DATE: August 3, 2016

TO: Board Members

FROM: Kameka Brown, PhD, MBA, NP
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.

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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

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1, 2018, review that agency’s regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified.

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

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

CHAPTER 3.6. REGULATORY REFORM

Article 1. Findings and Declarations

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

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

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not require agencies to individually review their regulations to identify overlapping, inconsistent, duplicative, or out-of-date regulations that may exist.

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systematically undertake to identify, publicly review, and eliminate overlapping, inconsistent, duplicative, or out-of-date regulations, both to ensure they more efficiently implement and enforce laws and to reduce unnecessary and outdated rules and regulations.

Article 2. Definitions

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

(a) “State agency” means a state agency, as defined in Section 11000, except those state agencies or activities described in Section 11340.9.
(b) “Regulation” has the same meaning as provided in Section 11342.600.

Article 3. State Agency Duties

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

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

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

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

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

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

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

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

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

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

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

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

Article 4. Chapter Repeal

11366.5. This chapter shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.
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
AB 611 — 2 —

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.


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

SECTION 1. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) (A) (i) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 shall, before January 1, 2016, or upon receipt of a federal Drug Enforcement Administration (DEA) registration, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that practitioner the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

(ii) A pharmacist shall, before January 1, 2016, or upon licensure, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that pharmacist the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program.
substances dispensed to an individual under his or her care based on data contained in the CURES PDMP.

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

(II) This clause does not require an individual designated by a board, bureau, or program within the Department of Consumer Affairs that regulates health care practitioners to submit an application to access the information stored within the CURES PDMP. The application shall contain facts demonstrating the probable cause to believe the licensee has violated a law governing controlled substances.

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

(i) Materially falsifying an application for a subscriber.

(ii) Failure to maintain effective controls for access to the patient activity report.

(iii) Suspended or revoked federal DEA registration.

(iv) Any subscriber who is arrested for a violation of law governing controlled substances or any other law for which the possession or use of a controlled substance is an element of the crime.

(v) Any subscriber described in clause (i) or (ii) of subparagraph (A) accessing information for any other reason than caring for his or her patients.
(vi) Any subscriber described in clause (iii) of subparagraph (A) accessing information for any other reason than investigating the holder of a professional license.

(C) Any authorized subscriber shall notify the Department of Justice within 30 days of any changes to the subscriber account.

(2) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 or a pharmacist shall be deemed to have complied with paragraph (1) if the licensed health care practitioner or pharmacist has been approved to access the CURES database through the process developed pursuant to subdivision (a) of Section 209 of the Business and Professions Code.

(b) Any request for, or release of, a controlled substance history pursuant to this section shall be made in accordance with guidelines developed by the Department of Justice.

(c) In order to prevent the inappropriate, improper, or illegal use of Schedule II, Schedule III, or Schedule IV controlled substances, the Department of Justice may initiate the referral of the history of controlled substances dispensed to an individual based on data contained in CURES to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

(d) The history of controlled substances dispensed to an individual based on data contained in CURES that is received by an authorized subscriber from the Department of Justice pursuant to this section shall be considered medical information subject to the provisions of the Confidentiality of Medical Information Act contained in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(e) Information concerning a patient’s controlled substance history provided to an authorized subscriber pursuant to this section shall include prescriptions for controlled substances listed in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code of Federal Regulations.
An act to add Section 463 to the Business and Professions Code, relating to business and professions.

LEGISLATIVE COUNSEL’S DIGEST


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.


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

SECTION 1. Section 463 is added to the Business and Professions Code, to read:

463. (a) Any of the boards, bureaus, commissions, or programs within the department may establish, by regulation, a system for a retired category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

(b) The regulation shall contain the following:

(1) The holder of a retired license issued pursuant to this section shall not engage in any activity for which a license is required, unless the board, by regulation, specifies the criteria for a retired licensee to practice his or her profession or vocation.

(2) The holder of a retired license shall not be required to renew that license.

(3) In order for the holder of a retired license issued pursuant to this section to restore his or her license to an active status, the holder of that license shall meet all the following:

(A) Pay a fee established by regulation.

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

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

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

(E) Complete any other requirements as specified by the board by regulation.
(c) A board may upon its own determination, and shall upon receipt of a complaint from any person, investigate the actions of any licensee, including a person with a license that either restricts or prohibits the practice of that person in his or her profession or vocation, including, but not limited to, a license that is retired, inactive, canceled, revoked, or suspended.
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.

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

SECTION 1. It is the intent of the Legislature to ensure that there is a process that management and supervisors in a state health care facility are required to follow to avoid on-the-spot mandatory overtime of any nurse or certified nursing assistant (CNA) whose regularly scheduled work shift is complete, and to prevent circumstances where an employee is stopped at the gate of, for example, a Department of Corrections and Rehabilitation and California Correctional Health Care Services facility, and is instructed to return to work at the end of the employee’s regularly scheduled work shift. It is the intent of the Legislature to prohibit a state facility that employs nurses or CNAs from using mandatory overtime as a scheduling tool, or as an excuse for fulfilling an operational need that results from a management failure to properly staff those state facilities.

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

19851.2. (a) As used in this section:

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

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

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

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

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

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

(i) An act of terrorism.
(ii) A natural disaster.
(iii) A widespread disease outbreak.
(iv) A warden, superintendent, or executive director-declared emergency, or severe emergency that necessitates the assistance of an outside agency.

(b) A facility shall not require a nurse or CNA to work in excess of a regularly scheduled workweek or work shift. A nurse or CNA may volunteer or agree to work hours in addition to his or her regularly scheduled workweek or work shift but the refusal by a nurse or CNA to accept those additional hours shall not constitute either of the following:

(1) Grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the nurse or CNA.

(2) Patient abandonment or neglect, except under circumstances provided for in the Nursing Practice Act (Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code).

(c) This section shall not apply in any of the following situations:

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

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

(A) The catastrophic event results in such a large number of patients in need of immediate medical treatment that the facility is incapable of providing sufficient nurses or CNAs to attend to the patients without resorting to mandatory overtime.

(B) The catastrophic event is an unanticipated and nonrecurring event.

(3) If an emergency situation occurs.

(d) Nothing in this section shall be construed to affect the Nursing Practice Act (Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code), the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840) of Division 2 of the Business and Professions Code), or a registered nurse’s duty under the standards of competent performance.

(e) Nothing in this section shall be construed to preclude a facility from hiring part-time or intermittent employees.
(f) Nothing in this section shall prevent a facility from providing employees with more protections against mandatory overtime than the minimum protections established pursuant to this section.

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


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

SECTION 1. Section 3750 of the Business and Professions Code is amended to read:
3750. The board may order the denial, suspension, or revocation
of, or the imposition of probationary conditions upon, a license
issued under this chapter, for any of the following causes:
(a) Advertising in violation of Section 651 or Section 17500.
(b) Fraud in the procurement of any license under this chapter.
(c) Employing an unlicensed person who presents herself or
himself as a licensed respiratory care practitioner when the
employer knew or should have known the person was not licensed.
(d) Conviction of a crime that substantially relates to the
qualifications, functions, or duties of a respiratory care practitioner.
The record of conviction or a certified copy thereof shall be
conclusive evidence of the conviction.
(e) Impersonating or acting as a proxy for an applicant in any
examination given under this chapter.
(f) Negligence in his or her practice as a respiratory care
practitioner.
(g) Conviction of a violation of this chapter or of Division 2
(commencing with Section 500), or violating, or attempting to
violate, directly or indirectly, or assisting in or abetting the
violation of, or conspiring to violate this chapter or Division 2
(commencing with Section 500).
(h) The aiding or abetting of any person to violate this chapter
or any regulations duly adopted under this chapter.
(i) The aiding or abetting of any person to engage in the unlawful
practice of respiratory care.
(j) The commission of any fraudulent, dishonest, or corrupt act
that is substantially related to the qualifications, functions, or duties
of a respiratory care practitioner.
(k) Falsifying, or making grossly incorrect, grossly inconsistent,
or unintelligible entries in any patient, hospital, or other record.
(l) Changing the prescription of a physician and surgeon, or
falsifying verbal or written orders for treatment or a diagnostic
regime received, whether or not that action resulted in actual patient
harm.
(m) Denial, suspension, or revocation of any license to practice
by another agency, state, or territory of the United States for any
act or omission that would constitute grounds for the denial,
suspension, or revocation of a license in this state.
(n) (1) Except for good cause, the knowing failure to protect
patients by failing to follow infection control guidelines of the
board, thereby risking transmission of bloodborne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Care Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other bloodborne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

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

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

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

(q) If the licensee is a mandated reporter or is required to report under Article 2 (commencing with Section 11160) or Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code. The commission 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 in Section 368 of the Penal Code, without regard to whether the person is a patient.

(r) Providing 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.
SEC. 2. Section 3754.8 is added to the Business and Professions Code, to read:

3754.8. The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice respiratory care by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of the license by a licensee shall 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.

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

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

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

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

(3) Any act of abuse towards a patient.

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

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

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

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
An act to amend Section 11346.3 of the Government Code, relating to state agency regulations.

LEGISLATIVE COUNSEL’S DIGEST


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.


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

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

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

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

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

(3) An economic impact assessment prepared pursuant to this subdivision for a proposed regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall be prepared in accordance with subdivision (b), and shall be included in the initial statement of reasons as required by Section 11346.2. An economic assessment prepared pursuant to this subdivision for a major regulation proposed on or after November 1, 2013, shall be prepared in accordance with subdivision (c), and shall be included in the initial statement of reasons as required by Section 11346.2.
(b) (1) A state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, shall prepare an economic impact assessment that assesses whether and to what extent it will affect the following:
(A) The creation or elimination of jobs within the state.
(B) The creation of new businesses or the elimination of existing businesses within the state.
(C) The expansion of businesses currently doing business within the state.
(D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment.
(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.
(3) Information required from a state agency for the purpose of completing the assessment may come from existing state publications.
(4) (A) For purposes of conducting the economic impact assessment pursuant to this subdivision, a state agency may use the consolidated definition of small business in subparagraph (B) in order to determine the number of small businesses within the economy, a specific industry sector, or geographic region. The state agency shall clearly identify the use of the consolidated small business definition in its rulemaking package.
(B) For the exclusive purpose of undertaking the economic impact assessment, a “small business” means a business that is all of the following:
(i) Independently owned and operated.
(ii) Not dominant in its field of operation.
(iii) Has fewer than 100 employees.
(C) Subparagraph (A) shall not apply to a regulation adopted by the Department of Insurance that applies to an insurance company.
(c) (1) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, shall prepare a standardized regulatory impact analysis in the manner prescribed by the Department of Finance pursuant to Section 11346.36. The standardized regulatory impact analysis shall address all of the following:
(A) The creation or elimination of jobs within the state.
(B) The creation of new businesses or the elimination of existing businesses within the state.
(C) The competitive advantages or disadvantages for businesses currently doing business within the state.
(D) The increase or decrease of investment in the state.
(E) The incentives for innovation in products, materials, or processes.
(F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state’s environment and quality of life, among any other benefits identified by the agency.
(2) This subdivision shall not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.
(3) Information required from state agencies for the purpose of completing the analysis may be derived from existing state, federal, or academic publications.
(d) Any administrative regulation adopted on or after January 1, 1993, that requires a report shall not apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.
(e) Analyses conducted pursuant to this section are intended to provide agencies and the public with tools to determine whether the regulatory proposal is an efficient and effective means of implementing the policy decisions enacted in statute or by other provisions of law in the least burdensome manner. Regulatory impact analyses shall inform the agencies and the public of the economic consequences of regulatory choices, not reassess statutory policy. The baseline for the regulatory analysis shall be the most cost-effective set of regulatory measures that are equally effective in achieving the purpose of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.
(f) Each state agency proposing to adopt, amend, or repeal a major regulation on or after November 1, 2013, and that has prepared a standardized regulatory impact analysis pursuant to subdivision (c), shall submit that analysis to the Department of
Finance upon completion. The department shall comment, within 30 days of receiving that analysis, on the extent to which the analysis adheres to the regulations adopted pursuant to Section 11346.36. Upon receiving the comments from the department, the agency may update its analysis to reflect any comments received from the department and shall summarize the comments and the response of the agency along with a statement of the results of the updated analysis for the statement required by paragraph (10) of subdivision (a) of Section 11346.5.
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.


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

SECTION 1. Section 2880.5 is added to the Business and Professions Code, to read:

2880.5. (a) In support of the mission of the Board of Vocational Nursing and Psychiatric Technicians on nursing education, the board has the sole responsibility to assess and recommend approval for schools of vocational nursing and psychiatric technician education programs in the State of California as one several core functions.

(b) The board shall select and approve secondary or post-secondary schools of vocational nursing and psychiatric technicians.

(c) The board shall have 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, Chapter 8 (commencing with Section 94800) of Part 59 of Division 10 of Title 3 of the Education Code.

(d) An institution of higher education or a private postsecondary school of nursing approved by the board shall remit to the board for deposit in the Vocational Nursing and Psychiatric Technicians Fund the following fees, in accordance with the following schedule:

(1) The fee for an initial approval of a school of vocational nurses and psychiatric technicians shall be five thousand dollars ($5,000).
(2) The fee for continuing approval of a school of vocational nurses and psychiatric technicians established after January 1, 2016 shall be three thousand five hundred dollars ($3,500).

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

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

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

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

(h) It shall be unprofessional conduct for any 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 this section.
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 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. 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.


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

SECTION 1. Section 463 is added to the Business and Professions Code, to read:

463. (a) Any of the boards, bureaus, commissions, or programs boards within the department may establish, by regulation, a system for a retired category of licensure for persons who are not actively engaged in the practice of their profession or vocation.

(b) The regulation shall contain the following:

(1) A retired license shall be issued to a person with either an active license or an inactive license that was not placed on inactive status for disciplinary reasons.

(2) The holder of a retired license issued pursuant to this section shall not engage in any activity for which a license is required, unless the board, by regulation, specifies the criteria for a retired licensee to practice his or her profession or vocation.

(3) The holder of a retired license shall not be required to renew that license.

(4) In order for the holder of a retired license issued pursuant to this section to restore his or her license to an active status, the holder of that license shall meet all the following:

(A) Pay a fee established by statute or regulation.
(B) Certify, in a manner satisfactory to the board, that he or she has not committed an act or crime constituting grounds for denial of licensure.

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

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

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

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

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


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

SECTION 1. Section 1727.8 is added to the Health and Safety Code, to read:

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

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

(b) (1) A licensed vocational nurse shall perform duties consistent with the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840) Division 2 of the Business and Professions Code). A licensed vocational nurse shall meet the qualifications established by the home health agency for the services provided and any additional qualifications required by home health agency licensure regulations.
(2) Notwithstanding paragraph (1), a licensed vocational nurse who otherwise meets the qualifications of this chapter shall not be required to have a minimum period of professional nursing experience prior to providing skilled nursing services for a home health agency, provided that the licensed vocational nurse has successfully completed a skills and competency training program, administered by a licensed home health agency. The skills and competency training program shall include at least 80 hours of clinical orientation, didactic, simulation, and hands-on training in the patient’s home.

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

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

SECTION 1. Section 1276.5 of the Health and Safety Code is amended to read:

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

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

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

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

(3) For the purposes of this subdivision, “direct care service hours” means the number of hours of work performed per patient day by a direct caregiver, as defined in Section 1276.65, and, in the distinct part of facilities and freestanding facilities providing care for persons with developmental disabilities or mental health...
disorders, by licensed psychiatric technicians who perform direct
nursing services for patients in skilled nursing facilities. 1276.65.
(c) Notwithstanding Section 1276, the department shall require
the utilization of a registered nurse at all times if the department
determines that the services of a skilled nursing and intermediate
care facility require the utilization of a registered nurse.
(d) (1) Except as otherwise provided by law, the administrator
of an intermediate care facility/developmentally disabled,
intermediate care facility/developmentally disabled habilitative,
or an intermediate care facility/developmentally disabled—nursing
shall be either a licensed nursing home administrator or a qualified
intellectual disability professional as defined in Section 483.430
of Title 42 of the Code of Federal Regulations.
(2) To qualify as an administrator for an intermediate care
facility for the developmentally disabled, a qualified intellectual
disability professional shall complete at least six months of
administrative training or demonstrate six months of experience
in an administrative capacity in a licensed health facility, as defined
in Section 1250, excluding those facilities specified in subdivisions
(e), (h), and (i).
SEC. 2. Section 1276.65 of the Health and Safety Code is
amended to read:
1276.65. (a) For purposes of this section, the following
definitions shall apply:
1. (A) “Direct caregiver” means a registered nurse, as referred
to in Section 2732 of the Business and Professions Code, a licensed
vocational nurse, as referred to in Section 2864 of the Business
and Professions Code, a psychiatric technician, as referred to in
Section 4516 of the Business and Professions Code, a certified
nurse assistant, as defined in Section 1337, or a
certified
nurse
assistant in an approved training program, as defined in Section
1337, while the
certified
nurse
assistant in an approved training
program is performing nursing services as described in Sections
72309, 72311, and 72315 of Title 22 of the California
Code of Regulations.
(B) “Direct caregiver” also includes (i) a licensed nurse serving
as a minimum data set coordinator and (ii) a person serving as the
director of nursing services in a facility with 60 or more licensed
beds and a person serving as the director of staff development
when that person is providing nursing services in the hours beyond
those required to carry out the duties of these positions, as long as these direct care service hours are separately documented.

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

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

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

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

(B) (i) The staff-to-patient ratios developed pursuant to subparagraph (A) shall be no less than the following:

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

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

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

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

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

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

(III) “Night shift” means the 8-hour period during which a facility’s patients require the least amount of care.
(2) The department, in developing an overall staff-to-patient ratio for direct caregivers, and in developing specific staff-to-patient ratios for certified nurse assistants and licensed nurses as required by this section, shall convert the requirement under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code for 3.2 direct care service hours per patient day, and commencing July 1, 2016, except as specified in paragraph (2) of subdivision (b) of Section 1276.5, for 4.1 direct care service hours per patient day, including a minimum staff-to-patient ratio for certified nurse assistants of 2.8 direct care service hours per patient day for certified nurse assistants, and a minimum staff-to-patient ratio for licensed nurses of 1.3 direct care service hours per patient day for licensed nurses, and shall ensure that no less care is given than is required pursuant to Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code. Further, the department shall develop the ratios in a manner that maximizes resident access to care, and takes into account the length of the shift worked. In developing the regulations, the department shall develop a procedure for facilities to apply for a waiver that addresses individual patient needs except that in no instance shall the minimum staff-to-patient ratios be less than the 3.2 direct care service hours per patient day, and, commencing July 1, 2016, except as specified in paragraph (2) of subdivision (b) of Section 1276.5, be less than the 4.1 direct care service hours per patient day, required under Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code. (d) The staffing ratios to be developed pursuant to this section shall be minimum standards only and shall be satisfied daily. Skilled nursing facilities shall employ and schedule additional staff as needed to ensure quality resident care based on the needs of individual residents and to ensure compliance with all relevant state and federal staffing requirements. (e) No later than January 1, 2018, and every five years thereafter, the department shall consult with consumers, consumer advocates, recognized collective bargaining agents, and providers to determine the sufficiency of the staffing standards provided in this section and may adopt regulations to increase the minimum staffing ratios to adequate levels. (f) (1) In a manner pursuant to federal requirements, effective January 1, 2003, every skilled nursing facility shall post
information about resident census and staffing levels that includes the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. This posting shall include staffing requirements developed pursuant to this section and an accurate report of the number of direct care staff working during the current shift, including a report of the number of registered nurses, licensed vocational nurses, psychiatric technicians, and certified nurse assistants. The information shall be posted on paper that is at least 8.5 inches by 14 inches and shall be printed in a font of at least 16 point.

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

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

(B) An area used for employee breaks.

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

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

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

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

(2) A violation of the regulations developed pursuant to this section may constitute a class “B,” “A,” or “AA” violation pursuant to the standards set forth in Section 1424.
(h) The requirements of this section are in addition to any requirement set forth in Section 1276.5 of this code and Section 14110.7 of the Welfare and Institutions Code.

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

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

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

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

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

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

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

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

(d) In intermediate care facilities, the minimum number of equivalent direct care service hours shall be 1.1.
(e) In intermediate care facilities/developmentally disabled to 2.7 disabled, the minimum number of equivalent direct care service hours shall be 2.7.

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

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

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

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

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

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

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

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

(A) Assess overall facility quality of care and quality of care improvement, and assign quality and accountability payments to skilled nursing facilities pursuant to performance measures described in subdivision (i).
(B) Assign quality and accountability payments or penalties relating to quality of care, or direct care staffing levels, wages, and benefits, or both.

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

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

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

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

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

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

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

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

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

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

(c) No appropriation associated with this bill is intended to implement the provisions of Section 1276.65 of the Health and Safety Code.
(d) (1) There is hereby appropriated for the 2010–11 fiscal year, one million nine hundred thousand dollars ($1,900,000) from the Skilled Nursing Facility Quality and Accountability Special Fund to the California Department of Aging for the Long-Term Care Ombudsman Program activities pursuant to Chapter 11 (commencing with Section 9700) of Division 8.5. It is the intent of the Legislature for the one million nine hundred thousand dollars ($1,900,000) from the fund to be in addition to the four million one hundred sixty-eight thousand dollars ($4,168,000) proposed in the Governor’s May Revision for the 2010–11 Budget. It is further the intent of the Legislature to increase this level of appropriation in subsequent years to provide support sufficient to carry out the mandates and activities pursuant to Chapter 11 (commencing with Section 9700) of Division 8.5.

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

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

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

(2) (A) Beginning with the 2010–11 fiscal year, the State Department of Public Health shall assess a skilled nursing facility, licensed pursuant to subdivision (c) of Section 1250 of the Health and Safety Code, an administrative penalty if the State Department of Public Health determines that the skilled nursing facility fails to meet the direct care service hours per patient per day requirements pursuant to Section 1276.5 of the Health and Safety Code as follows:
(i) Fifteen thousand dollars ($15,000) if the facility fails to meet the requirements for 5 percent or more of the audited days up to 49 percent.

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

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

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

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

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

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

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

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

(iii) The decision of the department’s hearing officer, when issued, shall be the final decision of the State Department of Public Health.
The appeals process set forth in this paragraph shall be exempt from Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code. The provisions of Section 100171 and 131071 of the Health and Safety Code shall not apply to appeals under this paragraph.

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

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

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

Nothing in this section shall impact the effectiveness or utilization of Section 1278.5 or 1432 of the Health and Safety Code relating to whistleblower protections, or Section 1420 of the Health and Safety Code relating to complaints.

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

The methodology developed pursuant to this section shall include, but not be limited to, the following requirements and performance measures:

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

(i) Immunization rates.

(ii) Facility acquired pressure ulcer incidence.

(iii) The use of physical restraints.

(iv) Compliance with the direct care service hours per patient per day requirements pursuant to Section 1276.5 of the Health and Safety Code.
(v) Resident and family satisfaction.

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

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

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

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


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

(iii) The use of chemical restraints.

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

(2) Notwithstanding paragraph (1), for the 2012–13 rate year only, savings from capping the professional liability insurance cost
category pursuant to paragraph (1) shall remain in the General Fund and shall not be transferred to the Skilled Nursing Facility Quality and Accountability Special Fund.

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

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

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

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

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

(2) Skilled nursing facilities that do not submit required performance data by the department’s specified data submission deadlines pursuant to subdivision (i) shall not be eligible to receive supplemental payments.
(3) Notwithstanding paragraph (1), if a facility appeals the performance measure of compliance with the direct care service hours per patient per day requirements, pursuant to Section 1276.5 of the Health and Safety Code, to the State Department of Public Health, and it is unresolved by the department’s published due date, the department shall not use that performance measure when determining the facility’s supplemental payment.

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

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

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

(p) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the following shall apply:
(1) The director shall implement this section, in whole or in part, by means of provider bulletins, or other similar instructions without taking regulatory action.

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

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

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

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

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

SECTION 1. It is the intent of the Legislature to ensure that there is a process that management and supervisors in a state health care facility are required to follow to avoid on-the-spot mandatory overtime of any psychiatric technician (PT) or psychiatric technician assistant (PTA) whose regularly scheduled work shift is complete, and to prevent circumstances where an employee is stopped at the gate of, for example, a Department of Corrections and Rehabilitation and California Correctional Health Care Services facility, and is instructed to return to work at the end of the employee’s regularly scheduled work shift. It is the intent of the Legislature to prohibit a state facility that employs PTs or PTAs from using mandatory overtime as a scheduling tool, or as an excuse for fulfilling an operational need that results from a management failure to properly staff those state facilities.

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

19851.4. (a) As used in this section:
(1) “Emergency situation” means any of the following:
(A) An unforeseeable declared national, state, or municipal emergency.
(B) A highly unusual or extraordinary event that is unpredictable or unavoidable and that substantially affects providing needed health care services or increases the need for health care services, which includes any of the following:
(i) An act of terrorism.
(ii) A natural disaster.
(iii) A widespread disease outbreak.
(iv) An emergency declared by a warden, superintendent, or executive director, or a severe emergency that necessitates the assistance of an outside agency.
(2) “Facility” means any facility that provides clinically related health services that is operated by the Division of Correctional Health Care Services of the Department of Corrections and Rehabilitation, the Department of Corrections and Rehabilitation, the State Department of State Hospitals, or the State Department of Developmental Services in which a PT or PTA works as an employee of the state.
(3) “Management or supervisor” means any person or group of persons acting directly or indirectly on behalf of, or in the interest of, the facility, whose duties and responsibilities include facilitating staffing needs.

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

(A) Are compensated for their availability.

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

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

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

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

(2) Patient abandonment or neglect.

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

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

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

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

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

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

(2) If a catastrophic event occurs in a facility and both of the following factors apply:
(A) The catastrophic event results in such a large number of patients in need of immediate medical treatment for which the facility is incapable of providing sufficient PTs or PTAs to attend to the patients without resorting to mandatory overtime.

(B) The catastrophic event is an unanticipated and nonrecurring event.

(3) If an emergency situation occurs.

(e) This section shall not be construed to affect the Psychiatric Technicians Law (Chapter 10 (commencing with Section 4500) of Division 2 of the Business and Professions Code) or a PT or PTA’s duty under the standards of competent performance.

(f) This section shall not be construed to preclude a facility from hiring part-time or intermittent employees.

(g) This section shall not prevent a facility from providing employees with more protections against mandatory overtime than 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.


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

SECTION 1. Section 114.6 is added to the Business and Professions Code, to read:

114.6. (a) (1) Notwithstanding any other provision of law, every board within the department shall grant a fee waiver for the application for and issuance of an initial license to an individual who is an honorably discharged veteran who served as an active duty member of the California National Guard or the United States Armed Forces. Under this program, all of the following apply:

an applicant who supplies satisfactory evidence 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.

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

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

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

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

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

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

(A) Renewal of a license.

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

(C) The application for an examination.

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


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

1 SECTION 1. Section 2909.5 of the Business and Professions Code is amended to read:
2 2909.5. This chapter shall not be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which persons were employed on the part of persons who meet the educational requirements of subdivision (b) of Section 2914 and who have one year or more of the supervised professional experience referenced in subdivision (c) of Section 2914, if they are employed by nonprofit community agencies that receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities.
activities solely within the confines of or under the jurisdiction of
the organization in which they are employed and do not render or
offer to render psychological services, services to the public, as
defined in Section 2903. Those persons shall be registered by the
agency with the board at the time of employment and shall be
identified in the setting as a “registered psychologist.” Those
persons shall be exempt from this chapter for a maximum period
of 30 months from the date of registration.

SECTION 1.

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

2913. A person other than a licensed psychologist may perform
psychological functions in preparation for licensure as a
psychologist only if all of the following conditions are met:
(a) The person shall register himself or herself with the board
as a “psychological assistant.” This registration shall be renewed
annually in accordance with regulations adopted by the board.
(b) The person (1) has completed a master’s degree in
psychology or education with the field of specialization in
psychology or counseling psychology, or (2) has been admitted to
candidacy for a doctoral degree in psychology or education with
the field of specialization in psychology or counseling psychology,
after having satisfactorily completed three or more years of
postgraduate education in psychology and having passed
preliminary doctoral examinations, or (3) has completed a doctoral
degree that qualifies for licensure under Section 2914.
(c) (1) The psychological assistant is at all times under the
immediate supervision, as defined in regulations adopted by the
board, of a licensed psychologist, or a licensed physician and
surgeon who is certified in psychiatry by the American Board of
Psychiatry and Neurology, who shall be responsible for insuring
that the extent, kind, and quality of the psychological services that
the psychological assistant performs are consistent with his or her
training and experience and be responsible for the psychological
assistant’s compliance with this chapter and regulations.
(2) A licensed psychologist or board certified psychiatrist shall
not supervise more than three psychological assistants at any given
time. No psychological assistant may provide psychological
services to the public except as a supervisee pursuant to this
section.
The psychological assistant shall comply with regulations that the board may, from time to time, duly adopt relating to the fulfillment of requirements in continuing education.

SEC. 2.

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

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

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

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

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

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

(3) An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate
degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

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

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

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

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

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

(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention.
strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

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

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

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

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

SEC. 3.
SEC. 4. Section 2914.1 of the Business and Professions Code is amended to read:

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

SEC. 4.
SEC. 5. Section 2914.2 of the Business and Professions Code is amended to read:

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

SEC. 5.
SEC. 6. Section 2915 of the Business and Professions Code is amended to read:
2915. (a) Except as provided in this section, the board shall issue a renewal license only to an applicant who has completed 36 hours of approved continuing professional development in the preceding two years.

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

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

1. Professional.
2. Academic.
4. Board certification from the American Board of Professional Psychology according to the standards the American Board of Professional Psychology used for certification as of January 1, 2016. Psychology.

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

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

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

(e) Continuing education courses approved to meet the requirements of this section shall be approved by organizations approved by the board. An organization previously approved by
the board to provide or approve continuing education on March 4, 2016, is deemed approved under this section.

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

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

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

SEC. 6.
SEC. 7. Section 2920 of the Business and Professions Code is amended to read:

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

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

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

SEC. 7.
SEC. 8. Section 2933 of the Business and Professions Code is amended to read:

2933. (a) Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds received by the board all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of this chapter.
(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

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

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

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

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

(A) Temporary restraining orders.

(B) Interim suspension orders.

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

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

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

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

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

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

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

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

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

2988.5. (a) The board may issue, upon an application prescribed by the board and payment of a fee not to exceed seventy-five dollars ($75), a retired license to a psychologist who
holds a current license issued by the board, or one capable of being renewed, and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline under this chapter.

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

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

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

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

(A) Has not committed an act or crime constituting grounds for denial or discipline of a license.
(B) Pays the renewal fee required by this chapter.
(C) Completes the continuing professional development required for the renewal of a license within two years of the date of application for restoration.
(D) Complies with the fingerprint submission requirements established by the board.

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

(A) Submit a complete application for a new license.
(B) Take and pass the California Psychology Law and Ethics Examination.
(C) Pay all fees required to obtain a new license.
(D) Comply with the fingerprint submission requirements established by the board.
(E) Be deemed to have met the educational and experience requirements of subdivisions (b) and (c) of Section 2914.
(F) Establish that he or she has not been subject to denial or discipline of a license.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.
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, 4846.5, 4904, and 4905 of, and to add Sections 4826.3, 4826.5, 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections 825, 11346.5, 11349, and 11349.1 of the Government Code, relating to professional regulations, and making an appropriation therefor.

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 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 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. The bill would authorize the California State Board of Pharmacy and the board to ensure compliance with these requirements. 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. The bill would require an applicant to authorize an individual to apply for and be issued a university license, if he or she meets certain requirements, including 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.


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

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

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

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

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

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

(c) The director may, upon his or her own initiative, and shall, upon request by a consumer or licensee, the board making the decision or the Legislature, review any nonministerial market-sensitive board action or decision or other action to
determine whether it unreasonably restrains trade. Such a review shall proceed as follows: by the board to determine whether it furthers state law. Market-sensitive actions or decisions are those that create barriers to market participation and restrict competition including, but not limited to, examination passage scores, advertising restrictions, price regulation, enlarging or restricting scope of practice qualifications for licensure, and a pattern or program of disciplinary actions affecting multiple individuals that creates barriers to market participation. If the board action or decision is determined to be a market-sensitive action or decision, the director shall review the board action or decision to determine whether that action or decision furthers a clearly articulated and affirmatively expressed state policy. Review under this subdivision shall serve to cease implementation of the market-sensitive action or decision until the review is finalized and the action or decision is found to further state law.

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

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

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

(A) The

Any review by the director under this subdivision shall include a full substantive review of the board action or decision using based upon all the relevant facts, data, market conditions, facts in the record provided by the board and any additional information provided by the director, which may include data, public comment, studies, or other documentary evidence
pertaining to the market impacted by the board’s action or decision and determine whether the anticompetitive effects of the action or decision are clearly outweighed by the benefit to the public. The director may seek, designate, employ, or contract for the services of independent antitrust or economic experts pursuant to Section 307. These experts shall not be active participants in the market affected by the board action or decision.

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

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

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

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

(A) Approve the action or decision upon determination that it furthers state law.

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

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

(D) Request further information from the board if the record provided is insufficient to make a determination that the action or decision furthers state law. Upon submission of further information from the board and any information provided by the director, the director shall make a final determination to approve, disapprove, or modify the board’s action or decision.
(d) The director shall issue, and post on the department’s Internet Web site, his or her final written decision—approving, modifying, or disapproving—an action or decision with an explanation of the reasons that action or decision does or does not further state law and the rationale behind the director’s decision within 90 days from receipt of the request from a consumer or licensee, board’s or Legislature’s request for review or the director’s decision to review the board action or decision. Notwithstanding any other law, the decision of the director shall be final, except if the state or federal constitution requires an appeal of the director’s decision.

(e) The review set forth in paragraph (3) of subdivision (c) shall not apply—when an individual seeks to the review of any disciplinary action or other action pertaining solely to that individual: any other sanction or citation imposed by a board upon a licensee.

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

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

This section is not to be construed to affect, impede, or delay any disciplinary actions of any board.

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

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

SEC. 3. Section 116 of the Business and Professions Code is amended to read:
116. (a) The director may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by any board or bureau within the department.
(b) The director shall report to the Chairs of the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee annually, commencing March 1, 2017, regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section. This report shall be submitted in compliance with Section 9795 of the Government Code.
SEC. 3.
SEC. 4. Section 153 of the Business and Professions Code is amended to read:
153. The director may investigate the work of the several boards in his or her department and may obtain a copy of all records and full and complete data in all official matters in possession of the boards, their members, officers, or employees.
SEC. 5.
SEC. 6. Section 307 of the Business and Professions Code is amended to read:
307. The director may contract for the services of experts and consultants where necessary to carry out this chapter and may provide compensation and reimbursement of expenses for those experts and consultants in accordance with state law.
SEC. 5.
SEC. 6. Section 313.1 of the Business and Professions Code is amended to read:
313.1. (a) Notwithstanding any other law to the contrary, no rule or regulation and no fee change proposed or promulgated by any of the boards, commissions, or committees within the department, shall take effect pending compliance with this section.
(b) The director shall be formally notified of and shall review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, the requirements in subdivision (c) of Section 109, and this section, all of the following:
(1) All notices of proposed action, any modifications and supplements thereto, and the text of proposed regulations.

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

(3) Final rulemaking records.

(4) All relevant facts, facts in the rulemaking record, which may include data, public comments, market conditions, studies, or other documentary evidence pertaining to the market impacted by the proposal.

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

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

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

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

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

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

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

SEC. 6.

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

2708. (a) The board shall appoint an executive officer who shall perform the duties delegated by the board and who shall be responsible to it for the accomplishment of those duties.
(b) The executive officer shall not be a licensee under this chapter and shall possess other qualifications as determined by the board.
(c) The executive officer shall not be a member of the board.
(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 7. SEC. 8. Section 4800 of the Business and Professions Code is amended to read:

4800. (a) There is in the Department of Consumer Affairs a Veterinary Medical Board in which the administration of this chapter is vested. The board consists of the following members:
(1) Four licensed veterinarians.
(2) One registered veterinary technician.
(3) Three public members.
(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.
(c) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature. However, the review of the board shall be limited to those issues identified by the appropriate policy committees of the Legislature and shall not involve the preparation or submission of a sunset review document or evaluative questionnaire.

SEC. 8.
SEC. 9. Section 4804.5 of the Business and Professions Code is amended to read:

4804.5. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.
(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

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

4825.1. These definitions shall govern the construction of this chapter as it applies to veterinary medicine.
(a) "Diagnosis" means the act or process of identifying or determining the health status of an animal through examination and the opinion derived from that examination.

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

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

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

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

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

4826.3. (a) Notwithstanding Section 4051, a veterinarian or registered veterinarian technician under the direct supervision of a veterinarian with a current and active license may 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 and only under the following conditions:

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

(2) Where the compounded drug is not available from a compounding pharmacy, outsourcing facility, or other compounding supplier in a dosage form and concentration to
appropriately treat the disease, symptom, or condition for which
the drug is being prescribed:

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

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

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

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

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

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

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

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

(4) There are no FDA-approved animal or human drugs that
can be used as labeled or in an appropriate extralabel manner to
properly treat the disease, symptom, or condition for which the
drug is being prescribed.
(5) All bulk drug substances used in compounding are manufactured by an establishment registered under Section 360 of Title 21 of the United States Code and are accompanied by a valid certificate of analysis.

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

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

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

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

(e) Any veterinarian, registered veterinarian technician who is under the direct supervision of a veterinarian, and veterinary premises engaged in compounding shall meet the compounding requirements for pharmacies and pharmacists stated by the
provisions of Article 4.5 (commencing with Section 1735) of Title
16 of the California Code of Regulations, except that every
reference therein to “pharmacy” and “pharmacist” shall be replaced
by “veterinary premises” and “veterinarian,” and any reference to
“patient” shall be understood to refer to the animal patient:
(1) Section 1735.1 of Title 16 of the California Code of
Regulations:
(2) Subdivisions (d), (e), (f), (g), (h), (i), (j), (k), and (l) of
Section 1735.2 of Title 16 of the California Code of Regulations.
(3) Section 1735.3 of Title 16 of the California Code of
Regulations, except that only a licensed veterinarian or registered
veterinarian technician may perform compounding and shall not
delegate to or supervise any part of the performance of
compounding by any other person:
(4) Section 1735.4 of Title 16 of the California Code of
Regulations:
(5) Section 1735.5 of Title 16 of the California Code of
Regulations:
(6) Section 1735.6 of Title 16 of the California Code of
Regulations:
(7) Section 1735.7 of Title 16 of the California Code of
Regulations:
(8) Section 1735.8 of Title 16 of the California Code of
Regulations:
(f) Any veterinarian, registered veterinarian technician under
the direct supervision of a veterinarian, and veterinary premises
engaged in sterile compounding shall meet the sterile compounding
requirements for pharmacies and pharmacists under Article 7
(commencing with Section 1751) of Title 16 of the California Code
of Regulations, except that every reference therein to “pharmacy”
and “pharmacist” shall be replaced by “veterinary premises” and
“veterinarian,” and any reference to “patient” shall be understood
to refer to the animal patient.
(g) The California State Board of Pharmacy shall have authority
with the board to ensure compliance with this section and shall
have the right to inspect any veterinary premises engaged in
compounding, along with or separate from the board, to ensure
compliance with this section. The board is specifically charged
with enforcing this section with regard to its licensees.
SEC. 11. Section 4826.5 is added to the Business and Professions Code, to read:
4826.5. Failure by a licensed veterinarian, registered veterinarian technician, or veterinary premises to comply with the provisions of this article shall be deemed unprofessional conduct and constitute grounds for discipline.

SEC. 12. Section 4826.7 is added to the Business and Professions Code, to read:
4826.7. The board may adopt regulations to implement the provisions of this article.

SEC. 10. Section 4826.5 is added to the Business and Professions Code, to read:
4826.5. Notwithstanding any other law, a licensed veterinarian or a registered veterinary technician under the supervision of a licensed veterinarian may compound drugs for animal use pursuant to Section 530 of Title 21 of the Code of Federal Regulations and in accordance with regulations promulgated by the board. The regulations promulgated by the board shall, 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 the safe compounding of drugs. Any violation of the regulations adopted by the board pursuant to this section shall constitute grounds for an enforcement or disciplinary action.

SEC. 13. SEC. 11. Section 4830 of the Business and Professions Code is amended to read:
4830. (a) This chapter does not apply to:
(1) Veterinarians while serving in any armed branch of the military service of the United States or the United States Department of Agriculture while actually engaged and employed in their official capacity.
(2) Regularly licensed veterinarians in actual consultation from other states.
(3) Regularly licensed veterinarians actually called from other states to attend cases in this state, but who do not open an office or appoint a place to do business within this state.
(4) Students in the School of Veterinary Medicine of the University of California or the College of Veterinary Medicine of the Western University of Health Sciences who participate in
diagnosis and treatment as part of their educational experience, including those in off-campus educational programs under the direct supervision of a licensed veterinarian in good standing, as defined in paragraph (1) of subdivision (b) of Section 4848, appointed by the University of California, Davis, or the Western University of Health Sciences.

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

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

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

(2) Notwithstanding any other provision of this chapter, a regularly licensed veterinarian in good standing who is called from another state to attend to cases that are a part of an investigation described in paragraph (1) may provide veterinary medical care for animals that are affected by the investigation with a temporary
shelter facility, and the temporary shelter facility shall be exempt from the registration requirement of Section 4853 if all of the following conditions are met:

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

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

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

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

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

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

SEC. 14.

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

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

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

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

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

(C) The American Veterinary Medical Association.
(D) American Veterinary Medical Association recognized specialty or affiliated allied groups.

(E) American Veterinary Medical Association’s affiliated state veterinary medical associations.

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

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

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

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

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

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

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

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

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

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

(5) Continuing education hours earned by attending courses sponsored or cosponsored by those entities listed in paragraph (1) between January 1, 2000, and January 1, 2001, shall be credited toward a veterinarian’s continuing education requirement under this section.
Every person renewing his or her license issued pursuant to Section 4846.4, or any person applying for relicensure or for reinstatement of his or her license to active status, shall submit proof of compliance with this section to the board certifying that he or she is in compliance with this section. Any false statement submitted pursuant to this section shall be a violation subject to Section 4831.

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

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

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

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

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

(i) The administration of this section may be funded through professional license and continuing education provider fees. The
fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.

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

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

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

SEC. 15.

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

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

(b) An applicant is eligible to hold individual may apply for and be issued a university license if all of the following are satisfied:
(1) The applicant—He or she is currently employed by the University of California or Western University of Health Sciences, as defined in subdivision (a).

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

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

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

(c) A university license:

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

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

(3) Shall be subject to the license renewal provisions in Section 4846.4, and the payment of the renewal fee pursuant to subdivision (i) of Section 4905.

(4) Shall be subject to denial, revocation, or suspension pursuant to Sections 4875 and 4883.

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

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

SEC. 16.

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

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

(a) No fact, circumstance, or condition exists that, if the premise registration was issued, would justify its revocation or suspension.
(b) All of the fees that would be required for the initial premise
registration are paid at the time of application.

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

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

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

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

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

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

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

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

(e) The renewal fee shall be set by the board for each biennial
renewal period in an amount it determines is reasonably necessary
to provide sufficient funds to carry out the purpose of this chapter,
not to exceed five hundred dollars ($500).
(f) The temporary license fee shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed two hundred fifty dollars ($250).

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

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

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

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

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

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

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

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

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

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

825. (a) Except as otherwise provided in this section, if an employee or former employee of a public entity 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 and 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, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

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

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

(b) Notwithstanding subdivision (a) or any other provision of law, a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:
(1) The judgment is based on an act or omission of an employee
or former employee acting within the course and scope of his or
her employment as an employee of the public entity.

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

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

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

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

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

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

(d) The subject of payment of punitive damages pursuant to this
section or any other provision of law shall not be a subject of meet
and confer under the provisions of Chapter 10 (commencing with
Section 3500) of Division 4 of Title 1, or pursuant to any other law or authority.

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

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

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

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

(4) This subdivision shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general.
(g) Notwithstanding subdivision (a), a public entity shall pay for 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.

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

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

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

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

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

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

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

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

(C) A policy statement overview explaining the broad objectives of the regulation and the specific benefits anticipated by the proposed adoption, amendment, or repeal of a regulation, including, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of
fairness or social equity, and the increase in openness and transparency in business and government, among other things.

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

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

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

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

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

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

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

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

(C) The following statement: “The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed
alternatives that would lessen any adverse economic impact on
business and invites you to submit proposals. Submissions may
include the following considerations:
(i) The establishment of differing compliance or reporting
requirements or timetables that take into account the resources
available to businesses.
(ii) Consolidation or simplification of compliance and reporting
requirements for businesses.
(iii) The use of performance standards rather than prescriptive
standards.
(iv) Exemption or partial exemption from the regulatory
requirements for businesses.”

(8) If a state agency, in adopting, amending, or repealing any
administrative regulation, makes an initial determination that the
action will not have a significant, statewide adverse economic
impact directly affecting business, including the ability of
California businesses to compete with businesses in other states,
it shall make a declaration to that effect in the notice of proposed
action. In making this declaration, the agency shall provide in the
record facts, evidence, documents, testimony, or other evidence
upon which the agency relies to support its initial determination.
An agency’s initial determination and declaration that a proposed
adoption, amendment, or repeal of a regulation may have or will
not have a significant, adverse impact on businesses, including the
ability of California businesses to compete with businesses in other
states, shall not be grounds for the office to refuse to publish the
notice of proposed action.
(9) A description of all cost impacts, known to the agency at
the time the notice of proposed action is submitted to the office,
that a representative private person or business would necessarily
incur in reasonable compliance with the proposed action.
If no cost impacts are known to the agency, it shall state the
following:
“The agency is not aware of any cost impacts that a
representative private person or business would necessarily incur
in reasonable compliance with the proposed action.”
(10) A statement of the results of the economic impact
assessment required by subdivision (b) of Section 11346.3 or the
standardized regulatory impact analysis if required by subdivision
c of Section 11346.3, a summary of any comments submitted to
the agency pursuant to subdivision (f) of Section 11346.3 and the agency’s response to those comments.

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

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

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

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

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

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

(14) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. For
a major regulation, as defined by Section 11342.548, proposed on
or after November 1, 2013, the statement shall be based, in part,
upon the standardized regulatory impact analysis of the proposed
regulation, as required by Section 11346.3, as well as upon the
benefits of the proposed regulation identified pursuant to
subparagraph (C) of paragraph (3).

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

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

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

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

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

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

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

(22) If the proposed regulation is subject to Section 11346.6, a
statement that the agency shall provide, upon request, a description
of the proposed changes included in the proposed action, in the
manner provided by Section 11346.6, to accommodate a person
with a visual or other disability for which effective communication
is required under state or federal law and that providing the
description of proposed changes may require extending the period
of public comment for the proposed action.
(b) The agency representative designated in paragraph (15) of
subdivision (a) shall make available to the public upon request the
express terms of the proposed action. The representative shall also
make available to the public upon request the location of public
records, including reports, documentation, and other materials,
related to the proposed action. If the representative receives an
inquiry regarding the proposed action that the representative cannot
answer, the representative shall refer the inquiry to another person
in the agency for a prompt response.
(c) This section shall not be construed in any manner that results
in the invalidation of a regulation because of the alleged inadequacy
of the notice content or the summary or cost estimates, or the
alleged inadequacy or inaccuracy of the housing cost estimates, if
there has been substantial compliance with those requirements.
SEC. 19. Section 11349 of the Government Code is amended
to read:
11349. The following definitions govern the interpretation of
this chapter:
(a) "Necessity" means the record of the rulemaking proceeding
demonstrates by substantial evidence the need for a regulation to
effectuate the purpose of the statute, court decision, or other
provision of law that the regulation implements, interprets, or
makes specific, taking into account the totality of the record. For
purposes of this standard, evidence includes, but is not limited to,
facts, studies, and expert opinion.
(b) "Authority" means the provision of law which permits or
obligates the agency to adopt, amend, or repeal a regulation.
(c) "Clarity" means written or displayed so that the meaning of
regulations will be easily understood by those persons directly
affected by them.
(d) "Consistency" means being in harmony with, and not in
conflict with or contradictory to, existing statutes, court decisions,
or other provisions of law.
(e) "Reference" means the statute, court decision, or other
provision of law which the agency implements, interprets, or makes
specific by adopting, amending, or repealing a regulation.
(f) “Nonduplication” means that a regulation does not serve the
same purpose as a state or federal statute or another regulation.
This standard requires that an agency proposing to amend or adopt
a regulation must identify any state or federal statute or regulation
which is overlapped or duplicated by the proposed regulation and
justify any overlap or duplication. This standard is not intended
to prohibit state agencies from printing relevant portions of
enabling legislation in regulations when the duplication is necessary
to satisfy the clarity standard in paragraph (3) of subdivision (a)
of Section 11349.1. This standard is intended to prevent the
indiscriminate incorporation of statutory language in a regulation.

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

SEC. 20. Section 11349.1 of the Government Code is amended
to read:
11349.1. (a) The office shall review all regulations adopted,
amended, or repealed pursuant to the procedure specified in Article
5 (commencing with Section 11346) and submitted to it for
publication in the California Code of Regulations Supplement and
for transmittal to the Secretary of State and make determinations
using all of the following standards:
(1) Necessity.
(2) Authority.
(3) Clarity.
(4) Consistency.
(5) Reference.
(6) Nonduplication.
(7) For those regulations submitted by a state board on which
a controlling number of decisionmakers are active market
participants in the market the board regulates, the office shall
review for competitive impact.

In reviewing regulations pursuant to this section, the office shall
restrict its review to the regulation and the record of the rulemaking
except as directed in subdivision (h). The office shall approve the
regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.

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

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

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

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

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

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

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

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

(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has
approved a request by the agency that funds be included in the
Budget Bill for the next following fiscal year to reimburse local
agencies or school districts for the costs mandated by the
regulation.

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

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

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

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

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

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

(g) Notwithstanding any other law, return of the regulation to
the adopting agency by the office pursuant to this section is the
exclusive remedy for a failure to comply with subdivision (c) of
Section 11346.3 or paragraph (10) of subdivision (a) of Section 11346.5.

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

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

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

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

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