
7 documentation the board deems necessary.

8 (d) (1) Have engaged for at least two years in supervised
9 professional experience under the direction of a licensed
10 psychologist, the specific requirements of which shall be defined
11 by the board in its regulations, or under suitable alternative
12 supervision as determined by the board in regulations duly adopted
13 under this chapter, at least one year of which shall be after being
14 awarded the doctorate in psychology. The supervisor shall submit
15 verification of the experience required by this subdivision to the
16 trainee in a manner prescribed by the board. If the supervising
17 licensed psychologist fails to provide verification to the trainee in
18 a timely manner, the board may establish alternative procedures
19 for obtaining the necessary documentation. Absent good cause,
20 the failure of a supervising licensed psychologist to provide the
21 verification to the board upon request shall constitute
22 unprofessional conduct.

23 (2) The board shall establish qualifications by regulation for
24 supervising psychologists.

25 (e) Take and pass the examination required by Section 2941
26 unless otherwise exempted by the board under this chapter.

27 (f) Show by evidence satisfactory to the board that he or she
28 has completed training in the detection and treatment of alcohol
29 and other chemical substance dependency. This requirement applies
30 only to applicants who matriculate on or after September 1, 1985.

31 (g) (1) Show by evidence satisfactory to the board that he or
32 she has completed coursework in spousal or partner abuse
33 assessment, detection, and intervention. This requirement applies
34 to applicants who began graduate training during the period
35 commencing on January 1, 1995, and ending on December 31,
36 2003.

37 (2) An applicant who began graduate training on or after January
38 1, 2004, shall show by evidence satisfactory to the board that he
39 or she has completed a minimum of 15 contact hours of coursework
40 in spousal or partner abuse assessment, detection, and intervention

1 strategies, including knowledge of community resources, cultural
2 factors, and same gender abuse dynamics. An applicant may request
3 an exemption from this requirement if he or she intends to practice
4 in an area that does not include the direct provision of mental health
5 services.

6 (3) Coursework required under this subdivision may be
7 satisfactory if taken either in fulfillment of other educational
8 requirements for licensure or in a separate course. This requirement
9 for coursework shall be satisfied by, and the board shall accept in
10 satisfaction of the requirement, a certification from the chief
11 academic officer of the educational institution from which the
12 applicant graduated that the required coursework is included within
13 the institution's required curriculum for graduation.

14 (h) Until January 1, 2020, an applicant holding a doctoral degree
15 in psychology from an approved institution is deemed to meet the
16 requirements of this section if both of the following are true:

17 (1) The approved institution offered a doctoral degree in
18 psychology designed to prepare students for a license to practice
19 psychology and was approved by the former Bureau for Private
20 Postsecondary and Vocational Education on or before July 1, 1999.

21 (2) The approved institution has not, since July 1, 1999, had a
22 new location, as described in Section 94823.5 of the Education
23 Code.

24 ~~SEC. 3.~~

25 *SEC. 4.* Section 2914.1 of the Business and Professions Code
26 is amended to read:

27 2914.1. The board shall encourage every licensed psychologist
28 to take a continuing professional development course in geriatric
29 pharmacology as a part of his or her continuing professional
30 development. *pharmacology.*

31 ~~SEC. 4.~~

32 *SEC. 5.* Section 2914.2 of the Business and Professions Code
33 is amended to read:

34 2914.2. The board shall encourage licensed psychologists to
35 take continuing professional development courses in
36 psychopharmacology and biological basis of behavior as part of
37 their continuing professional development. *behavior.*

38 ~~SEC. 5.~~

39 *SEC. 6.* Section 2915 of the Business and Professions Code is
40 amended to read:

1 2915. (a) Except as provided in this section, the board shall
2 issue a renewal license only to an applicant who has completed
3 36 hours of approved continuing professional development in the
4 preceding two years.

5 (b) Each person who applies to renew or reinstate his or her
6 license issued pursuant to this chapter shall certify under penalty
7 of perjury that he or she is in compliance with this section and
8 shall retain proof of this compliance for submission to the board
9 upon request. False statements submitted pursuant to this section
10 shall be a violation of Section 2970.

11 (c) Continuing professional development means certain
12 continuing education learning activities approved in four different
13 categories:

14 (1) Professional.

15 (2) Academic.

16 (3) Sponsored continuing education coursework.

17 (4) Board certification from the American Board of Professional
18 ~~Psychology according to the standards the American Board of~~
19 ~~Professional Psychology used for certification as of January 1,~~
20 ~~2016: *Psychology*.~~

21 The board may develop regulations further defining acceptable
22 continuing professional development activities.

23 (d) (1) The board shall require a licensed psychologist who
24 began graduate study prior to January 1, 2004, to take a continuing
25 education course during his or her first renewal period after the
26 operative date of this section in spousal or partner abuse
27 assessment, detection, and intervention strategies, including
28 community resources, cultural factors, and same gender abuse
29 dynamics. Equivalent courses in spousal or partner abuse
30 assessment, detection, and intervention strategies taken prior to
31 the operative date of this section or proof of equivalent teaching
32 or practice experience may be submitted to the board and at its
33 discretion, may be accepted in satisfaction of this requirement.

34 (2) Continuing education courses taken pursuant to this
35 subdivision shall be applied to the 36 hours of approved continuing
36 professional development required under subdivision (a).

37 (e) Continuing education courses approved to meet the
38 requirements of this section shall be approved by organizations
39 approved by the board. An organization *previously* approved by

1 the board to provide or approve continuing education ~~on March~~
2 ~~1, 2016~~, is deemed approved under this section.

3 (f) The board may accept sponsored continuing education
4 courses that have been approved by a private, nonprofit
5 organization that has demonstrated to the board in writing that it
6 has, at a minimum, a 10-year history of providing educational
7 programming for psychologists and has documented procedures
8 for maintaining a continuing education approval program. The
9 board shall adopt regulations as necessary for implementing this
10 section.

11 (g) The board may grant an exemption, or an extension of the
12 time for compliance with, from the continuing professional
13 development requirement of this section.

14 (h) The administration of this section may be funded through
15 professional license fees and continuing education provider and
16 course approval fees, or both. The fees related to the administration
17 of this section shall not exceed the costs of administering the
18 corresponding provisions of this section.

19 ~~SEC. 6.~~

20 *SEC. 7.* Section 2920 of the Business and Professions Code is
21 amended to read:

22 2920. (a) The Board of Psychology shall enforce and
23 administer this chapter. The board shall consist of nine members,
24 four of whom shall be public members.

25 (b) This section shall remain in effect only until January 1, 2021,
26 and as of that date is repealed.

27 (c) Notwithstanding any other law, the repeal of this section
28 renders the board subject to review by the appropriate policy
29 committees of the Legislature.

30 ~~SEC. 7.~~

31 *SEC. 8.* Section 2933 of the Business and Professions Code is
32 amended to read:

33 2933. (a) Except as provided by Section 159.5, the board shall
34 employ and shall make available to the board within the limits of
35 the funds received by the board all personnel necessary to carry
36 out this chapter. The board may employ, exempt from the State
37 Civil Service Act, an executive officer to the Board of Psychology.
38 The board shall make all expenditures to carry out this chapter.
39 The board may accept contributions to effectuate the purposes of
40 this chapter.

1 (b) This section shall remain in effect only until January 1, 2021,
 2 and as of that date is repealed.

3 ~~SEC. 8.~~

4 *SEC. 9.* Section 2934.1 is added to the Business and Professions
 5 Code, to read:

6 2934.1. (a) The board may post on its Internet Web site the
 7 following information on the current status of the license for all
 8 current and former licensees:

9 (1) Whether or not the licensee has a record of a disciplinary
 10 action.

11 (2) Any of the following enforcement actions or proceedings
 12 against the licensee:

13 (A) Temporary restraining orders.

14 (B) Interim suspension orders.

15 (C) Revocations, suspensions, probations, or limitations on
 16 practice ordered by the board or by a court with jurisdiction in the
 17 state, including those made part of a probationary order, cease
 18 practice order, or stipulated agreement.

19 (D) Accusations filed by the board, including those accusations
 20 that are on appeal, excluding ones that have been dismissed or
 21 withdrawn where the action is no longer pending.

22 (E) Citations issued by the board. Unless withdrawn, citations
 23 shall be posted for five years from the date of issuance.

24 (b) The board may also post on its Internet Web site all of the
 25 following historical information in its possession, custody, or
 26 control regarding all current and former licensees:

27 (1) Institutions that awarded the qualifying educational degree
 28 and type of degree awarded.

29 (2) A link to the licensee’s professional Internet Web site.

30 (c) The board may also post other information designated by
 31 the board in regulation.

32 ~~SEC. 9.~~

33 *SEC. 10.* Section 2947 of the Business and Professions Code
 34 is repealed.

35 ~~SEC. 10.~~

36 *SEC. 11.* Section 2988.5 is added to the Business and
 37 Professions Code, to read:

38 2988.5. (a) The board may issue, upon an application
 39 prescribed by the board and payment of a fee not to exceed
 40 seventy-five dollars (\$75), a retired license to a psychologist who

1 holds a current license issued by the board, or one capable of being
2 renewed, and whose license is not suspended, revoked, or otherwise
3 restricted by the board or subject to discipline under this chapter.

4 (b) The holder of a retired license issued pursuant to this section
5 shall not engage in any activity for which an active license is
6 required. A psychologist holding a retired license shall be permitted
7 to use the title “psychologist, retired” or “retired psychologist.”
8 The designation of retired shall not be abbreviated in any way.

9 (c) A retired license shall not be subject to renewal.

10 (d) The holder of a retired license may apply to obtain an active
11 status license as follows:

12 (1) If that retired license was issued less than three years prior
13 to the application date, the applicant shall meet all of the following
14 requirements:

15 (A) Has not committed an act or crime constituting grounds for
16 denial or discipline of a license.

17 (B) Pays the renewal fee required by this chapter.

18 (C) Completes the continuing professional development required
19 for the renewal of a license within two years of the date of
20 application for restoration.

21 (D) Complies with the fingerprint submission requirements
22 established by the board.

23 (2) Where the applicant has held a retired license for three or
24 more years, the applicant shall do all of the following:

25 (A) Submit a complete application for a new license.

26 (B) Take and pass the California Psychology Law and Ethics
27 Examination.

28 (C) Pay all fees required to obtain a new license.

29 (D) Comply with the fingerprint submission requirements
30 established by the board.

31 (E) Be deemed to have met the educational and experience
32 requirements of subdivisions (b) and (c) of Section 2914.

33 (F) Establish that he or she has not been subject to denial or
34 discipline of a license.

35 ~~SEC. 11.~~

36 *SEC. 12.* No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

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

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AMENDED IN SENATE JUNE 1, 2016

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL

No. 1195

Introduced by Senator Hill

February 18, 2016

An act to amend Sections 109, 116, 153, 307, 313.1, 2708, 4800, 4804.5, ~~4825.1~~, 4830, ~~and 4846.5~~ 4846.5, 4904, and 4905 of, and to add Sections ~~4826.3, 4826.5, 4826.7,~~ 109.5, 4826.5, 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections ~~825, 11346.5, 11349, and 11349.1~~ 825 and 11346.5 of the Government Code, relating to professional regulation, and making an appropriation therefor: *regulations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Hill. Professions and vocations: board ~~actions:~~ ~~competitive impact.~~ *actions.*

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction. Existing law makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of Consumer Affairs. Existing law authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case. Existing law requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or

monitoring and evaluation. Existing law authorizes the director to contract for services of experts and consultants where necessary. Existing law requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. Existing law prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified.

This bill would instead authorize the director, upon his or her own initiative, and require the director, upon the request of ~~a consumer or licensee~~, *the board making the decision or the Legislature*, to review ~~a~~ *any nonministerial market-sensitive decision or other action*, except as specified, of a board within the department to determine whether it ~~unreasonably restrains trade furthers state law~~ and to approve, disapprove, *request further information*, or modify the board decision or action, as specified. The bill would require the director to *issue and post on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee: request for review or the director's decision to review the board decision. The bill would prohibit the executive officer of any board, committee, or commission within the department from being an active licensee of any profession that board, committee, or commission regulates.* The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specified committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. ~~The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect. The bill would authorize the director, for a specified period of time, to approve, disapprove, or require modification of a proposed rule or regulation on the ground that it does not further state law.~~ The

bill would prohibit any rule or regulation from having any force or effect if the director does not approve the ~~regulation because it has an impermissible anticompetitive effect.~~ *rule or regulation and prohibits any rule or regulation that is not approved by the director from being submitted to the Office of Administrative Law.*

(2) Existing law, until January 1, 2018, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing, which is within the Department of Consumer Affairs, and requires the board to appoint an executive officer who is a nurse currently licensed by the board.

This bill would instead prohibit the executive officer from being a licensee of the board.

(3) The Veterinary Medicine Practice Act provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer, as specified. Existing law repeals the provisions establishing the board and authorizing the board to appoint an executive officer as of January 1, 2017. That act exempts certain persons from the requirements of the act, including a veterinarian employed by the University of California or the Western University of Health Sciences while engaged in the performance of specified duties. That act requires all premises where veterinary medicine, dentistry, and surgery is being practiced to register with the board. That act requires all fees collected on behalf of the board to be deposited into the Veterinary Medical Board Contingent Fund, which continuously appropriates fees deposited into the fund. That act makes a violation of any provision of the act punishable as a misdemeanor.

This bill would extend the operation of the board and the authorization of the board to appoint an executive officer to January 1, 2021. The bill would authorize a veterinarian ~~and or~~ registered veterinary technician who is under the direct supervision of a *licensed* veterinarian ~~with a current and active license~~ to compound a drug for ~~anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board, as specified.~~ *animal use pursuant to federal law and regulations promulgated by the board and would require those regulations to, at*

a minimum, address the storage of drugs, the level and type of supervision required for compounding drugs by a registered veterinary technician, and the equipment necessary for safe compounding of drugs. The bill would instead require veterinarians engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences—~~while and~~ engaged in the performance of specified duties to be licensed as a veterinarian in the state or ~~hold be issued a university license issued by the board. license,~~ *as specified.* The bill would ~~require an applicant~~ *authorize an individual to apply for and be issued a university license to meet if he or she meets certain requirements, including that the applicant passes a specified exam, paying an application and license fee.* The bill would require a university license, among other things, to automatically cease to be valid upon termination or cessation of employment by the University of California or the Western University of Health Sciences. The bill would also prohibit a premise registration that is not renewed within 5 years after its expiration from being renewed, restored, reissued, or reinstated; however, the bill would authorize a new premise registration to be issued to an applicant if no fact, circumstance, or condition exists that would justify the revocation or suspension of the registration if the registration was issued and if specified fees are paid. ~~By requiring additional persons to be licensed and pay certain fees that would go into a continuously appropriated fund, this bill would make an appropriation.~~ *This bill would provide that the Veterinary Medical Board Contingent Fund is available for expenditure only upon an appropriation by the Legislature.* By requiring additional persons to be licensed under the act that were previously exempt, this bill would expand the definition of an existing crime and would, therefore, result in a state-mandated local program.

(4) ~~Existing law,~~ *The Government Claims Act,* except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action. *That act prohibits*

the payment of punitive or exemplary damages by a public entity, except as specified.

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board. *The bill would specify that treble damages awarded pursuant to a specified federal law for violation of another federal law are not punitive or exemplary damages within the Government Claims Act.*

(5) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. ~~That act requires the review by the office to follow certain standards, including, among others, necessity, as defined. That act requires an agency proposing to adopt, amend, or repeal a regulation to prepare a notice to the public that includes specified information, including reference to the authority under which the regulation is proposed.~~

~~This bill would add competitive impact, as defined, as an additional standard for the office to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits. The bill would authorize the office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. The bill would require state boards on which a controlling number of decisionmakers are active market participants in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy. also require a board within the Department of Consumer Affairs to submit a statement to the office that the Director of Consumer Affairs has reviewed the proposed regulation and determined that the proposed regulation furthers state law.~~

(6) 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: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 109 of the Business and Professions Code
2 is amended to read:

3 109. (a) ~~The director~~ *decisions of any of the boards comprising*
4 *the department with respect to passing candidates and revoking*
5 *or otherwise imposing discipline on licenses shall not be subject*
6 *to review by the director and are final within the limits provided*
7 *by this code that are applicable to the particular board.*

8 (b) *The director may initiate an investigation of any allegations*
9 *of misconduct in the preparation, administration, or scoring of an*
10 *examination which is administered by a board, or in the review of*
11 *qualifications which are a part of the licensing process of any*
12 *board. A request for investigation shall be made by the director to*
13 *the Division of Investigation through the chief of the division or*
14 *to any law enforcement agency in the jurisdiction where the alleged*
15 *misconduct occurred.*

16 ~~(b)(1)~~

17 (1) *The director may intervene in any matter of any board where*
18 *an investigation by the Division of Investigation discloses probable*
19 *cause to believe that the conduct or activity of a board, or its*
20 *members or ~~employees~~ employees, constitutes a violation of*
21 *criminal law.*

22 (2) *The term “intervene,” as used in paragraph (1) of this section*
23 *may include, but is not limited to, an application for a restraining*
24 *order or injunctive relief as specified in Section 123.5, or a referral*
25 *or request for criminal prosecution. For purposes of this section,*
26 *the director shall be deemed to have standing under Section 123.5*
27 *and shall seek representation of the Attorney General, or other*
28 *appropriate counsel in the event of a conflict in pursuing that*
29 *action.*

30 (c) *The director may, upon his or her own initiative, and shall,*
31 *upon request by ~~a consumer or licensee,~~ the board making the*
32 *decision or the Legislature, review any nonministerial*
33 *market-sensitive board action or decision ~~or other action to~~*

1 ~~determine whether it unreasonably restrains trade. Such a review~~
2 ~~shall proceed as follows: by the board to determine whether it~~
3 ~~further state law. Market-sensitive actions or decisions are those~~
4 ~~that create barriers to market participation and restrict competition~~
5 ~~including, but not limited to, examination passage scores,~~
6 ~~advertising restrictions, price regulation, enlarging or restricting~~
7 ~~scope of practice qualifications for licensure, and a pattern or~~
8 ~~program of disciplinary actions affecting multiple individuals that~~
9 ~~creates barriers to market participation. If the board action or~~
10 ~~decision is determined to be a market-sensitive action or decision,~~
11 ~~the director shall review the board action or decision to determine~~
12 ~~whether that action or decision furthers a clearly articulated and~~
13 ~~affirmatively expressed state policy. Review under this subdivision~~
14 ~~shall serve to cease implementation of the market-sensitive action~~
15 ~~or decision until the review is finalized and the action or decision~~
16 ~~is found to further state law.~~

17 ~~(1) The director shall assess whether the action or decision~~
18 ~~reflects a clearly articulated and affirmatively expressed state law.~~
19 ~~If the director determines that the action or decision does not reflect~~
20 ~~a clearly articulated and affirmatively expressed state law, the~~
21 ~~director shall disapprove the board action or decision and it shall~~
22 ~~not go into effect.~~

23 ~~(2) If the action or decision is a reflection of clearly articulated~~
24 ~~and affirmatively expressed state law, the director shall assess~~
25 ~~whether the action or decision was the result of the board's exercise~~
26 ~~of ministerial or discretionary judgment. If the director finds no~~
27 ~~exercise of discretionary judgment, but merely the direct~~
28 ~~application of statutory or constitutional provisions, the director~~
29 ~~shall close the investigation and review of the board action or~~
30 ~~decision.~~

31 ~~(3) If the director concludes under paragraph (2) that the board~~
32 ~~exercised discretionary judgment, the director shall review the~~
33 ~~board action or decision as follows:~~

34 ~~(A) The~~

35 ~~(1) Any review by the director under this subdivision shall~~
36 ~~conduct include a full substantive review of the board action or~~
37 ~~decision using based upon all the relevant facts, data, market~~
38 ~~conditions, facts in the record provided by the board and any~~
39 ~~additional information provided by the director, which may include~~
40 ~~data, public comment, studies, or other documentary evidence~~

1 pertaining to the market impacted by the board's action or decision
2 and determine whether the anticompetitive effects of the action or
3 decision are clearly outweighed by the benefit to the public. The
4 director may seek, designate, employ, or contract for the services
5 of independent antitrust or economic experts pursuant to Section
6 307. These experts shall not be active participants in the market
7 affected by the board action or decision. *decision.*

8 (B) If the board action or decision was not previously subject
9 to a public comment period, the director shall release the subject
10 matter of his or her investigation for a 30-day public comment
11 period and shall consider all comments received.

12 (C) If the director determines that the action or decision furthers
13 the public protection mission of the board and the impact on
14 competition is justified, the director may approve the action or
15 decision.

16 (D) If the director determines that the action furthers the public
17 protection mission of the board and the impact on competition is
18 justified, the director may approve the action or decision. If the
19 director finds the action or decision does not further the public
20 protection mission of the board or finds that the action or decision
21 is not justified, the director shall either refuse to approve it or shall
22 modify the action or decision to ensure that any restraints of trade
23 are related to, and advance, clearly articulated state law or public
24 policy.

25 (2) *The director shall take one of the following actions:*

26 (A) *Approve the action or decision upon determination that it*
27 *further state law.*

28 (B) *Disapprove the action or decision if it does not further state*
29 *law. If the director disapproves the board action or decision, the*
30 *director may recommend modifications to the board action or*
31 *decision, which, if adopted, shall not become effective until final*
32 *approval by the director pursuant to this subdivision.*

33 (C) *Modify the action or decision to ensure that it furthers state*
34 *law.*

35 (D) *Request further information from the board if the record*
36 *provided is insufficient to make a determination that the action or*
37 *decision furthers state law. Upon submission of further information*
38 *from the board and any information provided by the director, the*
39 *director shall make a final determination to approve, disapprove,*
40 *or modify the board's action or decision.*

1 ~~(4)~~
 2 (d) The director shall issue, and post on the department’s Internet
 3 Web site, his or her final written decision approving, modifying,
 4 or disapproving on the board action or decision with an explanation
 5 of the reasons *that action or decision does or does not further state*
 6 *law and the rationale behind the director’s decision within 90 days*
 7 *from receipt of the request from a consumer or licensee. board’s*
 8 *or Legislature’s request for review or the director’s decision to*
 9 *review the board action or decision.* Notwithstanding any other
 10 law, the decision of the director shall be final, except if the state
 11 or federal constitution requires an appeal of the director’s decision.

12 ~~(d)~~
 13 (e) The review set forth in ~~paragraph (3)~~ of subdivision (c) shall
 14 not apply ~~when an individual seeks to the~~ review of any
 15 disciplinary *action or other action pertaining solely to that*
 16 ~~individual.~~ *any other sanction or citation imposed by a board upon*
 17 *a licensee.*

18 ~~(e)~~
 19 (f) The director shall report to the Chairs of the Senate Business,
 20 Professions, and Economic Development Committee and the
 21 Assembly Business and Professions Committee annually,
 22 commencing March 1, 2017, regarding his or her disapprovals,
 23 modifications, or findings from any audit, review, or monitoring
 24 and evaluation conducted pursuant to this section. That report shall
 25 be submitted in compliance with Section 9795 of the Government
 26 Code.

27 ~~(f) If the director has already reviewed a board action or decision~~
 28 ~~pursuant to this section or Section 313.1, the director shall not~~
 29 ~~review that action or decision again.~~

30 (g) This section shall not be construed to affect, impede, or
 31 delay any disciplinary actions of any board.

32 SEC. 2. *Section 109.5 is added to the Business and Professions*
 33 *Code, to read:*

34 109.5. *The executive officer of any board, committee, or*
 35 *commission within the department shall not be an active licensee*
 36 *of any profession that board, committee, or commission regulates.*

37 ~~SEC. 2.~~

38 SEC. 3. Section 116 of the Business and Professions Code is
 39 amended to read:

1 116. (a) The director may audit and review, upon his or her
2 own initiative, or upon the request of a consumer or licensee,
3 inquiries and complaints regarding licensees, dismissals of
4 disciplinary cases, the opening, conduct, or closure of
5 investigations, informal conferences, and discipline short of formal
6 accusation by any board or bureau within the department.

7 (b) The director shall report to the Chairs of the Senate Business,
8 Professions, and Economic Development Committee and the
9 Assembly Business and Professions Committee annually,
10 commencing March 1, 2017, regarding his or her findings from
11 any audit, review, or monitoring and evaluation conducted pursuant
12 to this section. This report shall be submitted in compliance with
13 Section 9795 of the Government Code.

14 ~~SEC. 3.~~

15 *SEC. 4.* Section 153 of the Business and Professions Code is
16 amended to read:

17 153. The director may investigate the work of the several
18 boards in his *or her* department and may obtain a copy of all
19 records and full and complete data in all official matters in
20 possession of the boards, their members, officers, or employees.

21 ~~SEC. 4.~~

22 *SEC. 5.* Section 307 of the Business and Professions Code is
23 amended to read:

24 307. The director may contract for the services of experts and
25 consultants where necessary to carry out this chapter and may
26 provide compensation and reimbursement of expenses for those
27 experts and consultants in accordance with state law.

28 ~~SEC. 5.~~

29 *SEC. 6.* Section 313.1 of the Business and Professions Code
30 is amended to read:

31 313.1. (a) Notwithstanding any other law to the contrary, no
32 rule or regulation and no fee change proposed or promulgated by
33 any of the boards, commissions, or committees within the
34 department, shall take effect pending compliance with this section.

35 (b) The director shall be formally notified of and shall review,
36 in accordance with the requirements of Article 5 (commencing
37 with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title
38 2 of the Government Code, the requirements in subdivision (c) of
39 Section 109, and this section, all of the following:

1 (1) All notices of proposed action, any modifications and
2 supplements thereto, and the text of proposed regulations.

3 (2) Any notices of sufficiently related changes to regulations
4 previously noticed to the public, and the text of proposed
5 regulations showing modifications to the text.

6 (3) Final rulemaking records.

7 (4) All relevant ~~facts~~, *facts in the rulemaking record, which may*
8 *include* data, public comments, ~~market conditions, studies,~~ or other
9 documentary evidence pertaining to the ~~market impacted by the~~
10 ~~proposed regulation. This information shall be included in the~~
11 ~~written decision of the director required under paragraph (4) of~~
12 ~~subdivision (c) of Section 109. proposed regulation to determine~~
13 *whether it furthers state law. If the regulation does not further*
14 *state law, it shall not be approved.*

15 (c) The submission of all notices and final rulemaking records
16 to the director and the director's approval, as authorized by this
17 section, shall be a precondition to the filing of any rule or
18 regulation with the Office of Administrative Law. The Office of
19 Administrative Law shall have no jurisdiction to review a rule or
20 regulation subject to this section until after the director's review
21 and approval. The filing of any document with the Office of
22 Administrative Law shall be accompanied by a certification that
23 the board, commission, or committee has complied with the
24 requirements of this section.

25 (d) Following the receipt of any final rulemaking record subject
26 to subdivision (a), the director shall have the authority for a period
27 of 30 days to ~~approve~~ *approve, disapprove, or require modification*
28 *of* a proposed rule or regulation ~~or disapprove a proposed rule or~~
29 ~~regulation~~ on the ground that it is injurious to the public health,
30 safety, or ~~welfare~~, *welfare* or ~~has an impermissible anticompetitive~~
31 ~~effect. The director may modify a rule or regulation as a condition~~
32 ~~of approval. Any modifications to regulations by the director shall~~
33 ~~be subject to a 30-day public comment period before the director~~
34 ~~issues a final decision regarding the modified regulation. If the~~
35 ~~director does not approve the rule or regulation within the 30-day~~
36 ~~period, the rule or regulation shall not be submitted to the Office~~
37 ~~of Administrative Law and the rule or regulation shall have no~~
38 ~~effect.~~ *does not further state law. If the director does not approve*
39 *the rule or regulation within the 30-day period, the rule or*

1 *regulation shall not be submitted to the Office of Administrative*
2 *Law and the rule or regulation shall have no effect.*

3 (e) Final rulemaking records shall be filed with the director
4 within the one-year notice period specified in Section 11346.4 of
5 the Government Code. If necessary for compliance with this
6 section, the one-year notice period may be extended, as specified
7 by this subdivision.

8 (1) In the event that the one-year notice period lapses during
9 the director's 30-day review period, or within 60 days following
10 the notice of the director's disapproval, it may be extended for a
11 maximum of 90 days.

12 (2) If the director approves the final rulemaking record, the
13 board, commission, or committee shall have five days from the
14 receipt of the record from the director within which to file it with
15 the Office of Administrative Law.

16 (3) If the director disapproves a rule or regulation, it shall have
17 no force or effect unless, within 60 days of the notice of
18 disapproval, (A) the disapproval is overridden by a unanimous
19 vote of the members of the board, commission, or committee, and
20 (B) the board, commission, or committee files the final rulemaking
21 record with the Office of Administrative Law in compliance with
22 this section and the procedures required by Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code. This paragraph shall not apply to any
25 decision disapproved by the director under subdivision (e) of
26 Section 109: *effect.*

27 (f) This section shall not be construed to prohibit the director
28 from affirmatively approving a proposed rule, regulation, or fee
29 change at any time within the 30-day period after it has been
30 submitted to him or her, in which event it shall become effective
31 upon compliance with this section and the procedures required by
32 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
33 3 of Title 2 of the Government Code.

34 ~~SEC. 6.~~

35 *SEC. 7.* Section 2708 of the Business and Professions Code is
36 amended to read:

37 2708. (a) The board shall appoint an executive officer who
38 shall perform the duties delegated by the board and who shall be
39 responsible to it for the accomplishment of those duties.

1 (b) The executive officer shall not be a licensee under this
2 chapter and shall possess other qualifications as determined by the
3 board.

4 (c) The executive officer shall not be a member of the board.

5 (d) This section shall remain in effect only until January 1, 2018,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2018, deletes or extends that date.

8 ~~SEC. 7:~~

9 *SEC. 8.* Section 4800 of the Business and Professions Code is
10 amended to read:

11 4800. (a) There is in the Department of Consumer Affairs a
12 Veterinary Medical Board in which the administration of this
13 chapter is vested. The board consists of the following members:

- 14 (1) Four licensed veterinarians.
- 15 (2) One registered veterinary technician.
- 16 (3) Three public members.

17 (b) This section shall remain in effect only until January 1, 2021,
18 and as of that date is repealed.

19 (c) Notwithstanding any other law, the repeal of this section
20 renders the board subject to review by the appropriate policy
21 committees of the Legislature. However, the review of the board
22 shall be limited to those issues identified by the appropriate policy
23 committees of the Legislature and shall not involve the preparation
24 or submission of a sunset review document or evaluative
25 questionnaire.

26 ~~SEC. 8:~~

27 *SEC. 9.* Section 4804.5 of the Business and Professions Code
28 is amended to read:

29 4804.5. (a) The board may appoint a person exempt from civil
30 service who shall be designated as an executive officer and who
31 shall exercise the powers and perform the duties delegated by the
32 board and vested in him or her by this chapter.

33 (b) This section shall remain in effect only until January 1, 2021,
34 and as of that date is repealed.

35 ~~SEC. 9. Section 4825.1 of the Business and Professions Code~~
36 ~~is amended to read:~~

37 ~~4825.1. These definitions shall govern the construction of this~~
38 ~~chapter as it applies to veterinary medicine.~~

1 (a) “Diagnosis” means the act or process of identifying or
2 determining the health status of an animal through examination
3 and the opinion derived from that examination.

4 (b) “Animal” means any member of the animal kingdom other
5 than humans, and includes fowl, fish, and reptiles, wild or
6 domestic, whether living or dead.

7 (c) “Food animal” means any animal that is raised for the
8 production of an edible product intended for consumption by
9 humans. The edible product includes, but is not limited to, milk,
10 meat, and eggs. Food animal includes, but is not limited to, cattle
11 (beef or dairy), swine, sheep, poultry, fish, and amphibian species.

12 (d) “Livestock” includes all animals, poultry, aquatic and
13 amphibian species that are raised, kept, or used for profit. It does
14 not include those species that are usually kept as pets such as dogs,
15 cats, and pet birds, or companion animals, including equines.

16 (e) “Compounding,” for the purposes of veterinary medicine,
17 shall have the same meaning given in Section 1735 of Title 16 of
18 the California Code of Regulations, except that every reference
19 therein to “pharmacy” and “pharmacist” shall be replaced with
20 “veterinary premises” and “veterinarian,” and except that only a
21 licensed veterinarian or a licensed registered veterinarian technician
22 under direct supervision of a veterinarian may perform
23 compounding and shall not delegate to or supervise any part of
24 the performance of compounding by any other person.

25 SEC. 10. Section 4826.3 is added to the Business and
26 Professions Code, to read:

27 4826.3. (a) Notwithstanding Section 4051, a veterinarian or
28 registered veterinarian technician under the direct supervision of
29 a veterinarian with a current and active license may compound a
30 drug for anesthesia, the prevention, cure, or relief of a wound,
31 fracture, bodily injury, or disease of an animal in a premises
32 currently and actively registered with the board and only under
33 the following conditions:

34 (1) Where there is no FDA-approved animal or human drug that
35 can be used as labeled or in an appropriate extralabel manner to
36 properly treat the disease, symptom, or condition for which the
37 drug is being prescribed.

38 (2) Where the compounded drug is not available from a
39 compounding pharmacy, outsourcing facility, or other
40 compounding supplier in a dosage form and concentration to

1 appropriately treat the disease, symptom, or condition for which
2 the drug is being prescribed.

3 ~~(3) Where the need and prescription for the compounded
4 medication has arisen within an established
5 veterinarian-client-patient relationship as a means to treat a specific
6 occurrence of a disease, symptom, or condition observed and
7 diagnosed by the veterinarian in a specific animal that threatens
8 the health of the animal or will cause suffering or death if left
9 untreated.~~

10 ~~(4) Where the quantity compounded does not exceed a quantity
11 demonstrably needed to treat a patient with which the veterinarian
12 has a current veterinarian-client-patient relationship.~~

13 ~~(5) Except as specified in subdivision (c), where the compound
14 is prepared only with commercially available FDA-approved
15 animal or human drugs as active ingredients.~~

16 ~~(b) A compounded veterinary drug may be prepared from an
17 FDA-approved animal or human drug for extralabel use only when
18 there is no approved animal or human drug that, when used as
19 labeled or in an appropriate extralabel manner will, in the available
20 dosage form and concentration, treat the disease, symptom, or
21 condition. Compounding from an approved human drug for use
22 in food-producing animals is not permitted if an approved animal
23 drug can be used for compounding.~~

24 ~~(c) A compounded veterinary drug may be prepared from bulk
25 drug substances only when:~~

26 ~~(1) The drug is compounded and dispensed by the veterinarian
27 to treat an individually identified animal patient under his or her
28 care.~~

29 ~~(2) The drug is not intended for use in food-producing animals.~~

30 ~~(3) If the drug contains a bulk drug substance that is a
31 component of any marketed FDA-approved animal or human drug,
32 there is a change between the compounded drug and the
33 comparable marketed drug made for an individually identified
34 animal patient that produces a clinical difference for that
35 individually identified animal patient, as determined by the
36 veterinarian prescribing the compounded drug for his or her patient.~~

37 ~~(4) There are no FDA-approved animal or human drugs that
38 can be used as labeled or in an appropriate extralabel manner to
39 properly treat the disease, symptom, or condition for which the
40 drug is being prescribed.~~

1 ~~(5) All bulk drug substances used in compounding are~~
2 ~~manufactured by an establishment registered under Section 360~~
3 ~~of Title 21 of the United States Code and are accompanied by a~~
4 ~~valid certificate of analysis.~~

5 ~~(6) The drug is not sold or transferred by the veterinarian~~
6 ~~compounding the drug, except that the veterinarian shall be~~
7 ~~permitted to administer the drug to a patient under his or her care~~
8 ~~or dispense it to the owner or caretaker of an animal under his or~~
9 ~~her care.~~

10 ~~(7) Within 15 days of becoming aware of any product defect or~~
11 ~~serious adverse event associated with any drug compounded by~~
12 ~~the veterinarian from bulk drug substances, the veterinarian shall~~
13 ~~report it to the federal Food and Drug Administration on Form~~
14 ~~FDA 1932a.~~

15 ~~(8) In addition to any other requirements, the label of any~~
16 ~~veterinary drug compounded from bulk drug substances shall~~
17 ~~indicate the species of the intended animal patient, the name of~~
18 ~~the animal patient, and the name of the owner or caretaker of the~~
19 ~~patient.~~

20 ~~(d) Each compounded veterinary drug preparation shall meet~~
21 ~~the labeling requirements of Section 4076 and Sections 1707.5~~
22 ~~and 1735.4 of Title 16 of the California Code of Regulations,~~
23 ~~except that every reference therein to “pharmacy” and “pharmacist”~~
24 ~~shall be replaced by “veterinary premises” and “veterinarian,” and~~
25 ~~any reference to “patient” shall be understood to refer to the animal~~
26 ~~patient. In addition, each label on a compounded veterinary drug~~
27 ~~preparation shall include withdrawal and holding times, if needed,~~
28 ~~and the disease, symptom, or condition for which the drug is being~~
29 ~~prescribed. Any compounded veterinary drug preparation that is~~
30 ~~intended to be sterile, including for injection, administration into~~
31 ~~the eye, or inhalation, shall in addition meet the labeling~~
32 ~~requirements of Section 1751.2 of Title 16 of the California Code~~
33 ~~of Regulations, except that every reference therein to “pharmacy”~~
34 ~~and “pharmacist” shall be replaced by “veterinary premises” and~~
35 ~~“veterinarian,” and any reference to “patient” shall be understood~~
36 ~~to refer to the animal patient.~~

37 ~~(e) Any veterinarian, registered veterinarian technician who is~~
38 ~~under the direct supervision of a veterinarian, and veterinary~~
39 ~~premises engaged in compounding shall meet the compounding~~
40 ~~requirements for pharmacies and pharmacists stated by the~~

1 provisions of Article 4.5 (commencing with Section 1735) of Title
2 16 of the California Code of Regulations, except that every
3 reference therein to “pharmacy” and “pharmacist” shall be replaced
4 by “veterinary premises” and “veterinarian,” and any reference to
5 “patient” shall be understood to refer to the animal patient:

6 (1) Section 1735.1 of Title 16 of the California Code of
7 Regulations.

8 (2) Subdivisions (d),(e), (f), (g), (h), (i), (j), (k), and (l) of
9 Section 1735.2 of Title 16 of the California Code of Regulations.

10 (3) Section 1735.3 of Title 16 of the California Code of
11 Regulations, except that only a licensed veterinarian or registered
12 veterinarian technician may perform compounding and shall not
13 delegate to or supervise any part of the performance of
14 compounding by any other person.

15 (4) Section 1735.4 of Title 16 of the California Code of
16 Regulations.

17 (5) Section 1735.5 of Title 16 of the California Code of
18 Regulations.

19 (6) Section 1735.6 of Title 16 of the California Code of
20 Regulations.

21 (7) Section 1735.7 of Title 16 of the California Code of
22 Regulations.

23 (8) Section 1735.8 of Title 16 of the California Code of
24 Regulations.

25 (f) Any veterinarian, registered veterinarian technician under
26 the direct supervision of a veterinarian, and veterinary premises
27 engaged in sterile compounding shall meet the sterile compounding
28 requirements for pharmacies and pharmacists under Article 7
29 (commencing with Section 1751) of Title 16 of the California Code
30 of Regulations, except that every reference therein to “pharmacy”
31 and “pharmacist” shall be replaced by “veterinary premises” and
32 “veterinarian,” and any reference to “patient” shall be understood
33 to refer to the animal patient.

34 (g) The California State Board of Pharmacy shall have authority
35 with the board to ensure compliance with this section and shall
36 have the right to inspect any veterinary premises engaged in
37 compounding, along with or separate from the board, to ensure
38 compliance with this section. The board is specifically charged
39 with enforcing this section with regard to its licensees.

1 ~~SEC. 11. Section 4826.5 is added to the Business and~~
2 ~~Professions Code, to read:~~

3 ~~4826.5. Failure by a licensed veterinarian, registered~~
4 ~~veterinarian technician, or veterinary premises to comply with the~~
5 ~~provisions of this article shall be deemed unprofessional conduct~~
6 ~~and constitute grounds for discipline.~~

7 ~~SEC. 12. Section 4826.7 is added to the Business and~~
8 ~~Professions Code, to read:~~

9 ~~4826.7. The board may adopt regulations to implement the~~
10 ~~provisions of this article.~~

11 *SEC. 10. Section 4826.5 is added to the Business and*
12 *Professions Code, to read:*

13 *4826.5. Notwithstanding any other law, a licensed veterinarian*
14 *or a registered veterinary technician under the supervision of a*
15 *licensed veterinarian may compound drugs for animal use pursuant*
16 *to Section 530 of Title 21 of the Code of Federal Regulations and*
17 *in accordance with regulations promulgated by the board. The*
18 *regulations promulgated by the board shall, at a minimum, address*
19 *the storage of drugs, the level and type of supervision required for*
20 *compounding drugs by a registered veterinary technician, and the*
21 *equipment necessary for the safe compounding of drugs. Any*
22 *violation of the regulations adopted by the board pursuant to this*
23 *section shall constitute grounds for an enforcement or disciplinary*
24 *action.*

25 ~~SEC. 13.~~

26 *SEC. 11. Section 4830 of the Business and Professions Code*
27 *is amended to read:*

28 4830. (a) This chapter does not apply to:

29 (1) Veterinarians while serving in any armed branch of the
30 military service of the United States or the United States
31 Department of Agriculture while actually engaged and employed
32 in their official capacity.

33 (2) Regularly licensed veterinarians in actual consultation from
34 other states.

35 (3) Regularly licensed veterinarians actually called from other
36 states to attend cases in this state, but who do not open an office
37 or appoint a place to do business within this state.

38 (4) Students in the School of Veterinary Medicine of the
39 University of California or the College of Veterinary Medicine of
40 the Western University of Health Sciences who participate in

1 diagnosis and treatment as part of their educational experience,
2 including those in off-campus educational programs under the
3 direct supervision of a licensed veterinarian in good standing, as
4 defined in paragraph (1) of subdivision (b) of Section 4848,
5 appointed by the University of California, Davis, or the Western
6 University of Health Sciences.

7 (5) A veterinarian who is employed by the Meat and Poultry
8 Inspection Branch of the California Department of Food and
9 Agriculture while actually engaged and employed in his or her
10 official capacity. A person exempt under this paragraph shall not
11 otherwise engage in the practice of veterinary medicine unless he
12 or she is issued a license by the board.

13 (6) Unlicensed personnel employed by the Department of Food
14 and Agriculture or the United States Department of Agriculture
15 when in the course of their duties they are directed by a veterinarian
16 supervisor to conduct an examination, obtain biological specimens,
17 apply biological tests, or administer medications or biological
18 products as part of government disease or condition monitoring,
19 investigation, control, or eradication activities.

20 (b) (1) For purposes of paragraph (3) of subdivision (a), a
21 regularly licensed veterinarian in good standing who is called from
22 another state by a law enforcement agency or animal control
23 agency, as defined in Section 31606 of the Food and Agricultural
24 Code, to attend to cases that are a part of an investigation of an
25 alleged violation of federal or state animal fighting or animal
26 cruelty laws within a single geographic location shall be exempt
27 from the licensing requirements of this chapter if the law
28 enforcement agency or animal control agency determines that it
29 is necessary to call the veterinarian in order for the agency or
30 officer to conduct the investigation in a timely, efficient, and
31 effective manner. In determining whether it is necessary to call a
32 veterinarian from another state, consideration shall be given to the
33 availability of veterinarians in this state to attend to these cases.
34 An agency, department, or officer that calls a veterinarian pursuant
35 to this subdivision shall notify the board of the investigation.

36 (2) Notwithstanding any other provision of this chapter, a
37 regularly licensed veterinarian in good standing who is called from
38 another state to attend to cases that are a part of an investigation
39 described in paragraph (1) may provide veterinary medical care
40 for animals that are affected by the investigation with a temporary

1 shelter facility, and the temporary shelter facility shall be exempt
2 from the registration requirement of Section 4853 if all of the
3 following conditions are met:

4 (A) The temporary shelter facility is established only for the
5 purpose of the investigation.

6 (B) The temporary shelter facility provides veterinary medical
7 care, shelter, food, and water only to animals that are affected by
8 the investigation.

9 (C) The temporary shelter facility complies with Section 4854.

10 (D) The temporary shelter facility exists for not more than 60
11 days, unless the law enforcement agency or animal control agency
12 determines that a longer period of time is necessary to complete
13 the investigation.

14 (E) Within 30 calendar days upon completion of the provision
15 of veterinary health care services at a temporary shelter facility
16 established pursuant to this section, the veterinarian called from
17 another state by a law enforcement agency or animal control agency
18 to attend to a case shall file a report with the board. The report
19 shall contain the date, place, type, and general description of the
20 care provided, along with a listing of the veterinary health care
21 practitioners who participated in providing that care.

22 (c) For purposes of paragraph (3) of subdivision (a), the board
23 may inspect temporary facilities established pursuant to this
24 section.

25 ~~SEC. 14.~~

26 *SEC. 12.* Section 4846.5 of the Business and Professions Code
27 is amended to read:

28 4846.5. (a) Except as provided in this section, the board shall
29 issue renewal licenses only to those applicants that have completed
30 a minimum of 36 hours of continuing education in the preceding
31 two years.

32 (b) (1) Notwithstanding any other law, continuing education
33 hours shall be earned by attending courses relevant to veterinary
34 medicine and sponsored or cosponsored by any of the following:

35 (A) American Veterinary Medical Association (AVMA)
36 accredited veterinary medical colleges.

37 (B) Accredited colleges or universities offering programs
38 relevant to veterinary medicine.

39 (C) The American Veterinary Medical Association.

1 (D) American Veterinary Medical Association recognized
2 specialty or affiliated allied groups.

3 (E) American Veterinary Medical Association's affiliated state
4 veterinary medical associations.

5 (F) Nonprofit annual conferences established in conjunction
6 with state veterinary medical associations.

7 (G) Educational organizations affiliated with the American
8 Veterinary Medical Association or its state affiliated veterinary
9 medical associations.

10 (H) Local veterinary medical associations affiliated with the
11 California Veterinary Medical Association.

12 (I) Federal, state, or local government agencies.

13 (J) Providers accredited by the Accreditation Council for
14 Continuing Medical Education (ACCME) or approved by the
15 American Medical Association (AMA), providers recognized by
16 the American Dental Association Continuing Education
17 Recognition Program (ADA CERP), and AMA or ADA affiliated
18 state, local, and specialty organizations.

19 (2) Continuing education credits shall be granted to those
20 veterinarians taking self-study courses, which may include, but
21 are not limited to, reading journals, viewing video recordings, or
22 listening to audio recordings. The taking of these courses shall be
23 limited to no more than six hours biennially.

24 (3) The board may approve other continuing veterinary medical
25 education providers not specified in paragraph (1).

26 (A) The board has the authority to recognize national continuing
27 education approval bodies for the purpose of approving continuing
28 education providers not specified in paragraph (1).

29 (B) Applicants seeking continuing education provider approval
30 shall have the option of applying to the board or to a
31 board-recognized national approval body.

32 (4) For good cause, the board may adopt an order specifying,
33 on a prospective basis, that a provider of continuing veterinary
34 medical education authorized pursuant to paragraph (1) or (3) is
35 no longer an acceptable provider.

36 (5) Continuing education hours earned by attending courses
37 sponsored or cosponsored by those entities listed in paragraph (1)
38 between January 1, 2000, and January 1, 2001, shall be credited
39 toward a veterinarian's continuing education requirement under
40 this section.

1 (c) Every person renewing his or her license issued pursuant to
2 Section 4846.4, or any person applying for relicensure or for
3 reinstatement of his or her license to active status, shall submit
4 proof of compliance with this section to the board certifying that
5 he or she is in compliance with this section. Any false statement
6 submitted pursuant to this section shall be a violation subject to
7 Section 4831.

8 (d) This section shall not apply to a veterinarian's first license
9 renewal. This section shall apply only to second and subsequent
10 license renewals granted on or after January 1, 2002.

11 (e) The board shall have the right to audit the records of all
12 applicants to verify the completion of the continuing education
13 requirement. Applicants shall maintain records of completion of
14 required continuing education coursework for a period of four
15 years and shall make these records available to the board for
16 auditing purposes upon request. If the board, during this audit,
17 questions whether any course reported by the veterinarian satisfies
18 the continuing education requirement, the veterinarian shall provide
19 information to the board concerning the content of the course; the
20 name of its sponsor and cosponsor, if any; and specify the specific
21 curricula that was of benefit to the veterinarian.

22 (f) A veterinarian desiring an inactive license or to restore an
23 inactive license under Section 701 shall submit an application on
24 a form provided by the board. In order to restore an inactive license
25 to active status, the veterinarian shall have completed a minimum
26 of 36 hours of continuing education within the last two years
27 preceding application. The inactive license status of a veterinarian
28 shall not deprive the board of its authority to institute or continue
29 a disciplinary action against a licensee.

30 (g) Knowing misrepresentation of compliance with this article
31 by a veterinarian constitutes unprofessional conduct and grounds
32 for disciplinary action or for the issuance of a citation and the
33 imposition of a civil penalty pursuant to Section 4883.

34 (h) The board, in its discretion, may exempt from the continuing
35 education requirement any veterinarian who for reasons of health,
36 military service, or undue hardship cannot meet those requirements.
37 Applications for waivers shall be submitted on a form provided
38 by the board.

39 (i) The administration of this section may be funded through
40 professional license and continuing education provider fees. The

1 fees related to the administration of this section shall not exceed
2 the costs of administering the corresponding provisions of this
3 section.

4 (j) For those continuing education providers not listed in
5 paragraph (1) of subdivision (b), the board or its recognized
6 national approval agent shall establish criteria by which a provider
7 of continuing education shall be approved. The board shall initially
8 review and approve these criteria and may review the criteria as
9 needed. The board or its recognized agent shall monitor, maintain,
10 and manage related records and data. The board may impose an
11 application fee, not to exceed two hundred dollars (\$200)
12 biennially, for continuing education providers not listed in
13 paragraph (1) of subdivision (b).

14 (k) (1) Beginning January 1, 2018, a licensed veterinarian who
15 renews his or her license shall complete a minimum of one credit
16 hour of continuing education on the judicious use of medically
17 important antimicrobial drugs every four years as part of his or
18 her continuing education requirements.

19 (2) For purposes of this subdivision, “medically important
20 antimicrobial drug” means an antimicrobial drug listed in Appendix
21 A of the federal Food and Drug Administration’s Guidance for
22 Industry #152, including critically important, highly important,
23 and important antimicrobial drugs, as that appendix may be
24 amended.

25 ~~SEC. 15.~~

26 *SEC. 13.* Section 4848.1 is added to the Business and
27 Professions Code, to read:

28 4848.1. (a) A veterinarian engaged in the practice of veterinary
29 medicine, as defined in Section 4826, employed by the University
30 of California ~~while and~~ engaged in the performance of duties in
31 connection with the School of Veterinary Medicine or employed
32 by the Western University of Health Sciences ~~while and~~ engaged
33 in the performance of duties in connection with the College of
34 Veterinary Medicine shall be ~~licensed in California or shall hold~~
35 *issued* a university license ~~issued by the board. pursuant to this~~
36 *section or hold a license to practice veterinary medicine in this*
37 *state.*

38 (b) ~~An applicant is eligible to hold~~ *individual may apply for and*
39 *be issued* a university license if all of the following are satisfied:

1 (1) ~~The applicant~~ *He or she* is currently employed by the
 2 University of California or Western University of Health Sciences
 3 *Sciences*, as defined in subdivision (a).

4 (2) ~~Passes~~ *He or she passes* an examination concerning the
 5 statutes and regulations of the Veterinary Medicine Practice Act,
 6 administered by the board, pursuant to subparagraph (C) of
 7 paragraph (2) of subdivision (a) of Section 4848.

8 (3) ~~Successfully~~ *He or she successfully* completes the approved
 9 educational curriculum described in paragraph (5) of subdivision
 10 (b) of Section 4848 on regionally specific and important diseases
 11 and conditions.

12 (4) *He or she completes and submits the application specified*
 13 *by the board and pays the application fee, pursuant to subdivision*
 14 *(g) of Section 4905, and the initial license fee, pursuant to*
 15 *subdivision (h) of Section 4905.*

16 (c) A university license:

17 (1) Shall be numbered as described in Section 4847.

18 (2) Shall *automatically* cease to be valid upon termination *or*
 19 *cessation* of employment by the University of California or by the
 20 Western University of Health Sciences.

21 (3) Shall be subject to the license renewal provisions in Section
 22 ~~4846.4.~~ *4846.4 and the payment of the renewal fee pursuant to*
 23 *subdivision (i) of Section 4905.*

24 (4) Shall be subject to denial, revocation, or suspension pursuant
 25 to Sections ~~4875 and 4883.~~ *480, 4875, and 4883.*

26 (5) *Authorizes the holder to practice veterinary medicine only*
 27 *at the educational institution described in subdivision (a) and any*
 28 *locations formally affiliated with those institutions.*

29 (d) An individual who holds a university license is exempt from
 30 satisfying the license renewal requirements of Section 4846.5.

31 ~~SEC. 16.~~

32 *SEC. 14.* Section 4853.7 is added to the Business and
 33 Professions Code, to read:

34 4853.7. A premise registration that is not renewed within five
 35 years after its expiration may not be renewed and shall not be
 36 restored, reissued, or reinstated thereafter. However, an application
 37 for a new premise registration may be submitted and obtained if
 38 both of the following conditions are met:

39 (a) No fact, circumstance, or condition exists that, if the premise
 40 registration was issued, would justify its revocation or suspension.

1 (b) All of the fees that would be required for the initial premise
2 registration are paid at the time of application.

3 *SEC. 15. Section 4904 of the Business and Professions Code*
4 *is amended to read:*

5 4904. All fees collected on behalf of the board and all receipts
6 of every kind and nature shall be reported each month for the month
7 preceding to the State Controller and at the same time the entire
8 amount shall be paid into the State Treasury and shall be credited
9 to the Veterinary Medical Board Contingent Fund. This contingent
10 fund shall be *available, upon appropriation by the Legislature,*
11 *for the use of the Veterinary Medical Board and out of it and not*
12 ~~otherwise shall be paid all expenses of the board.~~ *Board.*

13 *SEC. 16. Section 4905 of the Business and Professions Code*
14 *is amended to read:*

15 4905. The following fees shall be collected by the board and
16 shall be credited to the Veterinary Medical Board Contingent Fund:

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

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

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

29 (d) The initial license fee shall be set by the board not to exceed
30 five hundred dollars (\$500) except that, if the license is issued less
31 than one year before the date on which it will expire, then the fee
32 shall be set by the board at not to exceed two hundred fifty dollars
33 (\$250). The board may, by appropriate regulation, provide for the
34 waiver or refund of the initial license fee where the license is issued
35 less than 45 days before the date on which it will expire.

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

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

5 (g) *The fee for filing an application for a university license shall*
6 *be one hundred twenty-five dollars (\$125), which may be revised*
7 *by the board in regulation but shall not exceed three hundred fifty*
8 *dollars (\$350).*

9 (h) *The initial license fee for a university license shall be two*
10 *hundred ninety dollars (\$290), which may be revised by the board*
11 *in regulation but shall not exceed five hundred dollars (\$500).*

12 (i) *The biennial renewal fee for a university license shall be two*
13 *hundred ninety dollars (\$290), which may be revised by the board*
14 *in regulation but shall not exceed five hundred dollars (\$500).*

15 ~~(g)~~

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

18 ~~(h)~~

19 (k) The fee for issuance of a duplicate license is twenty-five
20 dollars (\$25).

21 ~~(i)~~

22 (l) Any charge made for duplication or other services shall be
23 set at the cost of rendering the service, except as specified in
24 subdivision~~(h)~~: (k).

25 ~~(j)~~

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

28 ~~(k)~~

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

32 ~~(l)~~

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

1 Veterinary Medical Board Contingent Fund reserve of more than
2 10 months of annual authorized board expenditures.

3 SEC. 17. Section 825 of the Government Code is amended to
4 read:

5 825. (a) Except as otherwise provided in this section, if an
6 employee or former employee of a public entity requests the public
7 entity to defend him or her against any claim or action against him
8 or her for an injury arising out of an act or omission occurring
9 within the scope of his or her employment as an employee of the
10 public entity and the request is made in writing not less than 10
11 days before the day of trial, and the employee or former employee
12 reasonably cooperates in good faith in the defense of the claim or
13 action, the public entity shall pay any judgment based thereon or
14 any compromise or settlement of the claim or action to which the
15 public entity has agreed.

16 If the public entity conducts the defense of an employee or
17 former employee against any claim or action with his or her
18 reasonable good-faith cooperation, the public entity shall pay any
19 judgment based thereon or any compromise or settlement of the
20 claim or action to which the public entity has agreed. However,
21 where the public entity conducted the defense pursuant to an
22 agreement with the employee or former employee reserving the
23 rights of the public entity not to pay the judgment, compromise,
24 or settlement until it is established that the injury arose out of an
25 act or omission occurring within the scope of his or her
26 employment as an employee of the public entity, the public entity
27 is required to pay the judgment, compromise, or settlement only
28 if it is established that the injury arose out of an act or omission
29 occurring in the scope of his or her employment as an employee
30 of the public entity.

31 Nothing in this section authorizes a public entity to pay that part
32 of a claim or judgment that is for punitive or exemplary damages.

33 (b) Notwithstanding subdivision (a) or any other provision of
34 law, a public entity is authorized to pay that part of a judgment
35 that is for punitive or exemplary damages if the governing body
36 of that public entity, acting in its sole discretion except in cases
37 involving an entity of the state government, finds all of the
38 following:

1 (1) The judgment is based on an act or omission of an employee
2 or former employee acting within the course and scope of his or
3 her employment as an employee of the public entity.

4 (2) At the time of the act giving rise to the liability, the employee
5 or former employee acted, or failed to act, in good faith, without
6 actual malice and in the apparent best interests of the public entity.

7 (3) Payment of the claim or judgment would be in the best
8 interests of the public entity.

9 As used in this subdivision with respect to an entity of state
10 government, “a decision of the governing body” means the
11 approval of the Legislature for payment of that part of a judgment
12 that is for punitive damages or exemplary damages, upon
13 recommendation of the appointing power of the employee or
14 former employee, based upon the finding by the Legislature and
15 the appointing authority of the existence of the three conditions
16 for payment of a punitive or exemplary damages claim. The
17 provisions of subdivision (a) of Section 965.6 shall apply to the
18 payment of any claim pursuant to this subdivision.

19 The discovery of the assets of a public entity and the introduction
20 of evidence of the assets of a public entity shall not be permitted
21 in an action in which it is alleged that a public employee is liable
22 for punitive or exemplary damages.

23 The possibility that a public entity may pay that part of a
24 judgment that is for punitive damages shall not be disclosed in any
25 trial in which it is alleged that a public employee is liable for
26 punitive or exemplary damages, and that disclosure shall be
27 grounds for a mistrial.

28 (c) Except as provided in subdivision (d), if the provisions of
29 this section are in conflict with the provisions of a memorandum
30 of understanding reached pursuant to Chapter 10 (commencing
31 with Section 3500) of Division 4 of Title 1, the memorandum of
32 understanding shall be controlling without further legislative action,
33 except that if those provisions of a memorandum of understanding
34 require the expenditure of funds, the provisions shall not become
35 effective unless approved by the Legislature in the annual Budget
36 Act.

37 (d) The subject of payment of punitive damages pursuant to this
38 section or any other provision of law shall not be a subject of meet
39 and confer under the provisions of Chapter 10 (commencing with

1 Section 3500) of Division 4 of Title 1, or pursuant to any other
2 law or authority.

3 (e) Nothing in this section shall affect the provisions of Section
4 818 prohibiting the award of punitive damages against a public
5 entity. This section shall not be construed as a waiver of a public
6 entity's immunity from liability for punitive damages under Section
7 1981, 1983, or 1985 of Title 42 of the United States Code.

8 (f) (1) Except as provided in paragraph (2), a public entity shall
9 not pay a judgment, compromise, or settlement arising from a
10 claim or action against an elected official, if the claim or action is
11 based on conduct by the elected official by way of tortiously
12 intervening or attempting to intervene in, or by way of tortiously
13 influencing or attempting to influence the outcome of, any judicial
14 action or proceeding for the benefit of a particular party by
15 contacting the trial judge or any commissioner, court-appointed
16 arbitrator, court-appointed mediator, or court-appointed special
17 referee assigned to the matter, or the court clerk, bailiff, or marshal
18 after an action has been filed, unless he or she was counsel of
19 record acting lawfully within the scope of his or her employment
20 on behalf of that party. Notwithstanding Section 825.6, if a public
21 entity conducted the defense of an elected official against such a
22 claim or action and the elected official is found liable by the trier
23 of fact, the court shall order the elected official to pay to the public
24 entity the cost of that defense.

25 (2) If an elected official is held liable for monetary damages in
26 the action, the plaintiff shall first seek recovery of the judgment
27 against the assets of the elected official. If the elected official's
28 assets are insufficient to satisfy the total judgment, as determined
29 by the court, the public entity may pay the deficiency if the public
30 entity is authorized by law to pay that judgment.

31 (3) To the extent the public entity pays any portion of the
32 judgment or is entitled to reimbursement of defense costs pursuant
33 to paragraph (1), the public entity shall pursue all available
34 creditor's remedies against the elected official, including
35 garnishment, until that party has fully reimbursed the public entity.

36 (4) This subdivision shall not apply to any criminal or civil
37 enforcement action brought in the name of the people of the State
38 of California by an elected district attorney, city attorney, or
39 attorney general.

1 (g) Notwithstanding subdivision (a), a public entity shall pay
2 for a judgment or settlement for treble damage antitrust awards
3 against a member of a regulatory board for an act or omission
4 occurring within the scope of his or her employment as a member
5 of a regulatory board.

6 (h) *Treble damages awarded pursuant to the federal Clayton*
7 *Act (Sections 12 to 27 of Title 15 of, and Sections 52 to 53 of Title*
8 *29 of, the United States Code) for a violation of the federal*
9 *Sherman Act (Sections 1 to 6, 6a, and 7 of Title 15 of the United*
10 *States Code) are not punitive or exemplary damages under the*
11 *Government Claims Act (Division 3.6 (commencing with Section*
12 *810) of Title 1 of the Government Code) for purposes of this*
13 *section.*

14 SEC. 18. Section 11346.5 of the Government Code is amended
15 to read:

16 11346.5. (a) The notice of proposed adoption, amendment, or
17 repeal of a regulation shall include the following:

18 (1) A statement of the time, place, and nature of proceedings
19 for adoption, amendment, or repeal of the regulation.

20 (2) Reference to the authority under which the regulation is
21 proposed and a reference to the particular code sections or other
22 provisions of law that are being implemented, interpreted, or made
23 specific.

24 (3) An informative digest drafted in plain English in a format
25 similar to the Legislative Counsel’s digest on legislative bills. The
26 informative digest shall include the following:

27 (A) A concise and clear summary of existing laws and
28 regulations, if any, related directly to the proposed action and of
29 the effect of the proposed action.

30 (B) If the proposed action differs substantially from an existing
31 comparable federal regulation or statute, a brief description of the
32 significant differences and the full citation of the federal regulations
33 or statutes.

34 (C) A policy statement overview explaining the broad objectives
35 of the regulation and the specific benefits anticipated by the
36 proposed adoption, amendment, or repeal of a regulation, including,
37 to the extent applicable, nonmonetary benefits such as the
38 protection of public health and safety, worker safety, or the
39 environment, the prevention of discrimination, the promotion of

1 fairness or social equity, and the increase in openness and
2 transparency in business and government, among other things.

3 (D) An evaluation of whether the proposed regulation is
4 inconsistent or incompatible with existing state regulations.

5 (4) Any other matters as are prescribed by statute applicable to
6 the specific state agency or to any specific regulation or class of
7 regulations.

8 (5) A determination as to whether the regulation imposes a
9 mandate on local agencies or school districts and, if so, whether
10 the mandate requires state reimbursement pursuant to Part 7
11 (commencing with Section 17500) of Division 4.

12 (6) An estimate, prepared in accordance with instructions
13 adopted by the Department of Finance, of the cost or savings to
14 any state agency, the cost to any local agency or school district
15 that is required to be reimbursed under Part 7 (commencing with
16 Section 17500) of Division 4, other nondiscretionary cost or
17 savings imposed on local agencies, and the cost or savings in
18 federal funding to the state.

19 For purposes of this paragraph, “cost or savings” means
20 additional costs or savings, both direct and indirect, that a public
21 agency necessarily incurs in reasonable compliance with
22 regulations.

23 (7) If a state agency, in proposing to adopt, amend, or repeal
24 any administrative regulation, makes an initial determination that
25 the action may have a significant, statewide adverse economic
26 impact directly affecting business, including the ability of
27 California businesses to compete with businesses in other states,
28 it shall include the following information in the notice of proposed
29 action:

30 (A) Identification of the types of businesses that would be
31 affected.

32 (B) A description of the projected reporting, recordkeeping, and
33 other compliance requirements that would result from the proposed
34 action.

35 (C) The following statement: “The (name of agency) has made
36 an initial determination that the (adoption/amendment/repeal) of
37 this regulation may have a significant, statewide adverse economic
38 impact directly affecting business, including the ability of
39 California businesses to compete with businesses in other states.
40 The (name of agency) (has/has not) considered proposed

1 alternatives that would lessen any adverse economic impact on
2 business and invites you to submit proposals. Submissions may
3 include the following considerations:

4 (i) The establishment of differing compliance or reporting
5 requirements or timetables that take into account the resources
6 available to businesses.

7 (ii) Consolidation or simplification of compliance and reporting
8 requirements for businesses.

9 (iii) The use of performance standards rather than prescriptive
10 standards.

11 (iv) Exemption or partial exemption from the regulatory
12 requirements for businesses.”

13 (8) If a state agency, in adopting, amending, or repealing any
14 administrative regulation, makes an initial determination that the
15 action will not have a significant, statewide adverse economic
16 impact directly affecting business, including the ability of
17 California businesses to compete with businesses in other states,
18 it shall make a declaration to that effect in the notice of proposed
19 action. In making this declaration, the agency shall provide in the
20 record facts, evidence, documents, testimony, or other evidence
21 upon which the agency relies to support its initial determination.

22 An agency’s initial determination and declaration that a proposed
23 adoption, amendment, or repeal of a regulation may have or will
24 not have a significant, adverse impact on businesses, including the
25 ability of California businesses to compete with businesses in other
26 states, shall not be grounds for the office to refuse to publish the
27 notice of proposed action.

28 (9) A description of all cost impacts, known to the agency at
29 the time the notice of proposed action is submitted to the office,
30 that a representative private person or business would necessarily
31 incur in reasonable compliance with the proposed action.

32 If no cost impacts are known to the agency, it shall state the
33 following:

34 “The agency is not aware of any cost impacts that a
35 representative private person or business would necessarily incur
36 in reasonable compliance with the proposed action.”

37 (10) A statement of the results of the economic impact
38 assessment required by subdivision (b) of Section 11346.3 or the
39 standardized regulatory impact analysis if required by subdivision
40 (c) of Section 11346.3, a summary of any comments submitted to

1 the agency pursuant to subdivision (f) of Section 11346.3 and the
2 agency's response to those comments.

3 (11) The finding prescribed by subdivision (d) of Section
4 11346.3, if required.

5 (12) (A) A statement that the action would have a significant
6 effect on housing costs, if a state agency, in adopting, amending,
7 or repealing any administrative regulation, makes an initial
8 determination that the action would have that effect.

9 (B) The agency officer designated in paragraph (15) shall make
10 available to the public, upon request, the agency's evaluation, if
11 any, of the effect of the proposed regulatory action on housing
12 costs.

13 (C) The statement described in subparagraph (A) shall also
14 include the estimated costs of compliance and potential benefits
15 of a building standard, if any, that were included in the initial
16 statement of reasons.

17 (D) For purposes of model codes adopted pursuant to Section
18 18928 of the Health and Safety Code, the agency shall comply
19 with the requirements of this paragraph only if an interested party
20 has made a request to the agency to examine a specific section for
21 purposes of estimating the costs of compliance and potential
22 benefits for that section, as described in Section 11346.2.

23 (13) ~~If the regulatory action is submitted by a state board on~~
24 ~~which a controlling number of decisionmakers are active market~~
25 ~~participants in the market the board regulates, a statement that the~~
26 ~~adopting agency has evaluated the impact of the proposed~~
27 ~~regulation on competition, and that the proposed regulation furthers~~
28 ~~a clearly articulated and affirmatively expressed state law to restrain~~
29 ~~competition.~~ *board within the Department of Consumer Affairs,*
30 *a statement that the Director of Consumer Affairs has reviewed*
31 *the proposed regulation and determined that the proposed*
32 *regulation furthers state law.*

33 (14) A statement that the adopting agency must determine that
34 no reasonable alternative considered by the agency or that has
35 otherwise been identified and brought to the attention of the agency
36 would be more effective in carrying out the purpose for which the
37 action is proposed, would be as effective and less burdensome to
38 affected private persons than the proposed action, or would be
39 more cost effective to affected private persons and equally effective
40 in implementing the statutory policy or other provision of law. For

1 a major regulation, as defined by Section 11342.548, proposed on
2 or after November 1, 2013, the statement shall be based, in part,
3 upon the standardized regulatory impact analysis of the proposed
4 regulation, as required by Section 11346.3, as well as upon the
5 benefits of the proposed regulation identified pursuant to
6 subparagraph (C) of paragraph (3).

7 (15) The name and telephone number of the agency
8 representative and designated backup contact person to whom
9 inquiries concerning the proposed administrative action may be
10 directed.

11 (16) The date by which comments submitted in writing must
12 be received to present statements, arguments, or contentions in
13 writing relating to the proposed action in order for them to be
14 considered by the state agency before it adopts, amends, or repeals
15 a regulation.

16 (17) Reference to the fact that the agency proposing the action
17 has prepared a statement of the reasons for the proposed action,
18 has available all the information upon which its proposal is based,
19 and has available the express terms of the proposed action, pursuant
20 to subdivision (b).

21 (18) A statement that if a public hearing is not scheduled, any
22 interested person or his or her duly authorized representative may
23 request, no later than 15 days prior to the close of the written
24 comment period, a public hearing pursuant to Section 11346.8.

25 (19) A statement indicating that the full text of a regulation
26 changed pursuant to Section 11346.8 will be available for at least
27 15 days prior to the date on which the agency adopts, amends, or
28 repeals the resulting regulation.

29 (20) A statement explaining how to obtain a copy of the final
30 statement of reasons once it has been prepared pursuant to
31 subdivision (a) of Section 11346.9.

32 (21) If the agency maintains an Internet Web site or other similar
33 forum for the electronic publication or distribution of written
34 material, a statement explaining how materials published or
35 distributed through that forum can be accessed.

36 (22) If the proposed regulation is subject to Section 11346.6, a
37 statement that the agency shall provide, upon request, a description
38 of the proposed changes included in the proposed action, in the
39 manner provided by Section 11346.6, to accommodate a person
40 with a visual or other disability for which effective communication

1 is required under state or federal law and that providing the
2 description of proposed changes may require extending the period
3 of public comment for the proposed action.

4 (b) The agency representative designated in paragraph (15) of
5 subdivision (a) shall make available to the public upon request the
6 express terms of the proposed action. The representative shall also
7 make available to the public upon request the location of public
8 records, including reports, documentation, and other materials,
9 related to the proposed action. If the representative receives an
10 inquiry regarding the proposed action that the representative cannot
11 answer, the representative shall refer the inquiry to another person
12 in the agency for a prompt response.

13 (c) This section shall not be construed in any manner that results
14 in the invalidation of a regulation because of the alleged inadequacy
15 of the notice content or the summary or cost estimates, or the
16 alleged inadequacy or inaccuracy of the housing cost estimates, if
17 there has been substantial compliance with those requirements.

18 ~~SEC. 19. Section 11349 of the Government Code is amended~~
19 ~~to read:~~

20 ~~11349. The following definitions govern the interpretation of~~
21 ~~this chapter:~~

22 (a) ~~“Necessity” means the record of the rulemaking proceeding~~
23 ~~demonstrates by substantial evidence the need for a regulation to~~
24 ~~effectuate the purpose of the statute, court decision, or other~~
25 ~~provision of law that the regulation implements, interprets, or~~
26 ~~makes specific, taking into account the totality of the record. For~~
27 ~~purposes of this standard, evidence includes, but is not limited to,~~
28 ~~facts, studies, and expert opinion.~~

29 (b) ~~“Authority” means the provision of law which permits or~~
30 ~~obligates the agency to adopt, amend, or repeal a regulation.~~

31 (c) ~~“Clarity” means written or displayed so that the meaning of~~
32 ~~regulations will be easily understood by those persons directly~~
33 ~~affected by them.~~

34 (d) ~~“Consistency” means being in harmony with, and not in~~
35 ~~conflict with or contradictory to, existing statutes, court decisions,~~
36 ~~or other provisions of law.~~

37 (e) ~~“Reference” means the statute, court decision, or other~~
38 ~~provision of law which the agency implements, interprets, or makes~~
39 ~~specific by adopting, amending, or repealing a regulation.~~

1 (f) “Nonduplication” means that a regulation does not serve the
2 same purpose as a state or federal statute or another regulation.
3 This standard requires that an agency proposing to amend or adopt
4 a regulation must identify any state or federal statute or regulation
5 which is overlapped or duplicated by the proposed regulation and
6 justify any overlap or duplication. This standard is not intended
7 to prohibit state agencies from printing relevant portions of
8 enabling legislation in regulations when the duplication is necessary
9 to satisfy the clarity standard in paragraph (3) of subdivision (a)
10 of Section 11349.1. This standard is intended to prevent the
11 indiscriminate incorporation of statutory language in a regulation.

12 (g) “Competitive impact” means that the record of the
13 rulemaking proceeding or other documentation demonstrates that
14 the regulation is authorized by a clearly articulated and
15 affirmatively expressed state law, that the regulation furthers the
16 public protection mission of the state agency, and that the impact
17 on competition is justified in light of the applicable regulatory
18 rationale for the regulation.

19 SEC. 20. Section 11349.1 of the Government Code is amended
20 to read:

21 11349.1. (a) The office shall review all regulations adopted,
22 amended, or repealed pursuant to the procedure specified in Article
23 5 (commencing with Section 11346) and submitted to it for
24 publication in the California Code of Regulations Supplement and
25 for transmittal to the Secretary of State and make determinations
26 using all of the following standards:

27 (1) Necessity.

28 (2) Authority.

29 (3) Clarity.

30 (4) Consistency.

31 (5) Reference.

32 (6) Nonduplication.

33 (7) For those regulations submitted by a state board on which
34 a controlling number of decisionmakers are active market
35 participants in the market the board regulates, the office shall
36 review for competitive impact.

37 In reviewing regulations pursuant to this section, the office shall
38 restrict its review to the regulation and the record of the rulemaking
39 except as directed in subdivision (h). The office shall approve the

1 regulation or order of repeal if it complies with the standards set
2 forth in this section and with this chapter.

3 (b) In reviewing proposed regulations for the criteria in
4 subdivision (a), the office may consider the clarity of the proposed
5 regulation in the context of related regulations already in existence.

6 (c) The office shall adopt regulations governing the procedures
7 it uses in reviewing regulations submitted to it. The regulations
8 shall provide for an orderly review and shall specify the methods,
9 standards, presumptions, and principles the office uses, and the
10 limitations it observes, in reviewing regulations to establish
11 compliance with the standards specified in subdivision (a). The
12 regulations adopted by the office shall ensure that it does not
13 substitute its judgment for that of the rulemaking agency as
14 expressed in the substantive content of adopted regulations.

15 (d) The office shall return any regulation subject to this chapter
16 to the adopting agency if any of the following occur:

17 (1) The adopting agency has not prepared the estimate required
18 by paragraph (6) of subdivision (a) of Section 11346.5 and has not
19 included the data used and calculations made and the summary
20 report of the estimate in the file of the rulemaking.

21 (2) The agency has not complied with Section 11346.3.
22 “Noncompliance” means that the agency failed to complete the
23 economic impact assessment or standardized regulatory impact
24 analysis required by Section 11346.3 or failed to include the
25 assessment or analysis in the file of the rulemaking proceeding as
26 required by Section 11347.3.

27 (3) The adopting agency has prepared the estimate required by
28 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
29 indicates that the regulation will result in a cost to local agencies
30 or school districts that is required to be reimbursed under Part 7
31 (commencing with Section 17500) of Division 4, and the adopting
32 agency fails to do any of the following:

33 (A) Cite an item in the Budget Act for the fiscal year in which
34 the regulation will go into effect as the source from which the
35 Controller may pay the claims of local agencies or school districts.

36 (B) Cite an accompanying bill appropriating funds as the source
37 from which the Controller may pay the claims of local agencies
38 or school districts.

39 (C) Attach a letter or other documentation from the Department
40 of Finance which states that the Department of Finance has

1 approved a request by the agency that funds be included in the
2 Budget Bill for the next following fiscal year to reimburse local
3 agencies or school districts for the costs mandated by the
4 regulation.

5 (D) Attach a letter or other documentation from the Department
6 of Finance which states that the Department of Finance has
7 authorized the augmentation of the amount available for
8 expenditure under the agency's appropriation in the Budget Act
9 which is for reimbursement pursuant to Part 7 (commencing with
10 Section 17500) of Division 4 to local agencies or school districts
11 from the unencumbered balances of other appropriations in the
12 Budget Act and that this augmentation is sufficient to reimburse
13 local agencies or school districts for their costs mandated by the
14 regulation.

15 (4) The proposed regulation conflicts with an existing state
16 regulation and the agency has not identified the manner in which
17 the conflict may be resolved.

18 (5) The agency did not make the alternatives determination as
19 required by paragraph (4) of subdivision (a) of Section 11346.9.

20 (6) The office decides that the record of the rulemaking
21 proceeding or other documentation for the proposed regulation
22 does not demonstrate that the regulation is authorized by a clearly
23 articulated and affirmatively expressed state law, that the regulation
24 does not further the public protection mission of the state agency,
25 or that the impact on competition is not justified in light of the
26 applicable regulatory rationale for the regulation.

27 (e) The office shall notify the Department of Finance of all
28 regulations returned pursuant to subdivision (d).

29 (f) The office shall return a rulemaking file to the submitting
30 agency if the file does not comply with subdivisions (a) and (b)
31 of Section 11347.3. Within three state working days of the receipt
32 of a rulemaking file, the office shall notify the submitting agency
33 of any deficiency identified. If no notice of deficiency is mailed
34 to the adopting agency within that time, a rulemaking file shall be
35 deemed submitted as of the date of its original receipt by the office.
36 A rulemaking file shall not be deemed submitted until each
37 deficiency identified under this subdivision has been corrected.

38 (g) Notwithstanding any other law, return of the regulation to
39 the adopting agency by the office pursuant to this section is the
40 exclusive remedy for a failure to comply with subdivision (c) of

1 ~~Section 11346.3 or paragraph (10) of subdivision (a) of Section~~
2 ~~11346.5.~~

3 ~~(h) The office may designate, employ, or contract for the~~
4 ~~services of independent antitrust or applicable economic experts~~
5 ~~when reviewing proposed regulations for competitive impact.~~
6 ~~When reviewing a regulation for competitive impact, the office~~
7 ~~shall do all of the following:~~

8 ~~(1) If the Director of Consumer Affairs issued a written decision~~
9 ~~pursuant to subdivision (e) of Section 109 of the Business and~~
10 ~~Professions Code, the office shall review and consider the decision~~
11 ~~and all supporting documentation in the rulemaking file.~~

12 ~~(2) Consider whether the anticompetitive effects of the proposed~~
13 ~~regulation are clearly outweighed by the public policy merits.~~

14 ~~(3) Provide a written opinion setting forth the office's findings~~
15 ~~and substantive conclusions under paragraph (2), including, but~~
16 ~~not limited to, whether rejection or modification of the proposed~~
17 ~~regulation is necessary to ensure that restraints of trade are related~~
18 ~~to and advance the public policy underlying the applicable~~
19 ~~regulatory rationale.~~

20 ~~SEC. 21:~~

21 ~~SEC. 19.~~ No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.