

**CALIFORNIA  
BOARD OF BARBERING AND COSMETOLOGY**



**JULY 17, 2017  
Board Meeting**

**Department of Consumer Affairs  
1747 North Market Blvd  
HQ2 Hearing Room 186, 1<sup>st</sup> Floor  
Sacramento CA 95834**



P.O. Box 944226, Sacramento, CA 94244-2260  
P (800) 952-5210 F (916) 575-7281 [www.barbercosmo.ca.gov](http://www.barbercosmo.ca.gov)

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**MEMBERS OF THE BOARD**

Dr. Kari Williams, President  
Andrew Drabkin, Vice President  
Bobbie Jean Anderson  
Polly Codorniz  
Jacquelyn Crabtree  
Joseph Federico  
Richard Hedges  
Coco LaChine  
Lisa Thong

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**BOARD MEETING**

**July 17, 2017**

Department of Consumer Affairs  
1747 North Market Blvd.  
HQ2 Hearing Room 186, 1<sup>st</sup> Floor  
Sacramento, CA 95834

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*Action may be taken on any item  
listed on the agenda.*



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**AGENDA**

10:00 A. M.

**UNTIL COMPLETION OF BUSINESS**

**OPEN SESSION:**

1. Call to Order/ Roll Call/ Establishment of Quorum **(Dr. Kari Williams)**
2. Board President's Opening Remarks **(Dr. Kari Williams)**
3. Public Comment on Items Not on the Agenda  
*Note: The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 1125.7(a))*
4. Executive Officer's Report **(Kristy Underwood)**
  - a. Licensing Statistics
  - b. Examination Statistics
  - c. Disciplinary Review Committee Statistics
  - d. Enforcement Statistics
  - e. Budget Updates
  - f. Outreach Updates
5. Approval of Board Meeting Minutes
  - a. January 22, 2017
  - b. April 24, 2017
  - c. May 15, 2017
6. Establishing the Manicurist/Hair Removal Task Force



7. **Enforcement Committee Report (Chairperson)**  
Consideration of Committee Recommendation and Possible Actions.

Proposed Amendments to Title 16, CCR Section 974.1 relating to the Requirements for Serving on the Disciplinary Review Committee.

8. **Legislative and Budget Committee Report (Chairperson)**  
Consideration of Committee Recommendation and Possible Actions.

- a. Proposed Amendments to Title 16, CCR Sections 910, 919, 931 and 937, relating to Application Forms.
- b. Proposed Amendments to Title 16, CCR Section 904, Enforcement, to define certain terms.

9. **Licensing and Examination Committee Report (Chairperson)**  
Consideration of Committee Recommendation and Possible Actions.

Regulatory Proposal relating to the Issuance of a Personal Service Permit (BPC §7402.5).

10. **Discussion and Action on Proposed Bills that could Impact BBC:**

- a. AB 326 (Salas) – Domestic Violence/Sexual Assault Awareness Training
- b. AB 1099 (Gonzalez) – Compensation- Gratuities
- c. AB 1516 (Cunningham) – Healthy Nail Salon Recognition; Compliance with Article 12 commencing with Section 977 of Division 9 of the California Code of Regulations
- d. AB 1575 (Kalra) – Cosmetic Ingredients Label
- e. SB 247 (Moorlach) – Deregulation of the Barbering license and Removal of Application of Makeup from the Specialty Branch of Skincare
- f. SB 296 (Nguyen) – Manicure Scope of Practice (Addition of Waxing Services)
- g. SB 490 (Bradford) – Commission wages for Employees licensed under the Barbering and Cosmetology Act
- h. SB 547 (Hill) – Apprentice Supervision
- i. SB 715 (Newman) – Removal of Board Members from Office

11. **Proposed Regulations:**

**Status Updates:**

- a. Title 16, CCR Sections 904 and 905; (Health and Safety Poster)
- b. Title 16, CCR Section 950.10; (Transfer of Credit or Training)
- c. Title 16, CCR Section 961; (National Interstate Council (NIC) Translation Guides)
- d. Title 16, CCR Section 974; (Administrative Fine Schedule)
- e. Title 16, CCR Section 974.3; (Citation of Establishments, Individuals for Same violation)
- f. Title 16, CCR Section 974.4; (Installment Payment Plan for Fines)
- g. Title 16, CCR Sections 978, 979, 980, 980.4, 981, 982, 984 and 989; (Health and Safety Regulations)

12. Agenda Items for the Next Meeting

13. Public Comment

*Note: The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 1125.7(a))*

14. Adjournment

*Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. The Board plans to webcast this meeting on its website at [www.barbercosmo.ca.gov](http://www.barbercosmo.ca.gov). Webcast availability cannot, however, be guaranteed due to limited resources. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.*

*\*Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).*

*The meeting is accessible to the physically disabled. A person who needs disability-related accommodation or modification in order to participate in the meeting may make a request by contacting: Marcene Melliza at (916) 575-7121, email: [marcene.melliza@dca.ca.gov](mailto:marcene.melliza@dca.ca.gov), or send a written request to the Board of Barbering and Cosmetology, PO Box 944226, Sacramento, CA 94244. Providing your request is at least five (5) business days before the meeting will help to ensure availability of the requested accommodations. TDD Line: (916) 322-1700.*

*No Attachment*

**Quarterly Barbering and Cosmetology  
Licensing Statistics  
Fiscal Year 16/17**

**Applications Received**

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-June	YTD
Establishment	1,767	1,683	1,845	2,027	7,322n
Mobile Unit	1	1	1	1	4
Barber					
Pre-App	233	225	227	293	978
Initial Application	347	381	349	397	1,474n
Re-Exam	537	516	471	447	1,971
<b>Sub-Total</b>	<b>1,117</b>	<b>1,122</b>	<b>1,047</b>	<b>1,137</b>	<b>4,423t</b>
Reciprocity	40	35	38	49	162
Apprentice	177	138	135	213	663
Cosmetology					
Pre-App	1,339	1,062	876	1,182	4,459n
Initial Application	1,018	996	1,055	1,127	4,196n
Re-Exam	1,251	1,346	1,635	1,536	5,768
<b>Sub-Total</b>	<b>3,608</b>	<b>3,404</b>	<b>3,566</b>	<b>3,845</b>	<b>14,423t</b>
Reciprocity	415	333	375	411	1,534n
Apprentice	199	216	161	163	739
Electrology					
Pre-App	4	5	5	6	20
Initial Application	1	1	1	3	6
Re-Exam	3	2	1	2	8
<b>Sub-Total</b>	<b>8</b>	<b>8</b>	<b>7</b>	<b>11</b>	<b>34</b>
Reciprocity	1	0	0	0	1
Manicuring					
Pre-App	671	606	453	600	2,330n
Initial Application	1,234	1,050	1,084	1,273	4,641n
Re-Exam	908	926	902	816	3,552
<b>Sub-Total</b>	<b>2,813</b>	<b>2,582</b>	<b>2,439</b>	<b>2,689</b>	<b>10,523t</b>
Reciprocity	137	95	115	121	468
Esthetician					
Pre-App	614	670	747	862	2,893n
Initial Application	497	542	530	639	2,208n
Re-Exam	442	390	460	455	1,747
<b>Sub-Total</b>	<b>1,553</b>	<b>1,602</b>	<b>1,737</b>	<b>1,956</b>	<b>6,848t</b>
Reciprocity	109	78	87	115	389
<b>Total</b>	<b>11,945</b>	<b>11,297</b>	<b>11,553</b>	<b>12,738</b>	<b>47,533</b>

### Licenses Issued

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-June	YTD
Establishment	1,700	1,683	1,628	1,867	6,878
Mobile Unit	2	1	1	2	6
Barber	586	508	567	576	2,237
Barber Apprentice	76	173	113	228	590
Cosmetology	2,381	1,929	2,086	2,250	8,646
Cosmetology Apprentice	113	227	169	174	683
Electrology	9	7	5	10	31
Electrology Apprentice	0	0	0	0	0
Manicurlng	1,579	1,715	1,644	1,698	6,636
Esthetician	1,332	1,084	1,159	1,283	4,858
<b>Total</b>	<b>7,778</b>	<b>7,327</b>	<b>7,372</b>	<b>8,088</b>	<b>30,565</b>

## LICENSES ISSUED LAST 5 YEARS

	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17
Establishment	6,176	6,512n	6,594n	6,823n	6,877n
Mobile Unit	4	4	9	8	6
Barber	1,515	1,854n	2,052n	1,929n	2,237n
Barber Apprentice	328	376	376	495	590
Cosmetology	12,306	11,354n	12,989n	10,488n	8,646n
Cosmetology Apprentice	388	467	527	604	683n
Electrology	25	33	32	35	31
Electrology Apprentice	0	0	0	0	0n
Manicuring	4,987	5,137	5,761	6,163	6,636
Esthetician	5,012	4,723	4,957	4,555	4,858
<b>Total</b>	<b>30,741</b>	<b>30,460</b>	<b>33,297</b>	<b>31,100</b>	<b>30,564</b>

## CURRENT LICENSE POPULATION

Barber	28,697
Barber Apprentice	1,089
Cosmetology	313,675
Cosmetology Apprentice	1,340
Electrologist	1,814
Esthetician	82,591
Manicurist	130,336
Establishment	51,772
Mobile Unit	45
<b>Total</b>	<b>611,359</b>



## Examination Results (April 1, 2017-June 30, 2017)

### Practical Examinations

Administered	Passed	Failed	Total	Pass Rate
Barber	500	94	594	84%
Cosmetologist	1,959	361	2,320	84%
Esthetician	1,281	41	1,322	97%
Electrologist	6	1	7	86%
Manicurist	1,547	360	1,907	81%
<b>TOTAL</b>	<b>5,293</b>	<b>857</b>	<b>6,150</b>	<b>86%</b>

### Written Examinations

Barber	Passed	Failed	Total	Pass Rate
English	481	243	724	66%
Spanish	46	31	77	60%
Vietnamese	17	11	28	61%
Korean	1	2	3	0%
<b>TOTAL</b>	<b>545</b>	<b>287</b>	<b>832</b>	<b>66%</b>

Cosmetologist	Passed	Failed	Total	Pass Rate
English	1,380	769	2,149	64%
Spanish	143	329	472	30%
Vietnamese	229	173	402	57%
Korean	46	13	59	78%
<b>TOTAL</b>	<b>1,798</b>	<b>1,284</b>	<b>3,082</b>	<b>58%</b>

Manicurist	Passed	Failed	Total	Pass Rate
English	300	175	475	63%
Spanish	20	5	25	80%
Vietnamese	1,255	133	1,388	90%
Korean	13	7	20	65%
<b>TOTAL</b>	<b>1,588</b>	<b>320</b>	<b>1,908</b>	<b>83%</b>

Esthetician	Passed	Failed	Total	Pass Rate
English	922	272	1,194	77%
Spanish	3	0	3	100%
Vietnamese	286	115	401	71%
Korean	34	5	39	87%
<b>TOTAL</b>	<b>1,245</b>	<b>392</b>	<b>1,637</b>	<b>76%</b>

Electrologist	Passed	Failed	Total	Pass Rate
English	4	3	7	57%
Spanish	0	0	0	0%
Vietnamese	0	0	0	0%
Korean	0	0	0	0%
<b>TOTAL</b>	<b>4</b>	<b>3</b>	<b>7</b>	<b>57%</b>





Business, Consumer Services, and Housing Agency – Governor Edmund G. Brown Jr.  
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## QUARTERLY BARBERING AND COSMETOLOGY DISCIPLINARY REVIEW COMMITTEE STATISTICS

**Fiscal Year 16-17**  
**Report Date: June 30, 2017**

	April - June	YTD
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### NORTHERN

Heard	105	370
Received	108	454
Pending <sup>1</sup>	163	163 <sup>2</sup>

### SOUTHERN

Heard	331	1,487
Received	303	1,505
Pending <sup>1</sup>	457	457 <sup>2</sup>

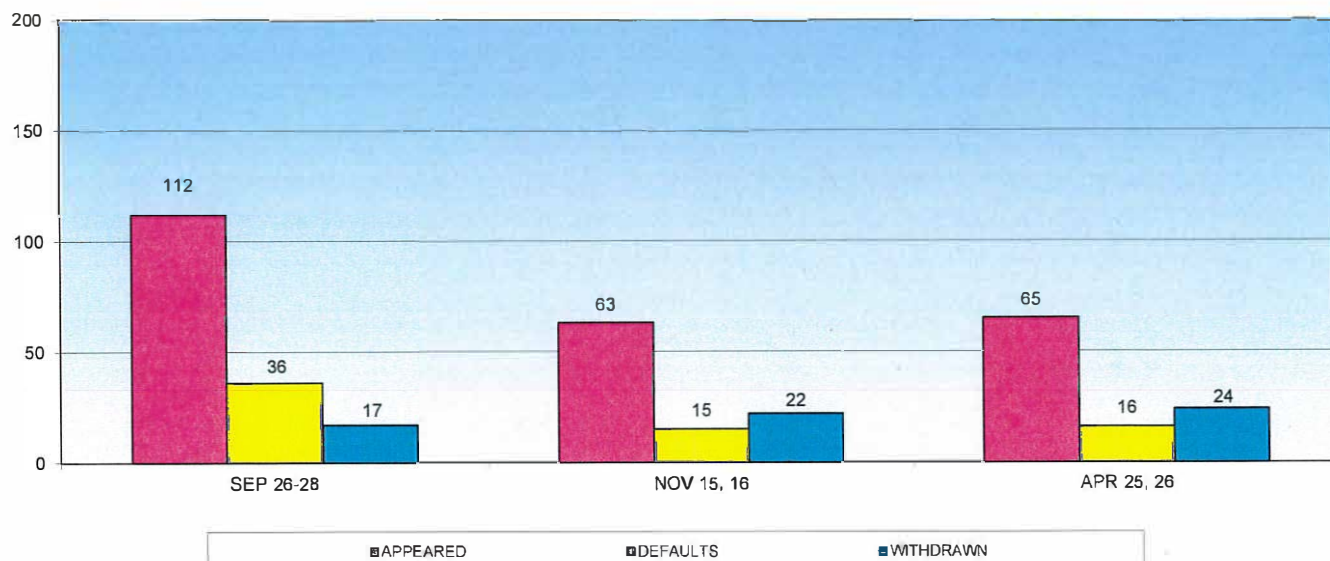
<sup>1</sup> Pending refers to the number of appeals received but not yet heard by DRC.

<sup>2</sup> Figure represents number of pending requests as of report date.

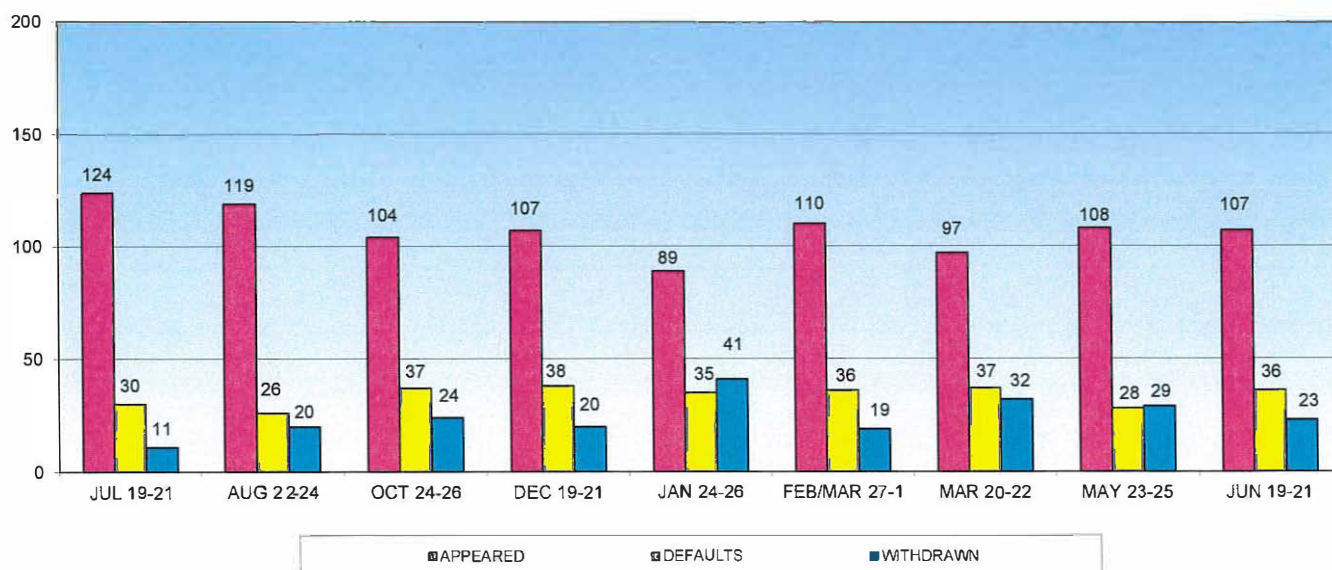
### 2017 SCHEDULED HEARINGS

Area	Location	Date
Northern	Sacramento	July 19, 20, 2017
Southern	Riverside	August 21-23, 2017
Southern	Riverside	September 25-27, 2017
Southern	San Diego	October 24-26, 2017
Northern	Sacramento	November 20-22, 2017
Southern	Los Angeles	December 18-20, 2017

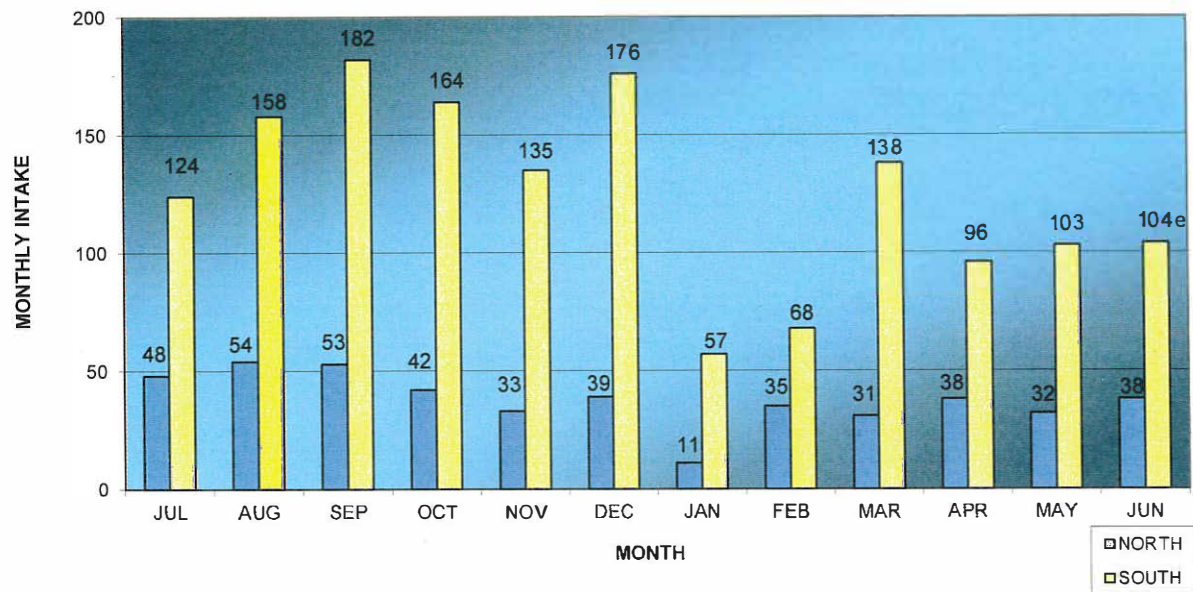
### NORTHERN APPEALS HEARD (Fiscal Year 16-17)



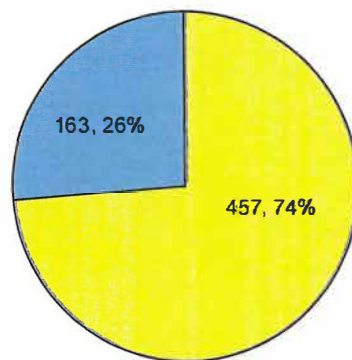
### SOUTHERN APPEALS HEARD (Fiscal Year 16-17)



**DRC MONTHLY INCOMING APPEALS (Fiscal Year 16-17)**



**DRC APPEALS WAITING TO BE HEARD/SCHEDULED  
(As of June 30, 2017)**



■ SOUTH  
■ NORTH



**QUARTERLY BARBERING AND COSMETOLOGY  
ENFORCEMENT STATISTICS Fiscal Year 16-17**

	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun	YTD
<b>COMPLAINTS</b>					
Complaints Received	828	1092	1025	1117	2945
Referred to DOI	7	4	1	2	12
Complaints Closed	1123	940	927	980	2990
Total Complaints Pending	712	882	963	1063	963
<b>APPLICATION INVESTIGATIONS*</b>					
Received	1	2	30	6	32
Pending	1	0	11	7	21
Closed	0	3	19	9	11
<b>ATTORNEY GENERAL</b>					
Referred	23	16	13	11	52
Accusations Filed	30	43	13	18	86
Statement of Issues Filed	0	1	0	2	1
Total Pending	112	115	84	70	84
<b>DISCIPLINARY PROCESS</b>					
Proposed Decisions	7	1	4	2	12
Default Decision	2	3	27	2	32
Stipulation	7	5	10	15	22
<b>DISCIPLINARY OUTCOMES</b>					
Revocation	4	3	28	3	35
Revoke, Stay, Probation	1	2	0	1	3
Revoke, Stay, Suspend/Prob	10	4	14	9	28
Revocation, Stay w/ Suspend	0	0	0	0	0
Probation Only	0	0	0	0	0
Suspension Only	2	0	0	0	2
Suspension & Probation	0	0	0	0	0
Suspension, Stay, Probation	8	2	2	5	12
Surrender of License	3	3	5	4	11
Public Reprimands	0	0	0	9	0
License Denied	0	0	0	1	0
Other	0	0	0	0	0
Total	28	14	49	32	91
<b>PROBATION</b>					
Active	145	140	126	135	126
	Jul-Sept	Oct-Dec	Jan- Mar	Apr-Jun*	YTD
<b>CITATIONS</b>					
Establishments	2857	2615	2344	1338	9154
Barber	152	232	254	145	783
Barber Apprentice	6	18	19	12	55
Cosmetologist	878	989	909	408	3184
Cosmetologist Apprentice	10	15	12	8	45
Electrologist	1	0	0	1	2
Electrologist Apprentice	0	0	0	0	0
Manicurist	606	617	502	282	2007
Esthetician	81	113	101	60	355
Unlicensed Est.	121	127	124	75	447
Unlicensed Individual	97	112	126	88	423
Total	4809	4838	4391	2417	16455
<b>INSPECTIONS</b>					
Establishments w/ violations	2633	2475	2561	1572	9241
Establishments w/o violations	911	1058	1043	762	3774
Total	3544	3533	3604	2334	13015
*Citations and Inspections only includes April and May 2017					



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**Budget Updates**

**Constraints:**

On April 26, 2011, the Governor issued Executive Order B-06-11 prohibiting in state or out-of-state travel unless it is mission critical or there is no cost to the state. The Board prepared a reduction plan for FY 2016-17. The plan included reducing the amount of staff who travel to Southern California to conduct disciplinary review hearings from three (3) staff to two (2) staff. All travel must be mission critical and pre-approved by the Boards' Executive Officer.

**1. Budget 2016/17 Fiscal Year (July 2017 - June 2018):**

**Attachment 1** displays projected expenditures for end of the year.

**Board of Barbering and Cosmetology**  
**Fiscal Year 2016/2017**  
**Projected Expenditures 05/31/17**

<b>Personnel Services</b>	<b>ALLOTMENT</b>	<b>BBC Projected Expenditures</b>	<b>Projected Year</b>
Permanent	4,435,000	4,011,121	423,879
Expert Examiners	452,777	444,000	8,777
Temporary	134,223	106,000	28,223
BL 12-03 Blanket	0	190,000	(190,000)
Statutory-Exempt	104,000	114,924	(10,924)
Board Member Commission	0	17,000	(17,000)
Overtime	0	2,500	(2,500)
<b>Total Salary &amp; Wages</b>	<b>5,126,000</b>	<b>4,885,545</b>	<b>240,455</b>
<b>Net Salary &amp; Wages</b>	<b>5,126,000</b>	<b>4,885,545</b>	<b>240,455</b>
Staff Benefits	2,458,000	2,428,831	29,169
<b>Total of Personnel Services</b>	<b>7,584,000</b>	<b>7,314,376</b>	<b>269,624</b>
<b>Operating Expenses &amp; Equipment (OE&amp;E)</b>	<b>Allotment</b>	<b>BBC Projected Expenditures</b>	<b>Projected Year End Balance</b>
General Expense	190,800	276,000	(85,200)
Printing	168,000	369,000	(201,000)
Communication	41,000	52,000	(11,000)
Postage	283,000	110,000	173,000
Insurance	4,000	13,089	(9,089)
Travel In State	83,000	130,000	(47,000)
Travel, Out-of-State	0	0	0
Training	11,000	296	10,704
Facilities Operations	1,289,000	900,272	388,728
Utilities	0	0	0
Consultant & Professional Svs. - Interdept.	126,000	390	125,610
Consultant & Professional Svs. - External	474,000	360,024	113,976
Depart. and Central Admin. Services	8,885,000	8,928,251	(43,251)
Consolidated Data Center	68,000	15	67,985
DP Maintenance	38,000	80,000	(42,000)
Central Admin Pro Rata	0	0	0
Examinations	1,394,000	2,467,272	(1,073,272)
Major Equipment	38,500	25,000	13,500
Minor Equipment	17,700	32,380	(14,680)
Other Items of Expense	5,000	1,356	3,644
Vehicle Operations	38,000	46,000	(8,000)
Enforcement	1,613,000	898,000	715,000
Special Items of Expenses	0	20,300	(20,300)
<b>Total Operating Expenses &amp; Equipment</b>	<b>14,767,000</b>	<b>14,709,645</b>	<b>57,355</b>
<b>Total Personal Services Expenses</b>	<b>7,016,000</b>	<b>24,608,190</b>	<b>269,624</b>
Total reimbursements		(57,000)	
<b>Total</b>	<b>22,294,000</b>	<b>23,748,996</b>	<b>326,979</b>

# 0069 - Barbering and Cosmetology

## Analysis of Fund Condition

1/10/2017

(Dollars in Thousands)

**NOTE: \$21 Million General Fund Repayment Outstanding**

### FY 2017-18 Governor's Budget

	Actual 2015-16	CY 2016-17	BY 2017-18
<b>BEGINNING BALANCE</b>	\$ 19,125	\$ 18,721	\$ 19,179
Prior Year Adjustment	\$ 592	\$ -	\$ -
Adjusted Beginning Balance	\$ 19,717	\$ 18,721	\$ 19,179
<b>REVENUES AND TRANSFERS</b>			
Revenues:			
125600 Other regulatory fees	\$ 6,355	\$ 6,364	\$ 6,555
125700 Other regulatory licenses and permits	\$ 4,473	\$ 4,571	\$ 4,709
125800 Renewal fees	\$ 11,018	\$ 11,362	\$ 11,247
125900 Delinquent fees	\$ 1,168	\$ 1,203	\$ 1,239
150300 Income from surplus money investments	\$ 83	\$ 58	\$ 92
161000 Escheat of unclaimed checks and warrants	\$ 17	\$ 17	\$ 17
161400 Miscellaneous revenues	\$ 15	\$ 15	\$ 15
Totals, Revenues	\$ 23,129	\$ 23,590	\$ 23,874
Totals, Revenues and Transfers	\$ 23,129	\$ 23,590	\$ 23,874
Totals, Resources	\$ 42,846	\$ 42,311	\$ 43,053
<b>EXPENDITURES</b>			
Disbursements:			
1110 Program Expenditures (State Operations)	\$ 24,087	\$ -	\$ -
1111 Program Expenditures (State Operations)	\$ -	\$ 22,049	\$ 21,965
8880 Financial Information System for California (State Operations)	\$ 38	\$ 31	\$ 29
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ -	\$ 1,052	\$ 1,597
Total Disbursements	\$ 24,125	\$ 23,132	\$ 23,591
<b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 18,721	\$ 19,179	\$ 19,462
Months in Reserve	9.7	9.8	9.7

#### NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.





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

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**FY 17-18 Outreach/Industry Events**

**Tentatively Scheduled:**

August 26 - August 28, 2017

Face and Body Spa Conference and Expo  
San Jose Convention Center  
Attendees: TBA

September 17, 2017

NailPro Sacramento Convention Center  
Attendees: Patricia Garcia and Nina Ton

October 26-29, 2017

American Electrology Association Annual  
Convention and Exhibitor Showcase San Diego  
Convention Center  
Attendees: TBA

January 27-29, 2018

International Salon and Spa Expo (ISSE) 2018  
Long Beach Convention Center  
Attendees: TBA



**DRAFT**  
**CALIFORNIA STATE BOARD**  
**OF**  
**BARBERING AND COSMETOLOGY**

**BOARD MEETING**  
**MINUTES OF JANUARY 22, 2017**  
Courtyard Marriott Santa Ana Orange County  
8 MacArthur Place  
Santa Ana, CA 92707

The off-site meeting location for teleconference:  
2405 Kalanianaʻole Ave PH-11  
Hilo, HI 96720

**BOARD MEMBERS PRESENT**

Dr. Kari Williams, Vice President  
Mary Lou Amaro  
Bobbie Jean Anderson  
Polly Codorniz  
Andrew Drabkin  
Richard Hedges (via teleconference)  
Coco LaChine  
Lisa Thong

**STAFF MEMBERS PRESENT**

Kristy Underwood, Executive Officer  
Rebecca Bon, Legal Counsel  
Tami Guess, Board Project Manager  
Marcene Melliza, Board Analyst

**BOARD MEMBERS ABSENT**

Joseph Federico, President

**1. Agenda Item #1, CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF A QUORUM**

Dr. Kari Williams, the Board Vice President, called the meeting to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

**2. Agenda Item #2, BOARD PRESIDENT'S OPENING REMARKS**

Dr. Williams did not have anything to report.

**3. Agenda Item #3, ANNUAL ELECTIONS OF OFFICERS**

Dr. Williams asked for nominations for president of the Board for 2017.

Mr. Hedges made a motion, seconded by Mr. LaChine, that the Board elects Dr. Kari Williams as president for 2017.

Ms. Amaro made a motion, seconded by Ms. Codorniz, that the Board elects Andrew Drabkin as president for 2017.

## **Public Comment**

Jerry Tyler, the Director of the Los Angeles County Apprenticeship Council, spoke in favor of electing Dr. Kari Williams as president for 2017.

Delane Sims, the Owner of Delane's Natural Nail Care, asked the nominees to provide background on their length of service.

Fred Jones, the Legal Counsel for the Professional Beauty Federation of California (PBFC), spoke in favor of electing Mr. Drabkin as president for 2017.

Mr. Drabkin withdrew his nomination for president but stated he would like to be considered next year.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. LaChine, that the Board elects Dr. Kari Williams as president for 2017. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

Dr. Williams asked for nominations for vice president of the Board for 2017.

Dr. Williams made a motion, seconded by Mr. Hedges, that the Board elects Lisa Thong as vice president for 2017.

Ms. Amaro made a motion, seconded by Ms. Codorniz, that the Board elects Andrew Drabkin as vice president for 2017.

Lisa Thong withdrew her nomination for vice president and stated Mr. Drabkin brings greater experience to the position.

**MOTION:** Ms. Amaro made a motion, seconded by Ms. Codorniz, that the Board elects Andrew Drabkin as vice president for 2017. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

## **4. Agenda Item #4, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

Wendy Jacobs, the Founder of the California Estheticians Facebook Group, stated a question that comes up every day among her Facebook group members is regarding the lifting process of lashes and whether or not keratin lash/lips can be performed by licensed estheticians in California. She stated non-licensed estheticians actively offer these services.

Richard Kendall, the Director of Education and Product Development for Dermaflash, a company that has made a home-use exfoliating device for retail sale inspired by dermaplaning, stated while dermaplaning is currently prohibited in the state of California by estheticians, in other states it is available. His company receives many requests from spas and salons asking to use Dermaflash in their establishments as an alternative to dermaplaning. He requested that the Board approve its use by estheticians. He asked to be invited back to speak further about this product.

Mr. Jones invited everyone to the 17<sup>th</sup> Annual Welcome to Our World (W.O.W.) event on May 1<sup>st</sup>, held on the south steps of the Capitol building from 3:00 p.m. to 6:00 p.m., which provides the industry an opportunity to showcase what it does by offering complementary services to legislators and their staff, administrators, officials, and the public.

**5. Agenda Item #5, EXECUTIVE OFFICER'S REPORT**

- Licensing Statistics
- Examination Statistics
- School Statistics
- Disciplinary Review Committee Statistics
- Enforcement Statistics
- Budget Updates
- Outreach Updates

Ms. Kristy Underwood, the Executive Officer, reviewed the statistics and budget charts and the list of industry events attended since the last Board meeting, which were included in the meeting packet. She highlighted that staff will attend the International Salon and Spa Expo (ISSE) in Long Beach on January 28-30. She stated the Board presence at the expo provides a good opportunity to answer questions and disseminate information.

Ms. Thong asked if there is a process in place to address schools with high fail rates. Ms. Underwood stated the Board does not address this, but the Board of Postsecondary Education may.

Mr. LaChine asked about schools that have small numbers of one to five students taking the test. Ms. Underwood stated the statistical report does not differentiate between initial and repeat exams. The small numbers may be those students who retook the exam, not the full graduating class. She stated staff is more concerned with particularly high numbers and is currently looking into that.

Mr. Drabkin noted that the Korean barber written examination pass rate results should be 60 percent, not zero percent. Ms. Underwood agreed and stated it will be corrected.

Mr. Drabkin asked if statistics reflect the solution to the low pass rates for Spanish cosmetologists. Ms. Underwood stated the vocabulary list suggested by the Board was implemented this month. Spanish pass rates have been around 34 percent for a long time. The Board can monitor the effectiveness of the vocabulary list in future statistical reports.

Mr. Hedges stated concern about the low barbering exam pass rates for all languages. The numbers of overall licensees have increased by 20 percent over the past ten years. He stated the need to work with the Department of Consumer Affairs (DCA) to significantly increase the number of inspectors. Ms. Underwood agreed and stated the Agency and the DCA are supportive. Staff will submit a Budget Change Proposal for this in April.

Mr. Hedges stated there are high fail rates for some schools. He asked if the Board can encourage the Board of Postsecondary Education to look into that. Ms. Underwood stated she would inquire about it.

### **Public Comment**

Mr. Jones stated the concern that there are schools that sell hours to students who receive no formal instruction. The PBFC supports one organization that is responsible for holding schools accountable, not the dual regulatory oversight that is currently in place. The license is what makes the industry, and if the license credibility and integrity are questioned, the industry will be eroded. Neighboring states are beginning to question the efficacy of the California State Board license.

## **6. Agenda Item #6, APPROVAL OF BOARD MEETING MINUTES**

- November 14, 2016

**MOTION:** Mr. Hedges made a motion, seconded by Ms. Anderson, that the Board approves the November 14, 2016, Meeting Minutes as presented. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

## **7. Agenda Item #7, REVIEW AND APPROVAL ON THE PROPOSED REVISIONS TO THE "HEALTH AND SAFETY FOR HAIR CARE AND BEAUTY PROFESSIONALS CURRICULUM."**

Ms. Underwood referred to the 583-page Health and Safety for Hair Care and Beauty Professionals Curriculum, included in the meeting packet, and stated it is the first time it has been updated since 1992 and has taken two years to update. It will be translated into multiple languages upon approval.

Tami Guess, the Board Project Manager, stated the hope to put each of the units in a tutorial version posted online. The printed version will be provided for students without Internet access.

Ms. Thong asked how updates will be handled in the future. Ms. Underwood stated the Health and Safety Advisory Committee will partner with other agencies to ensure accuracy and that it is kept current.

Mr. LaChine suggested changing out some of the photos to include more diversity.

Mr. Drabkin noted a typo under Production/Design/Typesetting

### **Public Comment**

Ms. Sims spoke in support of the approval of the curriculum.

Lisa Fu, MPH, the Program and Outreach Director at the California Healthy Nail Salon Collaborative, agreed with Mr. LaChine about diversifying the images and spoke in support of the approval of the curriculum.

Patti Glover, an Instructor at Citrus College, spoke in support of the approval of the curriculum. She stated she teaches from the 1992 Handbook. Having an updated version will not only benefit instructors but will provide students with a workbook to follow along with and be tested on after the course is completed. She thanked the Board for their hard work.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board approves the Health and Safety for Hair Care and Beauty Professionals Curriculum as revised and allows the executive officer to make non-substantive changes, if necessary. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

**8. Agenda Item #8, UPDATE AND PRIORITIZATION OF BOARD'S EDUCATIONAL TUTORIAL SERIES FOR LICENSEES, ESTABLISHMENT OWNERS, UNLICENSED INDIVIDUALS, AND APPRENTICES.**

Ms. Underwood stated this agenda item is an update from the last meeting where the Board requested that staff prioritize the proposed Board-created Educational Tutorial series subject areas for the tutorials that will be available online in multiple languages.

**Public Comment**

Dr. Washington, with the San Bernardino County Adult School and the Southern California Barbering Apprenticeship Program, stated the concern that some individuals will abuse the tutorial series. He spoke for himself and his colleagues that he is against taking this out of the public's hands because there is no way to control who is going to be taking the exam on the other side of the computer.

Mr. Tyler stated supervising the 39 pre-apprenticeship program hours is an important part of the Los Angeles County Apprenticeship Council's role. He asked if the Council will be able to continue their work when the tutorial series is implemented. Ms. Underwood answered in the affirmative.

**11. Agenda Item #11, PRESENTATION FROM THE CALIFORNIA HEALTHY NAIL SALON COLLABORATIVE**

Dr. Williams moved Agenda Item number 11 up so the Board could hear the presentation from the Healthy Nail Salon Collaborative.

Ms. Fu provided an overview, accompanied by a slide presentation, of the background, addressing nail salon worker health concerns, the Collaborative's approach, policy advocacy, the steps a salon must take to be recognized as a healthy nail salon, program requirements, staff training, recognition of salons, and expanding the program of the California Healthy Nail Salon Recognition Programs.

Mr. Drabkin asked if the training to salons provided by the Healthy Nail Salon Collaborative conflicts with Board rules and regulations. Ms. Fu stated the training follows the rules and regulations.

Mr. Hedges suggested inviting Board members to staff training sessions. He stated he has attended several meetings and offered his assistance to Ms. Fu.

Mr. Drabkin asked if materials are available in other languages. Ms. Fu stated materials are currently only available in English and Vietnamese. She stated they have not had requests for other languages, but as they receive requests, they will try to make them available.

Mr. LaChine asked if there is a disclaimer on the decal window stickers that the Board has not necessarily endorsed the salon and if salons pay a fee to be part of the collaborative. Ms. Fu stated the decal is a recognition from the salon's city or county. The collaborative is voluntary and does not charge a fee.

#### **Public Comment**

Ms. Sims addressed Mr. Drabkin's question about training. She stated the training is complementary to Board standards and touches on areas that are helpful to consumers and staff.

Jaime Schrabek, of Precision Nails, stated the concern that requiring salons to improve ventilation may be unnecessary. Employee health and safety laws are already in effect. She stated the need to work more closely with organizations to help create higher standards for ethical business practices in the industry.

### **9. Agenda Item #9, PROPOSED REGULATIONS UPDATES**

Dr. Williams deferred to Ms. Underwood to provide updates on the regulations updates. Ms Underwood provided a brief summary of the proposed changes to the following sections:

- **Review and Possible Adoption of Amendments to Title 16, CCR Sections 904 and 905, Regarding the Health and Safety Poster.**

Mr. Drabkin asked if technical changes include font and font size. Rebecca Bon, Legal Counsel, stated the language does not necessarily create the proposed poster by following the language in regulation, but, if the Board approves the proposed poster, it can be incorporated by reference into the regulations. She suggested the motion be to modify the text to reflect the incorporation by reference and that the Board delegates the authority to adopt that language, assuming there are no adverse public comments during the 15-day public comment period.

Mr. LaChine suggested spacing the layout of the poster differently for easier reading, such as moving "barbering" to the next line so that "barbering and cosmetology" stands out and also removing the word "or." He stated he will work with staff offline.

Ms. Underwood suggested giving the poster to the DCA to align the design to other Board materials and bring it back to the Board for approval at the next meeting.

#### **Public Comment**

Ms. Schrabek stated the concern that consumers may think the poster is the license for establishments.



Ms. Jacobs suggested including a small area on the poster for salons to incorporate their logo and also making the poster in downloadable PDF format. Ms. Underwood stated salon owners cannot add their logo to the poster because it is a state form.

Ms. Glover suggested putting the logo behind the words and adding "void if copied" on the poster. She suggested switching the places on the poster for the "to file a complaint" sentence and the "laws and regulations" sentence. That way, the repeated website addresses can be removed.

- **Review and Approval of Proposed Amendments to Title 16, CCR Section 904, Enforcement, to Add Definitions.**

**Public Comment**

Dr. Washington asked why an inspector would be required to inspect an office. Dr. Williams stated there are licensees who have tried to conceal products in offices and storage rooms. Allowing inspectors access to all areas of establishments is part of a full inspection.

Ms. Schrabek stated it would be difficult for booth renters to turn over the key to access a private room or secured cabinet to anyone.

Ms. Cordorniz agreed that that would be a problem.

Dr. Williams stated owners of establishments may have to take the risk of being fined if independent contractors are unavailable to allow inspectors to their secured locations.

Ms. Underwood reminded the Board that inspectors do not know who is an independent contractor. To them it is establishment owners and licensees.

Mr. Hedges stated the job of this Board is to protect the consumer and to ensure the salons are free of illegal items.

**Public Comment**

Mr. Tyler stated 75 to 90 percent of establishments in the state of California are independent contractor booth rental spaces and one out of two licensees in the United States is no longer traditionally employed but is self-employed. He suggested that the Board recognize establishments as employer/employee or independent contractor establishments and fine accordingly. He offered his assistance to the Board.

Mr. Jones stated the concern for potential unlawful searches by including the term "all" rooms. He suggested instead adding "where barbering, cosmetology, or electrolysis are being performed" after "to inspect all areas within the establishment." He stated he will submit further suggestions as the process moves forward.

Ms. Jacobs stated the concern that independent contractors may only be in the salon two or three days out of the week. Also, consistency in inspections is important.

Ms. Underwood stated this proposal, along with today's feedback, will be given to the Legislation and Regulations Committee.

**MOTION:** Mr. Drabkin made a motion, seconded by Dr. Williams, that the Board defers this item to the Legislation and Regulations Committee for review. Motion carried 7 yes and 1 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, LaChine, Thong, and Williams

The following Board Member voted "No": Hedges.

- **Review and Approval of Proposed Amendments to Title 16, CCR Sections 901, 902, 903, 910, 914, 919, 931 and 937, to Update Application Forms.**

Ms. Bon summarized several options the Board can take to amend these regulations. Ms. Underwood stated it would be easier to reference the form number and date as opposed to a form provided by the Board. She asked the Board not to vote on this recommendation.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board defers this item to the Legislation and Regulations Committee for review. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

- **Review and Approval of Proposed Repeal of Title 16, CCR Section 950.10, Regarding the Transfer of Credit or Training.**

**MOTION:** Mr. Drabkin made a motion, seconded by Mr. Hedges, that the Board approves the proposed regulatory language for noticing and delegates the executive officer to make any non-substantive changes as needed and to move forward with the rule-making package. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

- **Review and Approval of Proposed Amendments to Title 16, CCR Section 974, to Update the Administrative Fine Schedule.**

Ms. Underwood stated 7313 and 904(e) are off the table until the next meeting. She asked the Board to update the fine schedule for 7349, 7353.4, and 7404(l).

Dr. Williams suggested, as the Board works on the language and defining access, also helping establishment owners understand access to the establishment. Ms. Underwood stated that information is available in several ways. She suggested adding that information to one of the tutorials.

### **Public Comment**

Mr. Jones stated he supported the 7349 change. He asked about the difference between access in 7313 and 7404. Ms. Underwood stated 7313 is blocking inspectors from entering the establishment and 7404 is a personal blockage.

Mr. Washington asked that the Board post a notice on the website when the labor commissions implement the new labor poster.

**MOTION:** Mr. Drabkin made a motion, seconded by Mr. Hedges, that the Board approves the increased fine schedule for 7349, 7353.4, and 7404(l), will revisit the fine schedule for 7313 and 904(e) once the term "access" is defined by the Board, and delegates the executive officer to make any non-substantive changes as needed and to move forward with the rule-making package. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

- **Review and Approval of Proposed Amendments to Title 16, CCR Section 974.1, to Revise the Membership Requirements for Serving on the Disciplinary Review Committee.**

Mr. Drabkin asked if Committee Members would be required to fill out a Form 700.

Ms. Bon stated the language creates that standard and brings up the issue of who might be on the Committee. She spoke about the need to track cases for recusal purposes if Board Members were part of the DRC.

Dr. Williams suggested including at least one Board Member on the DRC. Mr. Hedges agreed and suggested including past Board Members. He suggested that DRC Members go through conflict-of-interest training for consistency. Ms. Bon agreed and discussed other options for consistency and tracking issues.

### **Public Comment**

Mr. Jones stated the tension is industry wants more timely, local DRC locations and that is the intent behind this change. He spoke in support of that but stated the other side is having a Board structure because it provides greater public accountability and opportunities for industry to connect to Board Members as opposed to Board staff. He suggested including at least one Board Member in each DRC.

Mr. LaChine agreed that the DRC should be made up of a combination of Board and non-Board Members. He also agreed with the importance of consistency, especially with multiple DRC Committees in different geographic areas.

Ms. Thong agreed that the DRC should be made up of at least one Board Member, because the other DRC Members may not attend Board meetings or have knowledge about issues the Board is currently discussing. A Board Member on the DRC would make that connection and add to the consistency.

**MOTION:** Mr. Drabkin made a motion, seconded by Dr. Williams, that the Board defers this item to the Enforcement Committee for review and delegates the Committee to research how other DCA Boards handle this issue. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

- **Review and Approval of Proposed Regulation to Add Title 16, CCR Section 974.3, to Establish when a Fine will be Issued to an Owner and an Individual Licensee.**

Ms. Bon suggested laying out the standard in the regulation to clarify the determination that establishment owners knew or should have known about a violation.

Mr. Hedges suggested training for consistency. He also stated the need for more specificity. He suggested giving this to the Enforcement Committee. Ms. Underwood agreed but stated the law came into effect on January 1<sup>st</sup> and the Enforcement Committee will not meet for several months. She suggested that the Board begin the regulatory process today rather than defer it to a Committee.

Ms. Bon suggested looking at the intent of the law to approve what the law is trying to achieve. The statute mandates that the Board shall regulate when one or both individuals should be cited and gives the consideration to use, which is the egregiousness or repeated violation. The second subsection deals with how to set the amount, but the Board already has a schedule of fines for that.

Mr. Hedges suggested approving the concept in general and delegating Ms. Underwood to work with legal on the proper language. Ms. Bon agreed but stated the Board should be clear on what the statute intends to achieve.

Mr. LaChine suggested ending the sentence after "sole responsibility for the violation."

Ms. Bon suggested the reverse – rather than stating what they could not have been expected to know, (a) talks about what can be assumed that they did know or would know and (b) talks about whether it is serious or repeated should affect the amount of the fine as opposed to when to apply the fine. She suggested "the Board may cite and fine both the establishment owner and an individual working in that establishment for the same violation, if the establishment owner knew or should have known of the violation; the Board could presume they knew or should have known if it is egregious or repeated."

Ms. Underwood asked how to determine what an establishment owner should know. Ms. Bon distinguished between an establishment owner not knowing every safety detail that the individuals working in the establishment have been trained in and egregious and repeated violations.

### **Public Comment**

Mr. Jones, as a co-sponsor of the bill, provided clarity and background for the Board. He stated the problem is that the Board does not recognize booth rental. The intent of the bill was to address the injustice of the booth renter, if they are truly an independent contractor having to pay twice for the same fine, but the bill was also to send a message to those booth renters that they need to be truly independent. He suggested moving slower on this regulation update and creating a regulation that separates the booth renter from the establishment owner.

Ms. Underwood stated, although she agrees with Mr. Jones, this is not booth rental license legislation – it is chaptered legislation that the Board is required to implement.

The Board does not have the authority or the staff to determine if individuals are booth renters or independent contractors.

Mr. LaChine stated one of the most common phrases that comes out of the DRC is "I did not know." The intent of legislation is to say the authorized representative may determine that one or both will be fined, but it is ultimately up to the Cite and Fine staff because the representative would not know at the time of inspection if there were repeat violations.

Ms. Underwood suggested removing (a). Ms. Bon agreed but stated it needs further clarity, such as removing "who are cited" and adding "in considering those factors, the establishment owner could be cited as well."

### **Public Comment**

Ms. Schrabek suggested removing (b), removing "duly authorized representatives determine," adding "unless the Board determines," and ending the sentence as Mr. LaChine suggested, at "responsibility for the violation."

Ms. Bon stated the need to state when one or both will be cited.

Mr. Hedges suggested (b) remain as is. He suggested that staff bring back standards to the next Board meeting.

**MOTION:** Mr. Drabkin made a motion, seconded by Mr. Hedges, that the Board approves the suggested changes, initiates a rule-making process, and delegates the executive officer to make non-substantive changes. Motion carried 6 yes, 0 no, 1 abstain per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Drabkin, Hedges, Thong, and Williams.

The following Board Member voted to abstain: LaChine.

- **Review and Approval of Proposed Regulation to Add Title 16, Section 974.4, to Establish an Installment Payment Plan for Fines.**

Mr. LaChine suggested a greater percentage for the first payment and the balance stretch out accordingly.

Ms. Bon agreed and suggested adding "in no more than twelve monthly payments." She suggested harmonizing this section with 125.9 and changing the term "approval" to "request." She noted a typo at the end of (c). She stated the need to incorporate the form by reference using a title and date in (a)(1).

**MOTION:** Mr. Drabkin made a motion, seconded by Mr. Hedges, that the Board approves the proposed regulatory language for noticing and sets it for hearing. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

- **Review and Approval of Proposed Amendments to Title 16, CCR Sections 978, 979, 980, 980.4, 981, 982, 984 and 989, to Update the Board's Health and Safety Regulations.**

Ms. Bon noted a typo in 978(a)(4).

### **Public Comment**

Mr. Jones stated the word "covered" is problematic. He asked how much more assurance an inspector will have that something is sanitized because it is covered.

Dr. Washington agreed with Mr. Jones that covering electrical tools is not realistic and creates an unnecessary problem.

Ms. Schrabec stated the most common electrical tool in a nail salon is a drill or file with disposable tips and those are not addressed here. She suggested taking 982 a step further to say if the standard of sanitation used in salons is misrepresented by using sterilization packages but not having the equipment to sterilize them. Using sterilization packages without the equipment is misleading to consumers.

Mr. Hedges stated the Board received negative comments from the barbering community when this regulation was implemented. This update restores the regulation to the way it was before where licensees hang their soiled shears and disinfect them just prior to use or store them away clean.

Ms. Jacobs stated the need to talk about duration along with storage. She gave the example of fines for sanitized tools that were just set out in between clients in preparation for the next client. She stated the need for consistency in the inspection process.

**MOTION:** Mr. Hedges made a motion, seconded by Dr. Williams, that the Board approves the proposed regulatory language for noticing and sets it for hearing. Motion carried 7 yes and 1 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Drabkin, Hedges, LaChine, Thong, and Williams.

The following Board Members voted "No": Codorniz.

## **10. Agenda Item #10, REPORT AND DISCUSSION ON HAIR STYLIST LICENSE REQUIREMENTS IN OTHER STATES**

Ms. Underwood stated staff was asked to research offering a hairstylist license. The staff report was included in the meeting packet.

Mr. Hedges stated moving forward with this today would be premature. Also, the Board rejected making a subcategory for makeup artists, so doing that for hairstylists may create conflict within the industry.

### **Public Comment**

Mr. Tyler suggested the Board watch a video by Luxury Brand Partners called "The Reset." He stated cosmetology as it exists in the United States does not exist anywhere else in the world without a master's degree to do facial, hair, and nail arts. He stated there is no need to have a comprehensive license that waters down the industry. 1,600 hours does not make anyone a master of anything. He

suggested going back to the occupational analysis to find out what hairstylists do not do and relating it to cosmetology.

Dr. Williams stated the Board is currently doing an occupational analysis, which will provide solid information to move forward to determine if there is a need for it. She agreed with Mr. Hedges that it may create conflict and it is premature to do anything today.

Karen Barras agreed with Mr. Tyler. She stated she was the international trainer for a large company and has watched many hairdressers leave the industry within the first three years because they were trained in only one thing.

**11. Agenda Item #11, PRESENTATION FROM THE CALIFORNIA HEALTHY NAIL SALON COLLABORATIVE**

Agenda Item number 11 was heard earlier in the meeting.

**12. Agenda Item #12, ANNUAL REVIEW AND APPROVAL OF BOARD GUIDELINES AND PROCEDURE MANUAL**

Ms. Underwood summarized the changes made to the Annual Board Guidelines and Procedure Manual.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board approves the Annual Board Guidelines and Procedure Manual as updated. Motion carried 8 yes and 0 no per roll call vote.

The following Board Members voted "Yes": Amaro, Anderson, Codorniz, Drabkin, Hedges, LaChine, Thong, and Williams.

**13. Agenda Item #13, WEBSITE REVIEW**

Ms. Underwood stated hard copies of updated website screens were included in the meeting packet.

**14. Agenda Item #14, AGENDA ITEMS FOR NEXT MEETING**

Mr. Drabkin stated a New York Times article on December 15 was about a bill that was passed in Illinois requiring hair stylists to go through domestic violence training. He requested looking at that law.

Mr. Hedges suggested that the executive officer and legal counsel meet prior to each meeting to discuss possible legal issues.

**Public Comment**

Ms. Schragebeck stated Ohio offers classes in human trafficking that relate to domestic violence, as well.

Mr. Tyler suggested a program titled "Cut it Out" that gives training to recognize potential domestic violence.

Mr. Kendall requested time on the next agenda to demonstrate and discuss Dermaflash as an alternative to dermaplaning.



**15. Agenda Item #15, PUBLIC COMMENT**

No members of the public addressed the Board.

**16. Agenda Item #16, ADJOURNMENT**

With no further business, the meeting was adjourned.



**DRAFT**  
**CALIFORNIA STATE BOARD  
OF  
BARBERING AND COSMETOLOGY**

**BOARD MEETING  
MINUTES OF APRIL 24, 2017**  
Department of Consumer Affairs  
1747 North Market Blvd.  
HQ2 Hearing Room 186, 1<sup>st</sup> Floor  
Sacramento, CA 95834

The off-site meeting location for teleconference:  
22770 Mountain View Road  
Moreno Valley, CA 92557

**BOARD MEMBERS PRESENT**

Dr. Kari Williams, President  
Andrew Drabkin, Vice President  
Polly Codorniz  
Jacquelyn Crabtree  
Joseph Federico  
Richard Hedges  
Coco LaChine  
Lisa Thong

**STAFF MEMBERS PRESENT**

Kristy Underwood, Executive Officer  
Rebecca Bon, Legal Counsel  
Tami Guess, Board Project Manager  
Marcene Melliza, Board Analyst

**BOARD MEMBERS ABSENT**

Bobby Jean Anderson

**OPEN SESSION:**

**1. Agenda Item #1, CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF A QUORUM**

Dr. Kari Williams, the Board President, called the meeting to order at 10:00 a.m. and confirmed the presence of a quorum.

She welcomed new Board Member Jacquelyn Crabtree.

**2. Agenda Item #2, PETITION FOR REINSTATEMENT HEARINGS**

- Gabriela Madera
- Galdina Carbajal

## **CLOSED SESSION:**

Dr. Williams deferred to Judge Heather Rowan to officiate the Petition for Reinstatement Hearings. The Board adjourned into closed session.

### **3. Agenda Item #3, RECONVENE OPEN SESSION AND INITIATE TELECONFERENCE MEETING LOCATION ESTABLISHED AT: 22770 MOUNTAIN VIEW ROAD, MORENO VALLEY, CA 92557**

The Board resumed its proceedings in open session.

Dr. Williams deferred to Kristy Underwood, Executive Officer, to make an announcement.

Ms. Underwood stated today's meeting must be canceled because the publicly-noticed teleconference meeting location is no longer available due to an emergency.

Rebecca Bon, Legal Counsel, directed the Board to Government Code Section 11123 for further information and answered procedural questions from the Board.

Andrew Drabkin, the Board Vice President, noted there are agenda items that are of a timely nature. He asked to reschedule this meeting as soon as possible to address those items.

### **4. ADJOURNMENT**

With no further business, the meeting was adjourned.





BOARD OF BARBERING AND COSMETOLOGY  
P.O. Box 944226, Sacramento, CA 94244-2260  
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**DRAFT**

**CALIFORNIA STATE BOARD  
OF  
BARBERING AND COSMETOLOGY**

**BOARD MEETING  
MINUTES OF MAY 15, 2017**  
Board of Barbering and Cosmetology  
2420 Del Paso Road  
Sequoia Room, 1<sup>st</sup> Floor  
Sacramento, CA 95834

The off-site meeting location for teleconference:  
Mahogany Hair Revolution  
5450 W. Pico Blvd., #203  
Los Angeles, CA 90019

**BOARD MEMBERS PRESENT**

Dr. Kari Williams, President  
(Teleconference)  
Andrew Drabkin, Vice President  
Polly Codorniz  
Jacquelyn Crabtree  
Joseph Federico  
Richard Hedges  
Coco LaChine (Teleconference)  
Lisa Thong (Teleconference)

**STAFF MEMBERS PRESENT**

Kristy Underwood, Executive Officer  
Kurt Heppler, Supervising Counsel  
Tami Guess, Board Project Manager  
Marcene Melliza, Board Analyst

**BOARD MEMBERS ABSENT**

Bobbie Jean Anderson

**1. Agenda Item #1, CALL TO ORDER/ESTABLISHMENT OF A QUORUM**

Dr. Kari Williams, the Board President, deferred to Andrew Drabkin, the Board Vice President, to run the meeting. Mr. Drabkin called the meeting to order at approximately 10:00 a.m. and confirmed the presence of a quorum.

**2. Agenda Item #2, APPOINTMENT OF COMMITTEE MEMBERS TO STANDING COMMITTEES FOR 2017-18**

The 2017-2018 Committees are as follows:

Disciplinary Review Committee

- All Board members are part of this Committee

#### Education and Outreach Committee

- Jacquelyn Crabtree
- Coco LaChine
- Lisa Thong
- Dr. Kari Williams.

#### Enforcement and Inspections Committee

- Jacquelyn Crabtree
- Joseph Federico
- Richard Hedges
- Lisa Thong

#### Health and Safety Advisory Committee

- Richard Hedges
- Lisa Thong
- Dr. Kari Williams

#### Legislative and Budget Committee

- Bobby Jean Anderson
- Jacquelyn Crabtree
- Andrew Drabkin
- Richard Hedges

#### Licensing and Examination Committee

- Polly Codorniz
- Joseph Federico
- Richard Hedges
- Dr. Kari Williams

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Federico, that the Board approves the Standing Committee makeup for 2017-2018 as assigned. Motion carried 8 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, LaChine, Thong, and Williams.

### **3. Agenda Item #3, REVIEW AND APPROVAL OF PROPOSED DRAFT OF THE PERSONAL SERVICE PERMIT REPORT TO BE PRESENTED TO THE CALIFORNIA LEGISLATURE**

Ms. Underwood summarized the Report on the Implementation Progress of the Personal Service Permit, which was included in the meeting packet.

#### **Public Comment**

Fred Jones, Legal Counsel for the Professional Beauty Federation of California (PBFC), reminded the Board that, although the stakeholder meeting attendance was low, often individuals in attendance were representing hundreds or thousands of constituents. He spoke against the implementation of a personal service permit (PSP). He stated the Board's responsibility is consumer



protection. It is clear that, in the existing freelance environment, consumers are not protected. The establishment of the PSP will require the Board to assume much more regulatory enforcement responsibilities. It is tough enough for the 22 state inspectors to monitor the 40,000 establishments statewide, much less 500,000 PSP holders who will operate in several different locations daily.

Mr. Hedges asked if the PSP enhances the chances of recouping through civil actions.

Mr. Jones stated it is irrelevant, legally. If a client is harmed in the course of doing business, they have the same standing to sue whether licensed or not, but freelance technicians have no assets to be attached to a judgement lien, thereby making it difficult for the client to secure legal representation.

Ms. Crabtree asked about tying the PSP to a brick and mortar establishment and what happens when the employee leaves the brick and mortar yet still has the license.

Mr. Jones agreed with tying the PSP to employees of a brick and mortar establishment. A regulatory package could be designed where the PSP is no longer valid the moment they are no longer employees of the brick and mortar establishment, although the paper license could continue to be used fraudulently.

Kurt Heppler, Supervising Counsel, stated, although Mr. Jones suggested several good policy arguments to be fleshed out in the Committees, the motion is limited to the content of the report.

Wendy Jacobs, California Estheticians Alliance, stated many estheticians are employed by salons but are not really employees. Estheticians tend to provide service outside of a salon environment because they are not properly employed by the salon. Incidents of not following the Labor Law in esthetics is astounding. Tying the PCP to brick and mortar establishments will be difficult. She stated estheticians should be held to a higher standard to ensure public protection.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Federico, that the Board approves the Report on the Implementation Progress of the Personal Service Permit, with the noted statement that there was limited attendance at the public meetings. Motion carried 7 yes, 0 no, and 1 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, Thong, and Williams.

The following Board member abstained: Board member LaChine.

#### **4. Agenda Item #4, DISCUSSION AND ACTION ON PROPOSED BILLS THAT COULD IMPACT BBC:**

Ms. Underwood summarized the Bill Analysis for the following bills, which was provided in the meeting packet.

##### **a. AB 326 (Salas) – Domestic Violence/Sexual Assault Awareness Training**

Mr. Federico stated the one-hour training should not be implemented in a school setting. It will not have the intended effect in the school environment where students' focus is on passing the State Board Examination. He suggested remaining neutral on this bill.

Ms. Underwood agreed and stated staff has been advised not to post information about awareness on the website because it is not within the Board's purview.

Mr. LaChine agreed with Mr. Federico. Licensees do not have the capacity or expertise to judge situations and it creates an undue burden on them.

Ms. Thong stated licensees become the recipient of personal information but are not equipped about what to do with that information. The curriculum can help licensees learn what to do, what kind of liability they may or may not have with that type of information, and point their clients to resources. The curriculum, in part, can be part of instilling awareness in licensees to better understand what they can do for themselves. She suggested exploring other options that provide access to this information.

Dr. Williams agreed with Mr. Federico. Some of the awareness discussed in the bill comes with mature licensees with established clientele. It is important that information be made available to make licensees aware. She suggested offering it as an optional resource for licensees who want to increase their awareness.

Ms. Crabtree agreed that there needs to be a sense of awareness, especially for young licensees, and a place where they can find resources.

### **Public Comment**

Mr. Jones stated the PBFC has taken a neutral stance on this bill. He agreed with the unintended consequences of this bill brought up by the Board. He stated Illinois is based on a continuing education model. He suggested that this bill may be premature until continuing education is discussed in California. He suggested an amendment that the Board is willing to embrace Section 1, giving the Board a chance to create a curriculum and a marketing campaign before considering the other sections. He stated dropping the information in curriculum without preparation is akin to live psychological landmines. He cautioned that instructors may bring up issues in the one-hour class that students had never acknowledged in themselves before. He stated the need to look beyond the good intentions of this bill and consider the many issues that are involved. He suggested taking the position of support if amended.

Ms. Jacobs stated estheticians work in a closed-door environment and conversations are more intimate. She spoke against the bill as written. She agreed that maturity level is important. She spoke in support of continuing education and certification to make a positive change in the industry.

John Moreno, Vice President of the Bakersfield Barber College, stated his school discusses this issue to increase awareness and as part of business because it is going to happen. He agreed with watching the bill.

Mr. Federico stated guest speakers are invited multiple times per year to present this information to students. What scares him is what the next step will be.

Jaime Schrabec, Precision Nails, agreed that continuing education cannot be ignored. She suggested that the Board support the dissemination of the information that state agencies already have through the California Department of Public Health (CDPH).

Mr. Drabkin stated the need to take action on this issue instead of waiting for the perfect bill.

**MOTION:** Mr. Hedges made a motion, seconded by Ms. Crabtree, that the Board supports AB 326 if amended by maintaining Section 1, which allows the Board to promote awareness, asking that the bill be given to the CDPH to collaborate with local health departments to promote awareness and provide information to salons in their jurisdictions, and noting that licensees who receive training by the CDPH are free from liability to report. Motion carried 7 yes, 1 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Federico, Hedges, LaChine, Thong, and Williams.

The following Board member voted "No": Board member Drabkin.

#### **b. AB 1099 (Gonzalez) – Compensation-Gratuities**

Ms. Underwood stated the Board opposed this bill last session.

##### **Public Comment**

Mr. Jones stated the PBFC opposed this bill last session and will continue to oppose it this session.

Ms. Schrabec spoke in opposition to this bill, which seeks to micromanage how salons are operated.

Ms. Jacobs spoke in opposition to this bill. She stated many establishments do not give estheticians a real accounting of what they have been paid because estheticians are not always employees. She stated, until the owners are more forthright with their accounting systems and what they present as their official payrolls, then this bill does not make sense.

**MOTION:** Mr. Drabkin made a motion, seconded by Mr. Hedges, that the Board supports AB 1099. Motion failed 4 yes, 4 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Crabtree, Drabkin, Hedges, and Thong.

The following Board members voted "No": Board members Codorniz, Federico, LaChine, and Williams.

**MOTION:** Mr. Hedges made a motion, seconded by Ms. Crabtree, that the Board watch AB 1099. Motion carried 6 yes, 0 no, and 2 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, and Thong.

The following Board members voted "Abstain": Board members LaChine and Williams.

**c. SB 247 (Moorlach) – Deregulation of the Barbering License and Removal of Application of Makeup from the Specialty Branch of Skincare**

**Public Comment**

Mr. Jones spoke in opposition to this bill. He encouraged the Board to consider the unintended consequences of micromanaging. The more the law micromanages, the less efficacy the laws and licenses will hold.

Mr. Moreno spoke in opposition to this bill.

Ms. Jacobs spoke in opposition to this bill.

Mr. Federico stated this issue will come back in different forms in the future. It is important to define what the Board stands for and its core principles.

**MOTION:** Mr. Drabkin made a motion, seconded by Mr. Hedges, that the Board oppose SB 247. Motion carried 8 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, LaChine, Thong, and Williams.

**d. SB 296 (Nguyen) – Manicure Scope of Practice (Addition of Waxing)**

Ms. Underwood stated Senators Hill and Nguyen plan to ask the Board to develop a task force to look at the manicure license curriculum to determine the number of additional hours required to add waxing services. She stated waxing certificates in other states require about 100 to 120 hours.

Mr. Hedges asked about the concerns of this bill. Ms. Underwood stated concern about the regulation of schools and that information is being added that the Board has no control over. It is not the expansion of the scope but the execution of it that is a concern.

Mr. Federico stated the additional hours required to add waxing to the manicure license curriculum may make it a course that is available for federal financial aid.

Mr. Hedges suggested adding health and safety instruction back into this with the increased hours.

Mr. Federico suggested creating a certificate program for manicurists who are interested in expanding their scope to fill this need. It does not necessarily need to be handled through statute, but can be addressed as a part of continuing education. He stated concern that creating a different license erodes the esthetics license and that it will be difficult to ensure that only the allotted areas are waxed.

Mr. LaChine stated a large percentage of manicurists may not have an interest in adding waxing to their scope of practice. He stated concern that this addition to the manicurist license overlaps another type of license and creates confusion for customers.

### **Public Comment**

Ms. Schrabeck agreed with Mr. LaChine. She spoke in opposition to this bill and to any move that tries to legitimize unlicensed activity. It is the wrong starting point and goes beyond the scope of practice. She suggested creating a hair-only license and creating specialty licenses where it makes sense.

Ms. Jacobs spoke in opposition to this bill. The bill does not mention estheticians and downplays the importance of manufacturers' training. She stated her members are mixed on the topic of specialty licenses but they would love to see estheticians as specialists in skin.

**MOTION:** Mr. Hedges made a motion, seconded by Ms. Crabtree, that the Board oppose SB 296. Motion carried 7 yes, 0 no, and 1 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Federico, Hedges, LaChine, Thong, and Williams.

The following Board member voted "Abstain": Board member Drabkin.

#### **e. SB 547 (Hill) – Apprentice Supervision**

### **Public Comment**

Mr. Moreno agreed that apprenticeship programs need to be under supervision, but cautioned that barbershop owners may not know that they must first meet all requirements to offer an apprenticeship program. He stated he is unaware of an approved apprenticeship course in his area.

**MOTION:** Mr. Hedges made a motion, seconded by Ms. Codorniz, that the Board approve SB 547. Motion carried 8 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, LaChine, Thong, and Williams.

## **5. Agenda Item #5, PROPOSED REGULATIONS – DISCUSSION/REVIEW AND APPROVAL OF PROPOSED CHANGES**

Ms. Underwood summarized the proposed changes to the regulations, which were included in the meeting packet.

### **a. Review and Adoption of Amendments to Title 16, CCR Sections 904 and 905, Regarding the Health and Safety Poster.**

### **Public Comment**

Ms. Schrabeck suggested keeping the language from the old poster that made clear the type of complaints the Board can address. Without that language, it sounds like consumers can file any complaint. The poster should be more informative to consumers and state what the Board has oversight of.

Mr. Heppler suggested keeping the updated poster language and addressing only the jurisdictional complaints.

Ms. Underwood stated the hope that the poster increases the awareness of the Board's existence.

Mr. Hedges stated many individuals do not read the fine print.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Drabkin, that the Board:

1. Adopt the second modified text language and the document added to the rulemaking file (the poster), and
2. Delegate to the executive officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

Motion carried 8 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, LaChine, Thong, and Williams.

**b. Review and Approval of Proposed Amendments to Title 16, CCR Section 950.10, Regarding the Transfer of Credit or Training.**

**Public Comment**

Ms. Jacobs asked how to quantify what training is similar enough to transfer.

Ms. Underwood stated it is up to schools to set the exact curriculum and operations within each area.

**MOTION:** Mr. Hedges made a motion, seconded by Ms. Codorniz, that the Board authorize the executive officer to prepare the necessary documents to commence the rulemaking function. Motion carried 8 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, LaChine, Thong, and Williams.

**c. Review and Approval of Proposed Regulation to Add Title 16, CCR Section 974.3, to Establish when a Fine will be Issued to an Owner and an Individual Licensee and Title 16, CCR Section 974.4, to Establish an Installment Payment Plan for Fines.**

Mr. Drabkin asked if an individual is allowed to have multiple concurrent payment plans if cited and fined for the same type of infraction. Ms. Underwood stated they need to complete the terms of the first payment plan before they would be eligible to participate in a payment plan for future citations.

**MOTION:** Mr. Federico made a motion, seconded by Mr. Hedges, that the Board authorize the executive officer to prepare the necessary documents to commence the rulemaking function. Motion carried 8 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, LaChine, Thong, and Williams.

**d. Review and Approval of Proposed Amendments to Title 16, CCR Section 961, to include the National Interstate Council (NIC) Translation Guides.**

**Public Comment**

Ms. Schrabek asked if electronic access is defined as providing a password or login code.

Ms. Underwood stated it is public information on the website. No password is necessary.

**MOTION:** Mr. Hedges made a motion, seconded by Mr. Federico, that the Board authorize the executive officer to prepare the necessary documents to commence the rulemaking function. Motion carried 8 yes, 0 no, and 0 abstain per roll call vote as follows:

The following Board members voted "Yes": Codorniz, Crabtree, Drabkin, Federico, Hedges, LaChine, Thong, and Williams.

**6. Agenda Item #6, PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

Mr. Jones suggested that the Board watch SB 490, a bill that addresses the AB 1513 crisis dealing with piece rate legislation versus commission wages. He stated it is a good effort, although the threshold to qualify is twice the minimum wage, not including tips. The PBFC's position is support if amended – it supports providing a carveout exception for the industry to allow commission wages, but opposes making the wage requirement so high that no one benefits from it.

Ms. Crabtree stated there are other wage options such as hourly wages.

Ms. Underwood stated staff is following this bill internally.

Mr. Jones reported that the PBFC's recent annual Welcome to Our World event was successful. Legislators and their staff attended the event to learn about the beauty industry.

Ms. Jacobs stated a device called Rezenerate is a microchip that delivers nutrients to the skin. It looks similar to a tattoo machine but is fixed-height, does not penetrate, and does not cause pinpoint bleeding. Several estheticians have been fined for using this device. She asked the Board to approve the device.

Mr. Heppler stated this product is the basis of citations that have been issued. He suggested that concerns are best directed to the executive officer and her staff and not to the Board members who will adjudicate those citations.

**7. Agenda Item #7, ADJOURNMENT**

With no further business, the meeting was adjourned.





**Board of Barbering and Cosmetology-Department of Consumer Affairs**  
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## MEMORANDUM

<b>DATE</b>	June 5, 2017
<b>TO</b>	Board Members Board of Barbering and Cosmetology
<b>FROM</b>	Tami Guess, Board Project Manager Board of Barbering and Cosmetology
<b>SUBJECT</b>	<b>Manicurist/Hair Removal Task Force</b>

A letter dated May 24, 2017, was received from Senator Janet Nguyen and Senator Jerry Hill of the California Legislature and has been included for your review.

Within the letter Senator Nguyen and Senator Hill are requesting the Board create a task force to study the appropriate educational and training requirements for an individual licensed as a manicurist to possibly increase their skill set in order to allow these individuals to safely practice superfluous hair removal while prioritizing public health and well-being.

The request references two reports, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers* by the Little Hoover Commission (October 2016) and the Board's *Report on Appropriate Licensing Sub-categories* submitted to the California Legislature in 2013, both reports are included for your reference.

### Action Required:

The Board, by motion, should determine:

1. If Board members should be present on the Task Force, if so, which member(s) will be present.
2. If the following committee compilation meets with the Members approval:
  - 1 Manicurist
  - 1 Esthetician
  - 1 Cosmetologist
  - 2 Educators (School Owner and School Instructor)
  - 1 Waxing Industry Representative

1 Association Representative  
Board's Executive Officer  
Board's Project Manager  
Board's Outreach Analyst

3. If the following terms are acceptable:

- Task Force membership is not considered employment with the State of California.
- Members serve on a voluntary basis and do not receive salary, benefits or travel reimbursement, with the exception of Board members and Board staff.

4. The directive of the Task Force and provide direction to staff on how they would like to accommodate Senator Nguyen's request.

5. If members should delegate the authority for the appointment of the Committee members to the Executive Officer.

6. If the following meeting details are acceptable:

Date: September 18, 2017

Time: 10 a.m. – 4 p.m.

Location: 2420 Del Paso Road, Sequoia Room, Sacramento, CA 95834

# CALIFORNIA LEGISLATURE

STATE CAPITOL  
SACRAMENTO, CALIFORNIA  
95814

May 24, 2017

Dr. Kari Williams  
President, Board of Barbering and Cosmetology  
PO Box 944226  
Sacramento, CA 94244-2260

## **Re: Task Force to Review Manicurist Scope of Practice**

Dear Dr. Williams:

The issue of appropriate licensing categories for the many professionals licensed by the Board of Barbering and Cosmetology (BBC) is something that the California State Senate has discussed for a number of years. Specifically, the issue of balancing consumer safety for beautification services with the appropriate training and practical experience for those providing services is something that we have worked on through oversight of the BBC, through legislation and through stakeholder conversations.

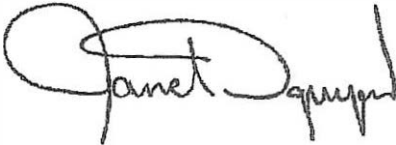
The Senate Committee on Business, Professions and Economic Development raised the issue of license categories dating back to 2013 and asked whether many of the beautification services offered by BBC licenses require the mandatory schooling and training hours necessary for a cosmetologist and esthetician and how there might not be a need for an individual performing specialized services to invest the vast resources required to complete many of the training programs offered by BBC-approved schools.

Additionally, the recent study and report completed by the Little Hoover Commission, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*, identified the need to help foreign trained workers gain licensure in the state because they possess certain skill sets for occupations in California and are fluent in languages other than English. The report also found that California compares poorly to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means.

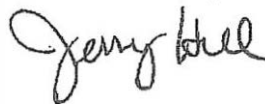
While we appreciate the work BBC has undertaken in the past to explore the appropriateness of current license categories and to examine the curriculum requirements for licensees, we believe that there is still work to be done. We respectfully request BBC to create a task force to study the appropriate educational and training requirements for an individual licensed as a manicurist to possibly increase their skill set in order to allow these individuals to safely practice superfluous hair removal while prioritizing public health and well-being. We would ask for the task force to report on its work and findings by December 1st of this year so that we can utilize the experience and expertise of your Board as we work to determine what options, if any, there may be for licensees to expand their professional abilities in a way that prioritizes and maintains consumer safety, and that directly connects to their education and training.

Thank you in advance for consideration of this request. Please do not hesitate to contact our staff, Elizabeth Watson in the office of Senator Janet Nguyen at (916) 651-4034 or Sarah Mason with the Senate Committee on Business, Professions and Economic Development at (916) 651-4104 if we can be of any assistance or if you have any questions.

Sincerely,



JANET NGUYEN  
State Senator, 34<sup>th</sup> District



JERRY HILL  
State Senator, 13<sup>th</sup> District





A Report to The Senate Business,  
Professions and Economic  
Development Committee

California State  
Board of Barbering and Cosmetology

**Report on Appropriate Licensing  
Sub-categories**





**Purpose:**

In 2013, the Board underwent its scheduled sunset review and appeared before the Senate and Assembly Business and Professions Committees. One of the issues raised from the committee was regarding appropriate licensing categories. In the final recommendations of the Board's sunset review, staff's recommendation for item number eight (8) stated:

*Staff Recommendation: The Board should review the issue of recognizing specialized service providers like eyelash extension appliers, makeup artists and waxers. The Board should work with national groups, professional associations, colleagues at NIC, school owners and licensees to determine if steps are necessary to create easier paths to Board recognition for individuals performing limited services. The Board should provide the Committee with statutory recommendations by January 1, 2014.*

**Recommendation:**

The Board's is recommending statutory language that will establish a Board recognized industry certification program.

On June 3, 2013, the Board held a public meeting with its Legislative and Budget Committee and invited individuals who have expressed interest in obtaining a license in a specialized area. During this meeting the option of having specialized licenses was discussed. It was determined that issuing a license to a specialized service (that exists within the current scope of practice) is diminishing the existing scope of practice.

The Board discussed the topic on July 14, 2013 and again on October 21, 2013 where it approved a final motion to proceed with a statutory change to allow for a Board recognized certification program. The Board recognizes the need for certification for specialized services and/or advanced services, and is recommending the proposed language that is included at the end of this report.

**Background:**Priority of the Board

The Boards priority and number one goal is consumer protection. As such, the Board tests for minimal competency. The Board does not test for advanced skill, however, many licensees take their own initiative to further their skills and take advanced training after licensure.

## Scope of Practice

The Board has recently been approached by individuals wishing to be licensed only to perform one skill of the scope of practice. For example, the scope of practice of an esthetician states:

*Skin care is any one or more of the following practices:*

*Giving facials, applying makeup, giving skin care, removing superfluous hair from the body of any person by use of depilatories, tweezers or waxing, or applying eyelashes to any person.*

*Beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions or creams.*

*Massaging, cleaning, or stimulating the face, neck, arms or upper part of the human body, by means of the hands, devices, apparatus or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions or creams.*

There have been requests made to the Board to have a waxing only certificate, makeup artist, or lash extension appliers, all topics are specifically covered in an esthetician scope of practice. The Board has concerns with issuing licenses/certificates to a single service within the existing scope because it could lead to a high amount of certificates for specialized areas. For example, a facial only certificate, hair color only certificate, or shaving certificate.

The Board is confident that the existing scope of practice is sufficient and necessary to carry out the Board's priority (consumer protection). Individuals may choose to perform only one skill within the scope of practice, however, the knowledge that is learned through the curriculum and the examinations should remain intact.

## Licensee and Approved School Input

At the Board's sunset hearing on March 18, 2013 several individuals came forward asking that a makeup artist certification be implemented. The Board has several concerns with this concept, most importantly (as stated above) the application of make-up is currently specified in the scope of practice of a cosmetologist and an esthetician. The Board believes it is in the best interest of consumer protection that individuals obtain, at a minimum, an esthetician license by completing a 600 hour course. Should that individual then wish to pursue an advanced career in make-up, the certification program being proposed in this report will allow for recognized advanced training.

The Board reached out to multiple schools and did not find any schools currently approved by the Board that are in support of specialized licensing categories.

### Professional Beauty Federation of California (PBFC)

The Professional Beauty Federation of California (PBFC) has made a statement that it agrees with the Board that creating specialized license types diminishes the scope of practice of existing licensure. The PBFC supports an industry wide certification process that is recognized by the Board, but implemented by the industry.

### National Interstate Council on Cosmetologists (NIC)

The NIC is the organization that provides the national examinations utilized by California. Research indicates that only two states (Virginia and Wyoming) administer tests to issue waxing certificates. In addition, only two states provide examinations for a form of makeup (Louisiana issues a makeup permit and Oklahoma issues a cosmetician license for hairdressing and makeup only).

### **Proposed Statutory Language:**

7312. The board shall do all of the following:

(a) Make rules and regulations in aid or furtherance of this chapter in accordance with the Administrative Procedure Act.

(b) Conduct and administer examinations of applicants for licensure.

(c) Issue licenses to those applicants that may be entitled thereto and to encourage such licensees to continue to develop their skills and the appropriate application and use of evolving industry techniques, products and equipment by recognizing industry certifications that meet appropriate standards approved by the board.

(d) Discipline persons who have been determined to be in violation of this chapter or the regulations adopted pursuant to this chapter.

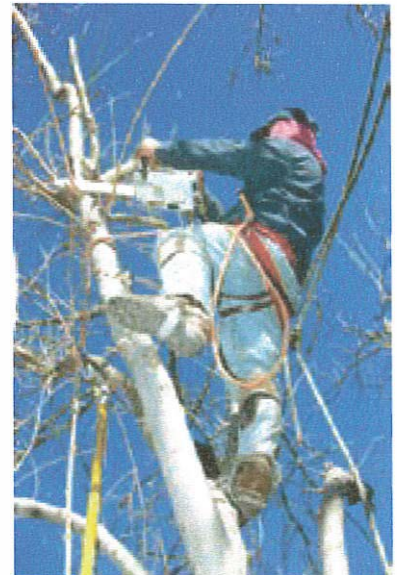
(e) Adopt rules governing sanitary conditions and precautions to be employed as are reasonably necessary to protect the public health and safety in establishments, schools approved by the board, and in the practice of any profession provided for in this chapter. The rules shall be adopted in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Title 2 of the Government Code, and shall be submitted to the State Department of Health Services and approved by that department prior to filing with the Secretary of State. A written copy of all those rules shall be furnished to each licensee.





# JOBS FOR CALIFORNIANS: STRATEGIES TO EASE OCCUPATIONAL LICENSING BARRIERS

**REPORT #234, October 2016**



**LITTLE HOOVER COMMISSION**

*DEDICATED TO PROMOTING ECONOMY AND  
EFFICIENCY IN CALIFORNIA STATE GOVERNMENT*

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## To Promote Economy and Efficiency

The Little Hoover Commission, formally known as the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, is an independent state oversight agency.

By statute, the Commission is a bipartisan board composed of five public members appointed by the governor, four public members appointed by the Legislature, two senators and two assemblymembers.

In creating the Commission in 1962, the Legislature declared its purpose:

*...to secure assistance for the Governor and itself in promoting economy, efficiency and improved services in the transaction of the public business in the various departments, agencies and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies and instrumentalities, and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...*

The Commission fulfills this charge by listening to the public, consulting with the experts and conferring with the wise. In the course of its investigations, the Commission typically empanels advisory committees, conducts public hearings and visits government operations in action.

Its conclusions are submitted to the Governor and the Legislature for their consideration. Recommendations often take the form of legislation, which the Commission supports through the legislative process.

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## LETTER FROM THE CHAIR

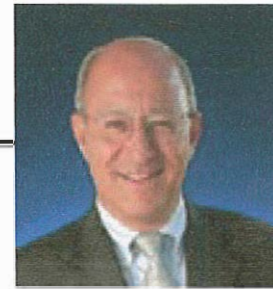
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October 4, 2016

The Honorable Edmund G. Brown, Jr.  
Governor, State of California

The Honorable Kevin de León  
President pro Tempore of the Senate  
and members of the Senate

The Honorable Anthony Rendon  
Speaker of the Assembly  
and members of the Assembly



The Honorable Jean Fuller  
Senate Minority Leader

The Honorable Chad Mayes  
Assembly Minority Leader

Dear Governor and Members of the Legislature:

One out of every five Californians must receive permission from the government to work. For millions of Californians, that means contending with the hurdles of becoming licensed. Sixty years ago the number needing licenses nationally was one in 20. What has changed? What once was a tool for consumer protection, particularly in the healing arts professions, is now a vehicle to promote a multitude of other goals. These include professionalism of occupations, standardization of services, a guarantee of quality and a means of limiting competition among practitioners, among others. Many of these goals, though usually well intentioned, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers.

In its study on occupational licensing, the Commission sought to learn whether the state properly balances consumer protection with ensuring that Californians have adequate access to jobs and services. It learned the state is not always maintaining this balance, as evidenced by discrepancies in requirements for jobs that pose similar risks to the consumer. Manicurists, for example, must complete at least 400 hours of education, which can cost thousands of dollars, and take a written and practical exam before becoming licensed. In contrast, tattoo artists simply register with their county's public health department and take an annual bloodborne pathogens class, which can be completed online for \$25.

The effects of occupational licensing extend well beyond people encountering hurdles to entering an occupation, the Commission learned. When government limits the supply of providers, the cost of services goes up. Those with limited means have a harder time accessing those services. Consequently, occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach. The Commission found that over time, California has enacted a thicket of occupational regulation that desperately needs untangling in order to ease barriers to entering occupations and ensure services are available to consumers of all income levels.

Fortunately, there is an effort underway to review licensing laws and adopt evidence-based approaches to consumer protection: The White House is providing \$7.5 million in grant funding for a consortium of states to assess whether their current levels of occupational regulation are appropriate.

California should be part of this effort. Additionally, the state should consider the impact of licensing on groups disproportionately harmed by these regulations, including:

- **Former offenders.** Witnesses testified there is no evidence demonstrating that having a criminal record is related to providing low quality services. Unnecessary restrictions on criminal convictions simply punish again people who have already served their time.
- **Military spouses.** When military spouses cannot transfer their licenses across state lines due to state restrictions, they spend precious time and resources re-completing requirements they already have, or taking, in all likelihood, a lower-paying, lower-skilled job. Married service members overwhelmingly report their spouse's ability to maintain a career affects their decision to remain in the military.
- **Veterans.** Veterans often face difficulty transferring their military education and experience into civilian licensing requirements. Sometimes they must repeat these requirements for a job they have been performing for years. Taxpayers then pay twice for them to learn the same set of skills: once while in the military and again through the G.I. Bill.
- **Foreign-trained workers.** Like veterans, foreign-trained workers often have difficulty translating their education and experience into state licensing requirements and often take lower-skilled jobs instead. With worker shortages looming in mid- and high-skilled professions, the state should embrace these workers instead of erecting barriers to keep them out of jobs.

Examining and assessing California's occupational regulations does not mean stripping consumer protection. Rather, experts should consider whether the current level of regulation strikes the appropriate balance between protecting consumers and limiting access to occupations and services.

California once tried an ambitious restructuring of its boards and commissions, including many licensing boards, as part of the 2004 California Performance Review. Governor Arnold Schwarzenegger, informed by the work of the California Performance Review, sent a Governor's Reorganization Plan to the Little Hoover Commission in January 2005 that went far beyond a review of occupational regulation: It was a complete overhaul of the state's boards and commissions. Facing insurmountable hurdles, Governor Schwarzenegger withdrew the plan from consideration a month later. No comprehensive attempts at reform have occurred since.

By participating in a more focused review of occupational regulation, potentially subsidized and supported by the federal government, by beginning reforms where the barriers are egregious and worker shortages loom, and by taking action based on the recommendations of independent experts, the state can avoid repeating the errors of the past and position itself to make a long-term difference for Californians.

The Commission respectfully submits these findings and recommendations and stands prepared to help you take on this challenge.

Sincerely,



**Pedro Nava**  
Chair, Little Hoover Commission

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## EXECUTIVE SUMMARY

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Californians rely on occupational regulation to protect them. Doctors must prove proficiency in medical knowledge before they treat patients. Electricians must demonstrate they know their trade before they wire a house. Yet for all these important protections, there is a flip side of occupational licensing: The requirements to prove proficiency often serve as a gate, keeping people out of occupations.

Licensing is more stringent than other types of occupational regulation because not being able to obtain a license means someone cannot practice the profession. Certification or registration allows practitioners to demonstrate they meet certain standards of quality or allows the state to know certain types of businesses are operating without barring people from the occupation.

### Since Statehood: A Jumble of Licensing Politics

When the Commission began its study on occupational licensing in California, it aimed to learn whether the State of California is striking the appropriate balance between protecting consumers and erecting barriers to entry into occupations. It found more than 165 years of accumulated regulations creating a nearly impenetrable thicket of bureaucracy for Californians. No one could give the Commission a list of all the licensed occupations in California. Licensing is heavily concentrated within the Department of Consumer Affairs, but it also is scattered throughout other government departments and agencies. Want to become a registered nurse? Go to the Board of Registered Nursing. Want to become a licensed vocational nurse? Go to the Board of Vocational Nursing and Psychiatric Technicians. Want to become a certified nursing assistant? Go to the Department of Public Health.

The Commission found that the licensing boards within the Department of Consumer Affairs are semi-autonomous, governed by a rulemaking process. But their considerable autonomy results in no holistic vision on how occupations should be regulated in California. Licensing authorities under the Department of Consumer Affairs undergo a sunset review process every four years to determine whether the authority is best serving Californians. If not, legislative fixes are made or the licensing authority is dissolved. But even when a licensing authority is disbanded it may not be gone for good. When the Legislature eliminated the Board of Barbering and Cosmetology in 1997, Senator Richard Polanco resurrected it with legislation in 2002.

This is the heart of problems the Commission found with occupational licensing: The process often is a political activity instead of a thoughtful examination of how best to protect consumers. Multiple witnesses told the Commission that consumers are not key players in creating and governing licensing regulations, even though the regulations are ostensibly made in their interest. Occupational licensing is not about consumers going to the Legislature and asking for protection, said one witness. It is about practitioners telling legislators that consumers need to be protected from them. Substantial benefits accrue to practitioners of licensed occupations. Working in occupations licensed in some, but not all, states raises wages by 5 percent to 8 percent. Working in occupations licensed in all states drives up wages by 10 percent to 15 percent, witnesses told the Commission.

### Effects of Licensing on Consumer Prices

It stands to reason that if wages within licensed professions increase, so will costs to consumers. Witnesses shared research showing that, depending on occupation, instituting licenses raised consumer

prices by 5 percent to 33 percent. One Commission witness estimated that licensing costs consumers more than \$200 billion a year nationally. Meanwhile, there is not necessarily a corresponding increase in consumer safety due to licensing. Researchers reported to the Commission that for many occupations, bad outcomes did not increase when licensing restrictions were relaxed to make it easier to enter those occupations.

## Some Groups are More Vulnerable to Licensing Regulations

The Commission learned that certain groups are especially vulnerable to licensing regulations:

- **Former offenders** must withstand scrutiny that is not always straightforward and typically have no advance guidance on whether a conviction will disqualify them from an occupation.
- **Military spouses** can spend a year or two recompleting requirements to meet California-specific regulations for a job they have practiced for years in other states. By the time they become licensed in California, their spouse is soon transferred to a new state.
- **Veterans**, too, often have to redo education and training that taxpayers already paid for while they were in the military. The state has enacted many bills to make it easier for veterans to become licensed. But that legislation has gaps: it is predominately directed at the Department of Consumer Affairs and not other licensing authorities, and no one tracks implementation.
- **Foreign-trained workers**, particularly bilingual professionals, are well suited to ease California's impending worker shortages. But they face many of the same obstacles as veterans: their education and experience abroad is difficult to apply to state licensing requirements.

## Legitimate Arguments for Licensing

It would be unfair to characterize all attempts to license an occupation as a means to artificially inflate wages for licensed practitioners. Witnesses made compelling arguments to the Commission about why their

occupations should be licensed. Commercial interior designers, for example often do building code-impacted design work – moving walls that entail electrical, lighting, HVAC and other changes. They design the layout of prisons, where the safety of correctional officers and inmates is on the line. Even though the people performing this commercial work typically have extensive educational and work experience, city and county inspectors do not recognize their unlicensed voluntary credentials. Architects or engineers must sign off on their plans, resulting in time and cost delays.

Other advocates see licensing as a vehicle to professionalize an occupation. This is particularly true of low-wage caretaker occupations, often practiced by minorities. Licensing presents opportunities for practitioners to offer government-guaranteed quality of care in return for being treated like professionals.

Finally, many pleas for the health and safety benefits of licensing are, indeed, genuine. Different people are willing to accept different degrees of risk. As long as humans are allowed to practice an occupation, there will be human errors and bad outcomes. Stricter levels of regulation often will reduce, but never completely eliminate, those errors and outcomes. Where is the line for acceptable risk? One person might be comfortable with *caveat emptor*, while another might see a consumer threat that must be regulated.

## California Needs a Holistic Regulatory Strategy

California needs a holistic well-reasoned strategy for regulating occupations. The specific details of who can and cannot practice will vary by occupation. But the underlying principles of what level of consumer protection the state hopes to achieve – and how difficult or easy it should be to enter occupations – should be set by state policymakers and implemented across all occupations. The Commission offers eight recommendations as guiding principles and a way forward. The first four recommendations address systemic issues in how California licenses occupations and governs its regulatory process. The last four recommendations offer ways to make it easier to enter licensed occupations without overhauling California's licensing structure or lowering standards.

## Recommendations

### Data Collection

It is difficult to assess the impact of licensing regulations on various demographic groups because no one collects demographic data for people who work in many licensed occupations or apply for licenses. Anecdotal reports say minorities are often negatively and disproportionately affected by licensing regulations. But without demographic information it is impossible to know for sure.

The Commission recommends collecting demographic information on licensed workers and applicants so policymakers better understand the impact of regulations on different groups of Californians. Yet safeguards must accompany the collection and analysis of demographic data. Race or gender should not be part of information officials consider when deciding to issue a license or when making disciplinary decisions. Demographic data will have to be tied to specific applicants in order to understand outcomes, such as whether they are issued a license or what reason they were denied. Modifying multiple IT systems used by licensing authorities to ensure this information is not visible to licensing and enforcement personnel will come with costs. The Legislature should ensure the department receives the funds necessary for this enterprise. Finally, supplying this demographic information should be voluntary, and not a requirement for licensure.

***Recommendation 1: The Legislature should authorize the mandatory collection of demographic information for license applications across all licensed occupations in California, including those outside of the Department of Consumer Affairs. This demographic information should not be made available to staff members issuing licenses or conducting enforcement actions, but should be studied in the aggregate to determine the impact of licensing requirements on various demographic groups.***

### Comprehensive Licensing Review

California has created occupational licensing regulations for more than 165 years. It is long past time for a comprehensive review of these accumulated rules to determine whether gains for consumer health and safety justify the barriers they present to entering occupations.

This review should specifically analyze barriers to former offenders, military spouses, veterans and people with education, training or experience outside California. Federal funding exists to perform this analysis and California is invited to participate in a consortium applying for this funding. California should not pass up the opportunity.

***Recommendation 2: The State of California should join a consortium of states organizing to attain federal funding to review their licensing requirements and determine whether those requirements are overly broad or burdensome to labor market entry or labor mobility. As part of this process, the state should consider whether there are alternative regulatory approaches that might be adequate to protect public health and safety, including, but not limited to, professional certification.***

### Reciprocity

License transferability across state lines is important to people who need immediately to begin working following a move to California. It is particularly important to military spouses, who move frequently. Licensing authorities should grant reciprocity to applicants licensed in other states. In occupations with dramatically differing requirements across the country, California should grant partial reciprocity to states with similar requirements as its own. California should start by assessing reciprocity in the occupations facing significant worker shortages, such as teachers and nurses. There may be some licenses for which California's standards are so unique that reciprocity is not an option, and in those cases, the licensing authority should justify why reciprocity or partial reciprocity is not feasible.

***Recommendation 3: The Legislature should require reciprocity for all professionals licensed in other states as the default, and through the existing sunset review process, require boards to justify why certain licenses should be excluded. Specifically, licensing boards should be required to:***

- Identify whether licensing requirements are the same or substantially different in other states.
- Grant partial reciprocity for professionals licensed in states with appropriately comparable testing and education requirements.



## Sunrise and Sunset Review

In the sunrise review process, a group trying to become licensed supplies the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development with evidence demonstrating that consumers are best protected by licensing the occupation in question. In the sunset review process, the two committees evaluate information submitted by the licensing authority to determine its performance and whether it still continues to present the best method of consumer protection. The committees will introduce legislative bills to fix problems found during the review.

Though the Commission was impressed with the professionalism and dedication of the business and professions committee staff, the two committees are inundated with information that they must verify and analyze in a relatively short period of time. Some have suggested that the state might benefit from the automatic sunset of licensing authorities periodically, perhaps every four or eight years. Licensing authorities and their performance would then be scrutinized by the entire Legislature when bills to reauthorize them were introduced – a more robust process than tasking the two committees with reviewing licensing authorities. Short of that, the Legislature should provide additional resources to enhance the committees' capacity to verify and analyze the information used in the sunrise and sunset reviews. It also should authorize audits when the business and professions committees deem necessary.

***Recommendation 4: The Legislature should provide additional resources, in the form of additional staff or outside support, to assist the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development in verifying and evaluating information for sunrise and sunset reviews. The Legislature should request the California State Auditor conduct an audit when warranted.***

## Former Offenders

Californians with convictions on their record face several challenges when trying to become licensed. Most licensing authorities do not list specific convictions that

automatically disqualify people. Those decisions are made on a case-by-case basis. This provides flexibility to allow people into occupations from which they might otherwise be excluded. Yet it also results in people investing time and money for education and training for occupations they might never be allowed to practice. The Commission recommends making publicly available the list of criteria by which applicants are evaluated. While it might not provide a firm answer to potential applicants on whether they will qualify, it will provide more information with which they can assess their educational decisions.

Applicants also sometimes face difficulty when asked to list their convictions. If significant time has passed since the conviction, if they had substance use disorders or mental health problems at the time or if they pled to a different charge than they remembered being arrested for, the convictions they list on their application might not match what returns on a background check. Even when this mistake is unintentional they can be disqualified for lying on their application. When criminal conviction history is required, the Commission recommends asking only for official records and not relying on applicants' memories. The Commission also urges expediting the background check fee waiver process so lower-income applicants can begin working sooner.

Applicants who are denied a license may engage in an appeals process, but many find it intimidating. Further, some licensing authorities rely on an administrative law hearing to process denials. The Commission learned that some applicants – particularly those who are legally unsophisticated or have lower levels of education – believe that the appeals process involves simply explaining the red flags on their application. Most are unprepared for an encounter with a judge and state attorney. The Commission recommends creating an intermediate appeals process where applicants can explain the problems with their application before encountering an administrative law hearing.

***Recommendation 5: With the Department of Consumer Affairs serving as a clearinghouse of best practices and providing guidance to other departments as needed, all licensing authorities should take the following steps to make it easier for former offenders to gain employment:***

- Post on their website the list of criteria used to evaluate applicants with criminal convictions so that potential applicants can be better informed about their possibilities of gaining licensure before investing time and resources into education, training and application fees.
- When background checks are necessary, follow the Department of Insurance model and require applicants with convictions to provide certified court documents instead of manually listing convictions. This will prevent license denials due to unintentional reporting errors. The State of California also should expedite the fee-waiver process for all low-income applicants requesting background checks.
- Follow the Bureau of Security and Investigative Services model and create an informal appeals process between an initial license denial and an administrative law hearing.

## Implementation of Veteran and Military Spouse Legislation

California has passed many laws to make it easier for veterans and military spouses to become licensed quickly and easily. These laws are summarized in the box to the right. Some of these laws have only just begun to take effect, and others, the Commission heard anecdotally, are not having the intended effects. Veterans and military spouses still face delays in receiving licenses. Helping veterans transition to civilian jobs has long been a goal of state policymakers. Military spouses' ability to get and hold jobs is important in retaining experienced military personnel: A U.S. Department of Defense witness testified that the military loses good people because of spouses having difficulty finding work, making it a national security issue. The Commission recommends that the Legislature authorize a research institute to study the implementation of laws designed to ease transitions of veterans and their spouses. The study should determine if they are being implemented effectively, identify how to bridge gaps between the intent of the legislation and current outcomes, and show how to better educate veterans and military spouses about these licensing benefits.

## RECENT VETERAN AND MILITARY SPOUSE LICENSING BILLS

These bills were designed to make it faster and easier for veterans and military spouses to become licensed. Some have only recently taken effect, while others, anecdotally, have not been as effective as lawmakers hoped. The Commission recommends a study on the implementation of these bills:

**SB 1226** (2014, Correa): Requires Department of Consumer Affairs (DCA) boards to expedite licensure of honorably-discharged veterans. Took effect July 1, 2016.

**AB 186** (2014, Maienschein): Requires DCA boards to issue 12-month temporary licenses to military spouses with out-of-state licenses for the following occupations: registered nurse, vocational nurse, psychiatric technician, speech-language pathologist, audiologist, veterinarian, all licenses issued by the Board for Professional Engineers, Land Surveyors and Geologists and all licenses issued by the Medical Board.

**AB 1057** (2013, Medina): Requires DCA boards to renew licenses that expire while an individual is on active duty without penalties or examination.

**AB 1588** (2012, Atkins): Requires DCA boards to waive renewal fees for licenses that expire while the practitioner is on active duty.

**AB 1904** (2012, Block): Requires DCA boards to expedite licensure for military spouses.

**AB 2462** (2012, Block et al.): Requires the Chancellor of the California Community College to determine which courses should receive credit for prior military experience, using the descriptors and recommendations provided by the American Council on Education.

**AB 2783** (2010, Salas et al.): Requires DCA boards to promulgate regulations to evaluate and credit military education, training, and experience if applicable to the profession.

***Recommendation 6: The Legislature should authorize a research institute, in conjunction with federal partners as needed, to study the implementation of recent legislation that requires the Department of Consumer Affairs to ease or waive licensing requirements for veterans and military spouses. The review should identify gaps between the intent of the laws and outcomes, and issue recommendations for executive or legislative action to bridge those gaps. The review also should assess the effectiveness of licensing authorities' outreach campaigns to inform veterans of their eligibility for expedited licensing.***

## Bridge Education

Many people who move to California meet most of the state's licensing requirements, but fall short on a few components. Few options exist for them to quickly make up those missing requirements. The state has created a promising model with its veteran field technician-to-nurse program, in which nursing programs lose authorization to teach nursing if they do not fast track veterans. The state should replicate this model for all veterans and those qualified outside California in other occupations. This should begin in occupations facing worker shortages.

***Recommendation 7: The Legislature should require California colleges and training academies to create bridge education programs for veterans and workers trained outside of California to help them quickly meet missing educational requirements. Specifically:***

- California licensing boards and other departments providing licenses and credentials should identify common educational gaps between the qualifications of returning service members and state licensing requirements.
- California colleges should create and offer programs to fill these gaps and expedite enrollment – or risk losing authorization for these programs.

## Interim Work and Apprenticeship Models

There are models to help people work while they are meeting California requirements for licensing or improving their skills to progress up a career path. In the California Teacher Credentialing Commission model, teachers licensed outside of California are allowed to work immediately, but must complete their missing requirements during the five years before their license needs to be renewed.

Additionally, the Department of Industrial Relations' Division of Apprenticeship Standards has a promising apprenticeship model. Individuals complete supervised hands-on training during apprenticeships and receive pay for the work they do. This model, applied as a bridge training program, would allow people to work and earn a living while completing missing requirements. It also would provide an income while training individuals wishing to improve their skills and education for upward mobility. The Legislature would have to adjust occupational practice acts to allow apprenticeships in some occupations. But since many of these occupations already allow or require student practicums, this represents a language change and not a shift in consumer protection.

***Recommendation 8: The State of California should develop interim work and apprenticeship models to provide opportunities for people missing certain qualifications to work while meeting their requirements, and to promote upward mobility within career paths.***

## INTRODUCTION

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The Little Hoover Commission began its study on occupational licensing in October 2015, following a review of the July 2015 White House report, *Occupational Licensing: A Framework for Policymakers*. Commissioners expressed interest in understanding how the barriers to entering occupations highlighted in the report applied to California. Licensed occupations in California often are good jobs that open a path for upward mobility for lower- and middle-income residents. Commissioners initiated the study to determine if the financial, time and opportunity costs imposed on a person trying to become licensed are justified by gains in consumer protection. The Commission decided not to study the requirements of specific occupations. Instead, Commissioners opted to examine and make recommendations on California's licensing system as a whole to serve as a guide for policymakers confronting licensing decisions across the entire spectrum of occupations.

### The Commission's Study Process

The Commission held its first occupational licensing hearing in February 2016. The hearing broadly introduced the Commission to the economics and politics of occupational licensing. Commissioners heard from a leading economist about the linkages between occupational licensing and effects on wages and employment and the price, quality and availability of services. Researchers from national think tanks explained the impact of occupational licensing on upward mobility and entrepreneurship. The director of a state-focused public law institute discussed what it means to protect the public interest and offered his assessment of the state's licensing entities in protecting that interest. The Commission also heard from consultants from the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development on how licensing statutes are created and reviewed, through the sunrise and sunset process.

The Commission held a second hearing in March 2016, in which it heard from people representing those personally affected by occupational licensing laws. This included people who experienced difficulty becoming licensed due to past convictions or received training or education out of state, including the military. It heard from people who wanted their occupations to become licensed because they faced difficulties competing without state-recognized credentials. It also heard from people in licensed industries who discussed the consumer protection and accountability benefits of licensing.

In June 2016, the Commission held a roundtable with policymakers from several licensing authorities, business and professions committee consultants and Assemblymember Rudy Salas, Chair of the Assembly Committee on Business and Professions. Commissioners and participants discussed different ideas shared by witnesses in the preceding two hearings to assess whether it would be possible to implement those ideas, and if implemented, whether there might be unintended consequences.

### PROFESSION VERSUS OCCUPATION

For the purpose of this report, the Commission uses the terms occupation and profession interchangeably. California courts, however, have drawn a distinction between the two. Licenses that require character, responsibility, good faith and sound financial status are considered to be for nonprofessional occupational services. Licenses that require education, training and a rigorous exam are considered to be for professional services.

Source: Julia Bishop, Legislative Manager - Division of Legislative & Regulatory Review, Department of Consumer Affairs. September 21, 2015. Written communication with Commission staff.

### **North Carolina State Board of Dental Examiners v. Federal Trade Commission**

The Commission's report does not address a topic related to occupational licensing recently in the headlines: the February 2015 Supreme Court decision on *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. The Court ruled that the practicing dentist-dominated North Carolina Board of Dental Examiners wrongly sent cease-and-desist letters to non-dentist teeth whiteners and had no antitrust immunity from a federal challenge to its order. While many states, in response, have begun to review the composition of their licensing boards and California continues discussions about the ruling, the Commission did not assess whether California complies with the ruling.

The California Attorney General's Office, Legislature and Department of Consumer Affairs have paid close attention to the case and are reassessing the structure of California's licensing boards.<sup>1</sup> The Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions held a hearing on the topic in October 2015. Legislation subsequently was introduced that would give the director of the Department of Consumer Affairs more authority to review board decisions, but that bill failed to pass committee. Though discussions continue, representatives from the Attorney General's Office maintain the structure of California's licensing boards under the umbrella of the Department of Consumer Affairs, coupled with a robust rulemaking process, prevents a *North Carolina* scenario from occurring in California.

### **Report Format**

The report largely follows the Commission's hearing format. The first chapter provides a high-level overview of occupational licensing, its effects and the justification for it, and a discussion of Commission findings on the barriers to entering occupations. It concludes with high-level recommendations to help the state better understand the effects of occupational licensing and guide future decision-making. The second chapter examines how the vulnerable groups outlined in the White House report – former offenders, military spouses, veterans, and people trained in other countries – fare in California. The chapter offers recommendations to better incorporate these groups into licensed occupations without loosening licensing standards.



## OCCUPATIONAL LICENSING IN CALIFORNIA

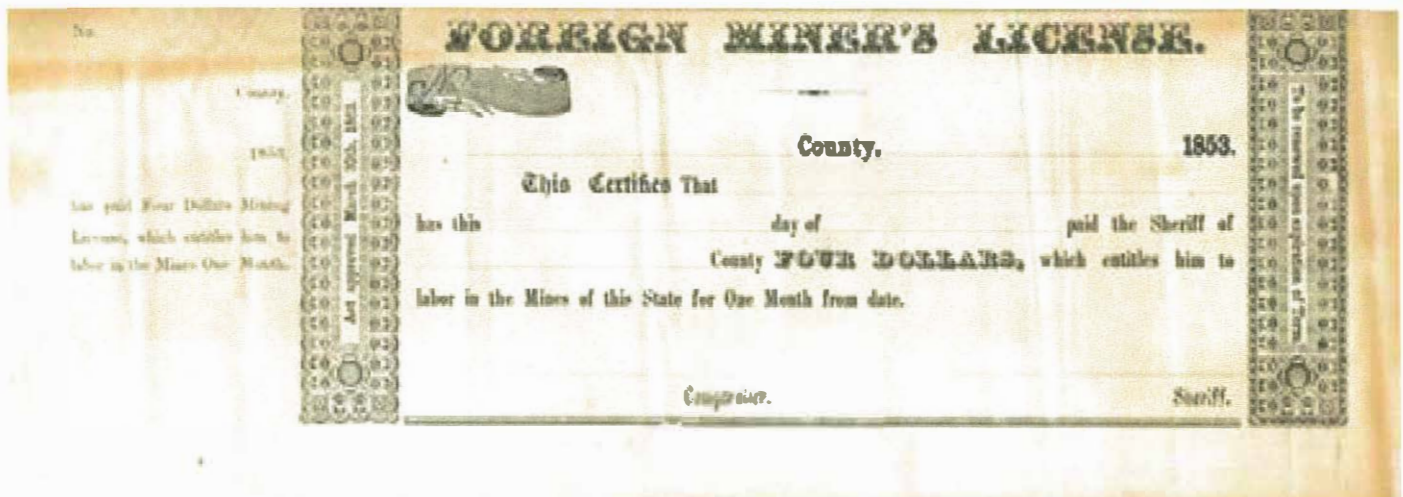
California's history of licensing began in its very infancy as a state. With hundreds of thousands of people pouring into California looking for gold, easily accessible claims were exhausted seemingly overnight. To ease competition, in April 1850 – five months before California was admitted to the union – the first session of California's Legislature required foreigners to become licensed before they could mine for gold. Specifically, non-Americans were required to pay \$20 per month for the license,<sup>2</sup> or an estimated \$569 per month in 2015 dollars.<sup>3</sup> Over the next 20 years, the licensing requirements were repealed, reinstated and reinvented as part of anti-Chinese sentiment until nullified in 1870 through federal civil rights legislation.<sup>4</sup>

Again, on the heels of the 49ers flooding into California came disease and doctors to fight it.<sup>5</sup> Alongside dedicated doctors serving their community were fraudsters who preyed on the uneducated, unsophisticated and desperate. Some borrowed liberally from religious texts to describe the miracles they could perform.<sup>6</sup> In response, California's Legislature opted to regulate who could practice as a doctor. The 1876 Medical Practice Act resulted in practitioners having to prove they had completed medical school or pass

an exam to demonstrate proficiency in the field, plus pay a \$5 fee to cover the expenses of verifying their competency.<sup>7</sup>

These examples highlight the challenge that occupational licensing presents to policymakers. It can serve as a gatekeeper to keep people out of occupations or protect the public from harm. In many cases, it simultaneously does both. There is no one-size-fits-all policy for occupational licensing. Nuance matters – no easy task when it comes to creating and administering laws to regulate a workforce of 19 million to protect California's 40 million inhabitants. "The devil is in the implementation," the director of California's top licensing department told the Commission.<sup>8</sup> The regulatory regime that makes sense for one occupation does not make sense for another, and new technologies and evolving consumer demand render even the most thoroughly-vetted rules and regulations obsolete. Racism, sexism and xenophobia are no longer explicitly written into licensing regulations, but lurk quietly in the outcomes.

Impeding entry into occupations matters in California. As one reporter noted, approximately 100 miles separates those with the highest quality of life in the in the United



An 1853 iteration of the Foreign Miner's License. Source: State Legislature Records, California State Archives

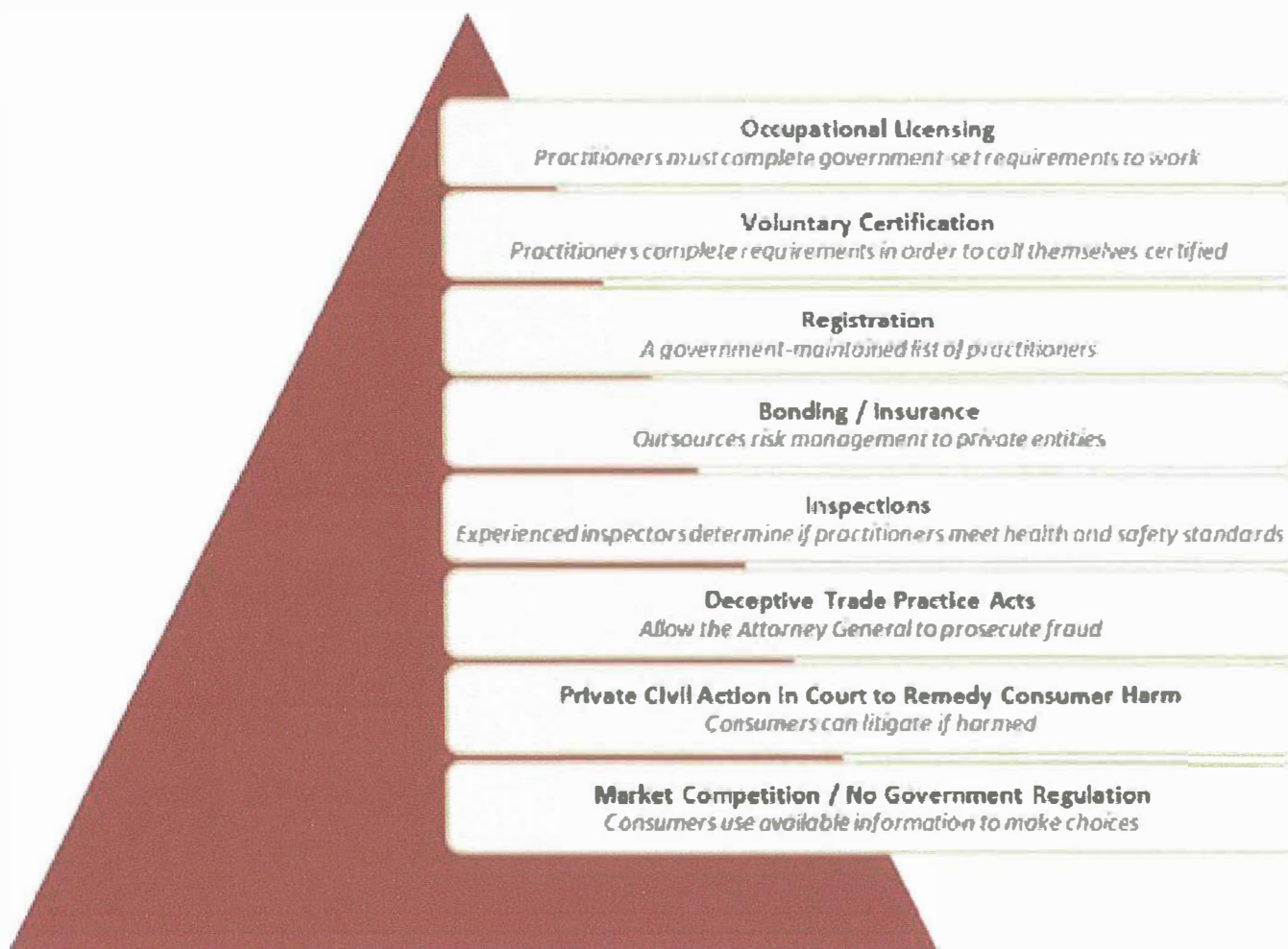
States from those with the lowest.<sup>9</sup> Removing licensing barriers will not fix all the ills that contribute to this economic inequality. But it is an important step because the impacts of licensing fall hardest on some of the most difficult groups to employ: former offenders, military spouses, veterans, and people who were educated and trained outside of the state.<sup>10</sup> Evaluating occupational regulation is bigger than simply modernizing the State of California's regulatory regime: It allows the state to step out of people's way as they seek a good job. Because every occupational regulation creates a barrier to entry into the occupation, there is one question that must be asked every time a new regulation is considered: Does that particular barrier provide the most appropriate level of consumer protection? Over the course of its study, the Commission consulted astute, dedicated and

conscientious state officials working diligently to answer that question, often in the face of powerful political forces. The Commission found silos and structural barriers that prevent people from answering those questions as effectively as they otherwise could.

This chapter provides a high level overview of occupational licensing, the justification for it, its effects and some of the obstacles the Commission found. It concludes with high-level recommendations to help the state better understand the effects of occupational licensing and to guide future decision-making. The next chapter will discuss the groups of people who face the most difficulties becoming licensed. It provides recommendations on how the state can help them move into licensed occupations – without relaxing licensing standards.

### **Spectrum of Occupational Regulation, from Most to Least Restrictive**

*Governments should select the least restrictive form of regulation necessary to protect consumer safety*



Sources: Dick M. Carpenter II. February 4, 2016. Written testimony to the Commission. Also, Dick M. Carpenter II and Lee McGrath. July 2014. "The Balance Between Public Protection and the Right to Earn a Living." Institute for Justice Research Brief.



## What is Occupational Licensing?

Economist Morris Kleiner defines occupational licensing as the process by which a government establishes the qualifications required to practice a trade or profession.<sup>11</sup> The government may set its own standards or adopt those of a national body, but regardless of which qualifications it requires, practitioners may not legally practice without meeting them. This differs from certification in that individuals who do not meet the requirements for certification may continue to practice, but cannot present themselves as certified. The act of credentialing individuals is called different things by different authorities. The Commission refers to any occupation in which an individual cannot practice without meeting qualifications set by the government as licensed, regardless of what the credentialing agency calls it. For example, the Commission considers teachers to be licensed, even though the credential they receive is called a certification.

## Occupational Licensing in California

Approximately 21 percent of California's 19 million workers are licensed, a dramatic increase from the 1950s, when approximately one in 20 workers nationwide were required to apply for permission from the government to practice their profession.<sup>12</sup> California licenses a lower percentage of its workforce than many other states: According to data by economists Morris Kleiner and Evgeny Vorotnikov published in the White House report, 29 states license a higher percentage of their population than California.<sup>13</sup>

California compares poorly, however, to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means. Researchers from the Institute for Justice selected 102 lower-income occupations – defined by the Bureau of Labor Statistics as making less than the national average income – and examined what, if any, licensing requirements were required to enter these professions in the 50 states and District of Columbia.<sup>14</sup> These occupations ranged from manicurist to pest control applicator. Of the 102 occupations selected, California required licensure for 62 – or 61 percent – of them. Here it ranked third most restrictive among 50 states and the District of Columbia, following only Louisiana and

## MOST STATES LICENSE MORE PEOPLE THAN CALIFORNIA

Rank	State	% of Workforce Licensed
1	Iowa	33.3
2	Nevada	30.7
3	Washington	30.5
4	Florida	28.7
5	Kentucky	27.8
6	Hawaii	26.6
6	North Dakota	26.6
8	Oregon	26.1
9	New Mexico	25.9
10	West Virginia	25.8
11	Alaska	25.5
12	Oklahoma	25
13	Connecticut	24.7
13	Illinois	24.7
15	Nebraska	24.6
16	Texas	24.1
17	Utah	23.8
18	Mississippi	23.1
18	Tennessee	23.1
20	Idaho	22.8
21	Arizona	22.3
21	Louisiana	22.3
23	North Carolina	22
24	South Dakota	21.8
25	Massachusetts	21.3
25	Missouri	21.3
25	Montana	21.3
28	Wyoming	21.2
29	Alabama	20.9
30	California	20.7
30	Maine	20.7
30	New Jersey	20.7
30	New York	20.7
34	Michigan	20.6
35	Arkansas	20.2
35	Pennsylvania	20.2
37	District of Columbia	19.7
38	Wisconsin	18.4
39	Ohio	18.1
40	Colorado	17.2
40	Maryland	17.2
40	Virginia	17.2
43	Vermont	16.8
44	Georgia	15.7
45	Delaware	15.3
46	Minnesota	15
47	Indiana	14.9
47	Kansas	14.9
49	New Hampshire	14.7
50	Rhode Island	14.5
51	South Carolina	12.4

Source: White House. July 2015. "Occupational Licensing: A Framework for Policy-makers." Quoting Kleiner and Vorotnikov (2015), Hanis data.

Arizona. California ranked seventh of 51 when measuring the burden imposed on entrants into these lower- and moderate-income occupations: On average, California applicants must pay \$300 in licensing fees, spend 549 days in education and/or training and pass one exam.<sup>15</sup>

## How Does Licensing Work in California?

California's licensing boards, bureaus, commissions and programs are created by the Legislature. The creation of a new regulatory entity requires a "sunrise" review before a bill is introduced. In this review, the requestor of the new regulation completes a questionnaire that is disseminated to the Assembly Committee on Business and Professions, the Senate Committee on Business, Professions and Economic Development and other relevant committees to review when considering the necessity of the legislation. There are three concepts that guide the sunrise review process:

- The public is best served by minimal governmental intervention.
- The decision to regulate an occupation involves weighing the right of individuals to do work of their choosing against the government's responsibility to protect the public when protection is needed.
- Small or poorly-funded groups should not be deterred from making legitimate requests for regulation. (Most requests for regulation come from professional associations that can provide extensive statistics and documentation in support of their proposal. Here, the Legislature is concerned that private citizens, even if they are not able to afford a formal data-collection process, have the ability to propose new statutes).<sup>16</sup>

The nine-part questionnaire seeks to establish:

- If the proposed regulation benefits public health, safety or welfare;
- If the proposed regulation is the most effective way to correct existing problems;
- And, if the level of proposed regulation is appropriate.

## CALIFORNIA LICENSES MORE LOWER-INCOME JOBS THAN OTHER STATES

Rank	State	% of Low-Income Occupations Licensed
1	Louisiana	70
2	Arizona	63
3	<b>California</b>	<b>61</b>
4	Oregon	58
5	Mississippi	54
5	Nevada	54
7	Connecticut	53
7	Iowa	53
7	Washington	53
10	Tennessee	52
11	Arkansas	51
11	New Mexico	51
13	South Carolina	50
14	Delaware	48
14	Rhode Island	48
14	West Virginia	48
17	New Jersey	47
17	North Carolina	47
19	Alabama	46
19	Idaho	46
19	Wisconsin	46
22	Utah	45
22	Virginia	45
24	Florida	44
24	Nebraska	44
26	Alaska	43
26	Montana	43
26	Pennsylvania	43
29	Hawaii	42
30	Maryland	41
30	Michigan	41
32	District of Columbia	40
33	Illinois	39
33	North Dakota	39
35	Maine	38
36	Massachusetts	36
37	Minnesota	35
38	Kansas	33
38	New Hampshire	33
38	Texas	33
41	Georgia	32
41	New York	32
43	Missouri	30
43	Ohio	30
45	Oklahoma	28
46	Colorado	27
46	Indiana	27
46	South Dakota	27
49	Kentucky	26
49	Vermont	26
51	Wyoming	24

Source: Dick M. Carpenter II, Ph.D., Lisa Knepper, Angela C. Erickson and John K. Ross, Institute for Justice. May 2012. "License to Work"

After creation, a licensing entity is reviewed every four years by a joint session of the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development. This process is called sunset review. The box on page 18 outlines the goals and objectives of the sunset review process. If problems are found with the licensing entity, legislators will introduce bills to provide fixes and it will be asked to reappear before the Legislature sooner than its regularly-scheduled four-year review. On rare occasions, the Legislature has used the sunset review to dissolve a licensing body. Notably, in 1997, the Legislature eliminated the Board of Barbering and Cosmetology and transferred its functions to the Department of Consumer Affairs. In 2002, Senator Richard Polanco successfully authored legislation to reconstitute the board. In 2016, the Legislature enacted Senate Bill 1039 (Hill), which sunsets the Telephone Medical Advice Services Bureau. In 1986, the Legislature dissolved the Board of Dry Cleaning and Fabric Care. But such dissolutions of licensing authorities are few and far between.

The 40 boards, bureaus, commissions and programs within the Department of Consumer Affairs (DCA) oversee most licensing in California. In addition to licensed individuals, the department also oversees many licensed facilities in California, such as smog check stations and funeral homes. In 2015, approximately 3.5 million individuals and facilities were licensed by DCA.<sup>17</sup> Significant numbers of Californians, however, are licensed by other authorities: The Department of Insurance, State Bar Association, Department of Public Health and California Commission on Teacher Credentialing collectively license more than a million Californians.<sup>18</sup>

## Why License?

Proponents of occupational licensing argue that it protects health and safety, prevents the privatization of health and safety standards, is sometimes necessary for upward mobility and provides an accessible means of accountability.

## Health and Safety Concerns

California has a legal obligation to protect its residents' health and safety: This is the primary purpose of

### TOP 10 LICENSED OCCUPATIONS IN CALIFORNIA

Occupation	Number Licensed
Registered Nurse	400,134
Insurance Agent/Broker	390,000
Teacher*	295,025
Investment Agent/Rep	287,197
Security Guard	282,189
Cosmetologist	254,271
Real Estate Salesperson	264,816
Contractor	230,204
Lawyer*	187,190
Real Estate Broker	138,121

\*Indicates teachers in public schools.

\*Active members.

Sources: Please see endnote 18 in Notes.

occupational licensing. Given that the health and safety components of licensing healthcare professions seem obvious to many, the Commission invited witnesses from seemingly less-intuitive industries to speak about their health and safety considerations. Myra Irizarry Reddy of the Professional Beauty Association told the Commission that many people think of the cosmetology industry as simply a haircut. "They think that if someone doesn't like their haircut, their hair will grow back and they can leave a bad review on Yelp – no harm done," she said.

The problem, she said, is that many of the procedures cosmetologists do can result in irreparable damage. The chemicals used by hair stylists to color hair are stronger than those available in drug stores. If used improperly, they can burn the scalp to the extent that hair will not grow back. Light chemical peels – the process of applying acid to the skin to cause it to blister and peel off for a more youthful appearance – are performed by estheticians, who must perform the procedure without going too deep and must assess if the patient is a good candidate for a peel, as the acid can change a poor candidate's skin color. Even simple manicures leave customers at risk for blood-borne diseases, viruses, and bacterial and fungal infections if the manicurist does not follow proper safety procedures.<sup>19</sup>

## LEGISLATIVE GOALS AND OBJECTIVES IN SUNSET REVIEW

### Goals of Sunset Review:

- Eliminate unneeded, nonfunctional or redundant boards or programs, or any unnecessary rules and regulations.
- Improve the quality of services provided to the consumer by examining the board's requirements for education, experience and testing of professionals and other actions to assure competency.
- Eliminate overly restrictive eligibility standards, or standards of practice that unduly limit competition between professionals or place undue burdens on those who want to enter the occupation.
- Ensure people know where to go if injured or harmed by a licensed or unlicensed person, what actions they can take and what the outcomes may be.
- Ensure the public's complaints are handled in a courteous and expeditious manner.
- Ensure boards are providing the appropriate remedy for the consumer: mediation, arbitration, restitution, disciplinary action and/or criminal action against the licensee or person posing as a licensee.
- Ensure the public is informed about any complaints, disciplinary actions, judgments and criminal actions against a licensed professional.
- Use information technology advancements to provide better and more uniform information on licensed professionals for the consumer to make informed decisions about using the services of particular professionals.

### Objectives of the Sunset Review Process:

- Determine if the membership of the board adequately represents both consumer interests and the licensing population, and whether the board encourages public participation in its decision-making.
- Examine the board's organization and management and recommend elimination, consolidation and reorganization of programs where appropriate.
- Identify opportunities for improvements in the management of the board's daily operations and for providing more efficient and effective consumer services.
- Identify consumer concerns and those of the regulated profession regarding the way the board operates.
- Establish appropriate performance measures for each board reviewed.
- Evaluate the board's programs and policies to identify overlapping functions and outmoded methodologies.
- Determine whether the board's licensing, examination and enforcement programs are administered so as to protect the public, or if they are instead self-serving to the profession, industry, or individuals being regulated by the board.
- Review the law and regulations pertaining to the board and determine whether they restrict competition in the marketplace, the extent to which they are still necessary to regulate the profession and whether the board is carrying out its legal mandate or has exceeded its authority.
- Examine the board's fiscal management practices and financial relationships with other agencies.

Sources: Joint Committee on Boards, Commissions & Consumer Protection. Also, Le Ondra Clarke Harvey, Consultant, Assembly Committee on Business and Professions. October 6, 2015. Communication with Commission staff.

Deborah Davis, a commercial interior designer, said that the health and safety impacts of her work cannot be regulated by the free market. Many people think of interior designers as people who pick out pillows, carpets and curtains, she told the Commission. While those are components of her job, she continued, a lot of her job involves code-impacted work. Interior designers, who currently are not licensed in California, she said, can design all interior elements of a building outside of seismic components and load-bearing walls.<sup>20</sup> When she is hired to move a wall four feet, she adjusts the HVAC system, fire sprinklers, electrical wiring, lighting and other elements. “This is the interior designer’s purview,” she told Commission staff. “Architects don’t want this job. No one becomes an architect to move a wall four feet.”<sup>21</sup>

Licensing opponents say that there is a spectrum of activities to manage health and safety risks and that licensing should be considered the nuclear option. It can make sense to license many of the healing arts professions, for example, because of the potential adverse effects on public health. But for many occupations, they say, there are ways that the state and the private sector can work together to ensure standards are met. Lee McGrath, an attorney from the Institute for Justice, gave an example to Commission staff: Outside of driving, he said, eating out is one of the most harmful activities the average consumer will do on a regular basis. But the state doesn’t license food handlers, he continued. Consumers may spend time researching a restaurant, but outside of a few establishments with celebrity chefs, they don’t research who works for the restaurant and assess their qualifications. Yet, millions of people eat out every day without dying, thanks to inspections and shutting down unsafe establishments, quick action by public health officials on suspected food poisoning and restaurateurs’ concern for their reputations, he contended. The costs of regulations and standards to protect public safety do not fall on the backs of the cooks, servers and bussers.<sup>22</sup>

## Prevents Privatization of Health and Safety Standards

Some licensing opponents argue that certification offers a viable alternative to licensing. Dr. Morris Kleiner, the national expert on occupational licensing, advocates for certification because it allows more flexibility for workers:

They can still practice their occupation without a license. He also told the Commission that certification benefits consumers. This is because it signals that someone has met the government’s requirements to work in the occupation, yet uncertified individuals are still able to work so long as they do not call themselves certified. Consequently, certification identifies standards without lowering the supply of practitioners.<sup>23</sup>

Licensing advocates argue that, in practice, governments often turn their authority over to a private certification authority, and the private certification authority then sets the standards instead of the state – essentially privatizing the protection of the public interest.<sup>24</sup> Assembly Bill 1279 (Holden, 2015) would have done just that, for example, had it not been vetoed by Governor Brown. The bill was a “right to title” act for music therapists, meaning that music therapists would have had to meet the standards set by the Certification Board for Music Therapists in order to use that title.<sup>25</sup>

A representative for the California Nurses Association told the Commission that the rationale for occupational licensing is the protection of public health and safety. If the state identifies a threat to public health and safety that justifies intervening in the economy, she said, then the state – not a private entity – should set the standards.<sup>26</sup>

## Real World Conditions Disadvantage Some Unlicensed Occupations

Some people in unlicensed occupations face immediate disadvantages that cannot be discounted when considering upward mobility. Commercial interior designers, for example, push for occupational regulation because they are disadvantaged by other industries’ occupational regulations, according to industry advocates. Because commercial interior designers work in code-impacted environments, their plans must be approved by a licensed architect. A small percentage of interior designers work for architectural firms, where obtaining a colleague’s approval can be quick and inexpensive. However, if the interior designer is self-employed, this requirement results in a delay and increased costs to the interior designer. As 90 percent of the industry is women-owned small businesses,

this disproportionately impacts female small business owners.<sup>27</sup> By asking to be licensed, commercial interior designers are asking to drop the requirement that architects sign off on their plans, and establish qualifications so the public can trust their work without architectural oversight.<sup>28</sup>

## Practical Means of Accountability

Ms. Irizarry Reddy disputed the commonly-held idea that the court system should ensure accountability and be the first recourse in disputes between practitioners and consumers. It's just not practical, she told the Commission. The delays from an already-overwhelmed and backlogged court system would be extensive and expensive for the consumer, practitioner and the state. The mediation and complaint systems created through the licensing boards provide a practical resolution for most problems consumers have, she said, and the state should not switch to a system that disadvantages consumers and practitioners.<sup>29</sup>

## Effects of Occupational Licensing

Critics of occupational licensing contend that it raises prices, slows growth and costs jobs. They add that it does not provide the same benefits to lower-earning occupations as higher-earning occupations, inhibits entrepreneurship and is subject to political forces that favor practitioners over consumers and the unlicensed without justifiable protections to health and safety. In other words, licensing causes unwarranted barriers to entry to many occupations.

## Raises Prices Without Always Increasing the Quality of Service

Witnesses told the Commission that occupational licensing essentially is the government granting a monopoly to a subsection of service providers within a given occupation. The results are what economists expect from a monopoly: higher prices and fewer providers. Dr. Kleiner's research found that licensing raises prices by 5 percent to 33 percent, depending on occupation. Restrictive licensing for dentistry, for example, raises prices between 8.5 percent and 18 percent. Restrictions on nurse practitioners raise the

price of well-child exams by 10 percent. Dr. Kleiner, citing his and colleagues' work with economic models on the topic, estimates that occupational licensing restrictions cost consumers nationwide \$203 billion annually.<sup>30</sup>

Consumer health and safety does not necessarily increase with the price of the service, according to witnesses. Researchers found that more lenient dentistry licensing policies did not result in more bad outcomes. Stricter licensing, however, resulted in higher prices and a reduced supply of dentists.<sup>31</sup> In the preceding nurse practitioner example, the 10 percent increase in cost that accompanied the restrictions had no effect on child mortality or malpractice insurance rates. A study in Louisiana and Texas found that licensed florists in Louisiana did not generate any perceivable increase in consumer protection while increasing the price of floral arrangements.

In some cases, however, licensure does improve the quality of service. A study found that giving building contractor licenses to people who previously did not meet licensing requirements resulted in a modest decrease in quality.<sup>32</sup> These studies suggest that occupational regulation is nuanced and there is no "one-size-fits-all" policy of regulating who can work.

## Slows Growth in Licensed Professions

According to Dr. Kleiner's research, working in a universally licensed occupation appears to increase hourly earnings by 10 percent to 15 percent compared to unlicensed individuals with similar qualifications.<sup>33</sup> Working in an occupation that is licensed in some states, but not others, results in a 5 percent to 8 percent increase in wages.<sup>34</sup> Due to grandfather clauses often included in legislation, it typically takes 10 years to see the effects of licensing on employment. By the end of the initial 10 years following the legislation, entry into occupations is limited. Employment growth in an occupation that is licensed in one state will be slower than in a state that does not license it.<sup>35</sup> Dr. Kleiner estimates that occupational licensing restrictions have resulted in approximately 2.8 million fewer jobs nationwide.<sup>36</sup>



## Benefits are Concentrated in Higher-Income Professions

Increases in wages and limited competition are most concentrated in higher-paying licensed occupations, such as physicians, dentists and attorneys.<sup>37</sup> The effect of licensing on wages and limiting competition for lower-income occupations, including those that have expensive educational or training requirements such as teachers, nurses and cosmetologists, range from little to none.<sup>38</sup> This suggests that middle- and lower-class occupations are the least likely to enjoy the financial benefits from licensing.

## Services are Standardized, Entrepreneurship Suffers

Occupational licensing requirements standardize service. Professional and occupational organizations argue that standardization improves service and reduces uncertainty in consumers' minds. Critics argue that standardization inhibits innovation and entrepreneurship. Jason Wiens of the Kauffman Foundation offered the example of barbershops. The foundation worked with someone who wanted to open a mobile barbershop, though the regulations of that state required a fixed location for a barbershop. State officials were unwilling to work with the entrepreneur to find a solution that would allow for the mobile barbershop. Eventually he gave up on his idea even though he had data indicating demand for that service.<sup>39</sup>

The problem becomes magnified with low-income entrepreneurship. Decades of research have shown entrepreneurship in low-income populations is an important path out of poverty. The University of Michigan's Panel Survey of Entrepreneurial Dynamics found that nearly 40 percent of nascent entrepreneurs live in low- and moderate-income areas. Nearly 10 percent of emerging entrepreneurs come from households below the poverty line. Researchers from the Aspen Institute followed 1,500 low-income entrepreneurs for five years, and found that 72 percent of them increased their household income by an average of \$15,000 during the study period. Fifty-three percent moved out of poverty.<sup>40</sup>

Working under the assumption that policies that promote

entrepreneurship are key to upward mobility, researchers from the Goldwater Institute combined data from the Institute for Justice and Kauffman Foundation and found that states that license more lower-income occupations have a lower entrepreneurship rate. They also found the converse: states that license fewer lower-income occupations have a higher entrepreneurship rate.<sup>41</sup>

Professional and occupational organizations argue that consumers are receiving better services in exchange for the higher prices: Better-trained dentists with more training, for example, provide a higher quality of care for the consumer with higher-quality equipment because of better standards. But economists worry that, particularly in high-income professions such as dentistry and law, wealthier consumers can steer the supply of services away from the reach of low- and middle-income consumers. If wealthier consumers demand the highest standards of cosmetic dentistry as the basis for licensing requirements, for example, lower-income consumers who might care more about access to fillings and root canals might find themselves with less access to services and at a higher price.

## Inhibits Interstate Mobility

State licensing requirements make it difficult for many to work in states other than the one that licensed them due to different training or educational requirements. One expert gave the following example: Anyone who attended one of the approximately 40 non-American Bar Association (ABA)-accredited law schools in California is ineligible to sit for the bar exam in Minnesota, no matter whether his or her school was accredited by the California Committee of Bar Examiners, how well he or she performed on the California Bar Exam or how distinguished his or her career in California.<sup>42</sup> The attorney would need to re-complete his or her law school education at an ABA-accredited school in order to sit for the Minnesota Bar Exam.

While these policies affect anyone who moves across state lines, they often fall hardest on those who can least afford them. In the example above, non-ABA law schools often educate people with families and are working full-time jobs while in school<sup>43</sup> – people who might move across state lines for reasons other than their job and who might not have the resources to take out more loans to repeat their law school education.

Military families also are disproportionately affected



by occupational licensing laws, which will be discussed further in the next chapter. Veterans may be trained for an occupation in the military only to discover upon discharge that they do not meet state licensing requirements. Service members' spouses and sometimes working-age children may discover that they are not eligible to work in their occupation when the service member is transferred to a new state.

Simply requiring that all state licenses be portable across state lines would not necessarily solve the problem, however. With licensing regulations varying wildly across the nation, it often would be difficult to tailor a set of licensing requirements to meet every other state's requirements. Some occupations have a national standard developed by a credentialing or professional association. The standards set by a private organization do not always put consumers first, and sometimes may create as many barriers as would be removed by adopting a national standard. For example, the national standard to become a physician assistant, set by the Accreditation Review Commission on Education for the Physician Assistant, was recently changed to require a master's degree to become a physician assistant. California previously had a pathway to becoming a physician assistant through its community colleges. Because community colleges are unable to award masters degrees, this pathway is now no longer an option.<sup>44</sup> By adopting the national standard California has solved the reciprocity problem, yet has enacted more barriers to upward mobility for lower-income Californians.

The state should consider license portability and strive to make its licenses reciprocal where possible. In some cases, it may not make sense for the state to have reciprocity with every state, but it could grant partial reciprocity with some states with similar licensing requirements. In situations where meeting a national or other states' standards would create more barriers to entry for Californians, the licensing boards should explain to the sunrise and sunset review committees why the state is not opting for reciprocity.

## The Political Forces of Licensing

Occupational licensing regulations are made in the name of protecting the public interest. The reality, witnesses told the Commission, is that occupational regulation often amounts to rent-seeking. Briefly

defined, rent-seeking is an attempt to influence the political, social or other environment to achieve an economic gain for oneself without contributing to productivity.<sup>45</sup> In occupational licensing, the rules serve to keep competitors out of the industry. Most of the time, experts told Commission staff, the groups behind requirements for occupational licensing are industry

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***"Usually it's not consumer groups going to the Legislature and saying that consumers need protections from certain practitioners. It's the other way around. It is practitioners telling legislators, 'you need to protect consumers from us.'"***

Jason Wiens, Policy Director, Kauffman Foundation

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associations trying to create regulations to keep out the competitors.<sup>46</sup>

Robert Fellmeth of the Center for Public Interest Law explained that occupational regulation does not reflect the consumer's point of view due to the concept of concentrated benefits and diffuse (sometimes called dispersed) costs.<sup>47</sup> This is a key point in what political scientists call public choice theory. The higher costs caused by occupational licensing are dispersed among a large number of consumers, while the benefits are limited to a relatively small number of practitioners.

Therefore, the practitioners who receive the benefit have an incentive to lobby and take other action to protect their benefit. Consumers, on the other hand, might spend more to lobby against the regulation than the increase in cost they would pay for the service due to a functional monopoly. Quite simply, witnesses told the Commission, practitioners benefit from the system, not consumers, and certainly not the workers who are unable to become practitioners.

## Gatekeeping and Inequality

The effects and political nature of occupational licensing combine to create formidable challenges for those with fewer means. Licensing requirements protect those who are already licensed at the expense of those who are not, and California licenses more occupations traditionally entered into by lower-income people than nearly every

other state. The financial and time costs to become licensed are not insignificant. Licensing results in higher prices and reduces the availability of services to lower-income people. The costs of organizing to be represented in occupational regulation often are insurmountable for the underrepresented. Though the testimony of economists, researchers and legal experts featured prominently in the Commission's hearings, it is important to remember that for most Californians, this conversation is not academic. It is many Californians' reality in a society with ever-increasing income inequality.

## Licensing Silos and Missing Data

Policymakers focus much of their attention on the Department of Consumer Affairs because the boards, bureaus, commissions and programs under its umbrella license so many Californians. More than 3.5 million individuals and facilities are licensed by the department across more than 250 occupations.<sup>48</sup> Proposals to license new occupations under the department must undergo the sunrise review process discussed previously. New rules made by the boards and bureaus under the department are subjected to a public rulemaking process. Every four years the department's licensing authorities undergo legislative scrutiny to justify their

existence. Legislation to improve occupational licensing often targets the Department of Consumer Affairs. For example, if a recent bill, AB 1939 (Patterson, 2016), had passed, it would have required the Legislative Analyst's Office to review the occupations under the Department of Consumer Affairs and identify any unnecessary barriers to entry.<sup>49</sup>

The focus on the Department of Consumer Affairs misses the enormous numbers of Californians who are licensed by other entities. More than 250,000 people are licensed by the State Bar.<sup>50</sup> The Department of Insurance licenses some 390,000 insurance agents and brokers.<sup>51</sup> The California Teacher Credentialing Commission licenses more than 295,000 teachers.<sup>52</sup> Other departments license smaller numbers of Californians. The California Department of Public Health licenses nursing home administrators and certified nursing assistants. The Division of Labor Standards Enforcement under the Department of Industrial Relations licenses farm labor contractors. No government official asked was able to provide the Commission with a comprehensive list of every licensed occupation in California.

It is impossible for the state to holistically evaluate its performance in protecting the public and determine

## DISCREPANCIES IN OCCUPATIONAL REQUIREMENTS

The discrepancies in requirements to become manicurists and tattoo artists highlight the need to review California's occupational regulations. Both occupations involve hands-on contact with customers' bodies. Practitioners of these occupations are exposed to bloodborne diseases, bacteria and fungi, yet the requirements to work in each occupation vary dramatically.

Manicurists must complete at least 400 hours of classwork and training. At some schools this costs thousands of dollars. They then must take written and practical exams before becoming licensed. The practical exam only is offered in two cities: Fairfield and Glendale. Applicants are assigned dates for both portions of the exam and are unable to reschedule the date assigned to them for the practical exam. If they cannot travel to one of those two cities on the date assigned to them, their candidacy is terminated, they lose their application fee and they must begin the application process all over again.

Conversely, tattoo artists must register with their county's public health department, provide proof of Hepatitis B vaccination and take an annual two-hour bloodborne pathogens class, available online for \$25.

If state and local governments successfully protect consumers through the lighter regulatory regime for tattoo artists, state officials might consider whether the burdens imposed on aspiring manicurists are justifiable and whether lower levels of regulations might result in the same public safety outcomes.

whether it is unnecessarily acting as a gatekeeper to upward mobility if there is no single authority that knows who is licensed. Fortunately, there currently is an initiative underway that can provide the groundwork. Dr. Kleiner, funded in part by the Kauffman Foundation and Smith Richardson Foundation, is cataloguing the nation's universally licensed occupations. The goal is to provide data for a comprehensive cross-comparison study of licensing. Most academic studies of occupational licensing focus on a single occupation because getting data from multiple states is time-consuming and difficult. The work is expected to be completed within a year.<sup>53</sup> California officials across all departments that license one or more occupations should work with Dr. Kleiner to share their licensing data with this initiative, as the results of cross-comparison studies based on this data would help inform evidence-based policy decisions. They should then build on this effort and catalog all of California's licensing requirements in a single, easily and publicly accessible location, so that policymakers and stakeholders can better understand the extent of California's licensing regime.

Knowing which occupations are licensed in the state is only a start, however. For most occupations, demographic information is collected on a voluntary basis; the Legislature must authorize mandatory collection of information. The reasoning behind this is valid: "The person who decides whether someone receives a license should be blind to the individual's race and ethnicity," said Department of Consumer Affairs Director Awet Kidane. He went on to say that he believes in the utility of data and that demographic information in the aggregate would be helpful, but licensing and enforcement authorities should not have an individual's demographic information in front of them while they're making decisions.<sup>54</sup>

Not collecting demographic data, however, leaves the state unable to track whether a licensing requirement is having an adverse racial, gender or other demographic impact. As will be discussed further in the next chapter, there is significant anecdotal evidence that some licensing requirements harm certain groups. But without data, it is difficult to know for certain. The Legislature should authorize the collection of demographic data, including race, ethnicity, gender, age, education level and languages spoken. For some occupations, it may be beneficial to collect other types of data, such as specific pre-licensure programs the applicant completed in order

to assess which pathways applicants are using to enter the occupation.

Given the impact of licensing on prices, availability, wages both inside and outside the licensed occupation, geographic mobility and entrepreneurship, it is critical that the state be absolutely sure that effects are justified by the consumer health and safety provided by each regulation. Most licensing authorities were created before the institution of the sunrise process, and never had to prove that the level of regulation requested was necessary to protect consumers. The sunset review process cannot completely escape political forces, and requires a small legislative staff to sort through a mountain of data compiled by the very boards under review in a relatively short period of time.

It is long past time for a nonpartisan research body to sift through the complete body of California's licensed occupations to determine whether each requirement justifiably protects public health and safety, then make recommendations for legislative action. California has the opportunity to participate in just such a venture. The U.S. Department of Labor is issuing a grant of up to \$7.5 million to consortia of states to examine licensing criteria, licensing portability issues and whether licensing requirements are overly broad or burdensome.<sup>55</sup> Additionally, the Department of Labor indicates that states may consider the approaches to licensing to protect public health and safety, such as certification.<sup>56</sup> The Upjohn Institute of Employment Research is organizing a consortium of states to apply for grant funding, and has invited California to participate. The opportunity to evaluate California's licensing laws with the assistance of federal funding, a nonprofit to coordinate the work, and the expertise of economists such as Dr. Kleiner is too valuable to squander. California should accept the Upjohn Institute's invitation and begin reviewing its licensing laws and regulations across all licensing authorities, not just the Department of Consumer Affairs.

Finally, California's sunrise and sunset review process is critical to ensuring occupational regulation erects the fewest barriers to entry into occupations while protecting health and safety. It is incumbent upon the state to provide the committees that carry out this important function with the resources they need. For future sunrise and sunset reviews, the Legislature should fund additional resources to assist the Assembly Committee

on Business and Professions and Senate Committee on Business, Professions and Economic Development to verify information submitted to the committees. This could take the form of dedicated analysts within the committees or funding for additional help from nonpartisan research bureaus or consultants outside the committees. When the data supplied by licensing entities is incomplete or questionable, legislators should request an audit by the state auditor.

## Recommendations

**Recommendation 1:** *The Legislature should authorize the mandatory collection of demographic information for license applications across all licensed occupations in California, including those outside of the Department of Consumer Affairs. This demographic information should not be made available to staff members issuing licenses or conducting enforcement actions, but should be studied in the aggregate to determine the impact of licensing requirements on different demographic groups.*

**Recommendation 2:** *The State of California should join a consortium of states organizing to attain federal funding to review their licensing requirements and determine whether those requirements are overly broad or burdensome to labor market entry or labor mobility, particularly for individuals who have moved to California from another state or country, transitioning service members, military spouses and former offenders. As part of this process, the state should consider whether there are alternative regulatory approaches that might be adequate to protect public health and safety, including, but not limited to, professional certification.*

**Recommendation 3:** *The Legislature should require reciprocity for all professionals licensed in other states as the default, and through the existing sunset review process, require boards to justify why certain licenses should be excluded. Specifically, licensing boards should be required to:*

- Identify whether licensing requirements are the same or substantially different in other states.
- Grant partial reciprocity for professionals licensed in states with appropriately comparable testing and education requirements.

**Recommendation 4:** *The Legislature should fund additional resources, in the form of additional staff or outside support, to assist the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development in verifying and evaluating information for sunrise and sunset reviews. The Legislature should request the California State Auditor conduct an audit when warranted.*

## PATHWAYS TO UPWARD MOBILITY

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At the heart of all conversations about occupational regulation are people: protecting people, removing barriers for people, enabling upward mobility for people. The 2015 White House Report on occupational licensing described several groups of people particularly vulnerable to occupational licensing laws: former offenders, military spouses, veterans and immigrants.<sup>57</sup> With ever-increasing economic inequality, policymakers must think about the impact of occupational licensing policies on vulnerable groups. That is, how to create pathways for upward mobility for those who have the hardest time becoming employed – even though they may be qualified. In this chapter, the Commission explores how the groups identified in the White House report fare in California and offers recommendations on how the state can break down the barriers preventing them from finding good jobs:

- **Former Offenders:** People with convictions on their record often face difficulties in becoming licensed. They typically must demonstrate that their convictions were not substantially related to the duties of the occupation, or if their convictions were, that they have been rehabilitated. The problem is that “substantially related” and “rehabilitated” are not always clearly defined. Advocates report encountering some arbitrariness in licensing authorities’ decisions. Further, appealing a denial can be confusing and expensive for former offenders.
- **Military Spouses:** Military spouses suffer when their licenses do not transfer across state lines with them. Already at a disadvantage when job searching because employers know they will likely move again in a few years, starting over by spending a year or two redoing licensing requirements further diminishes their employability. The cost of lost job opportunities and of repeatedly meeting licensing requirements is considerable to military families. Most service members say their spouses’ ability to

maintain their career is an important factor when deciding whether to remain in the service – and Department of Defense personnel say they lose some of their best people because of spouses’ career difficulties. Ensuring that military spouses have rewarding careers has a positive impact on national security.

- **Veterans:** Veterans may be trained in the service in occupations that are licensed in the civilian sector. Sometimes, upon separation from the military, they have difficulties gaining credit for their military education and experience and have to begin again. Not only does this impose a cost on the veteran, it also affects taxpayers who pay for the veteran to learn an occupation in the military, then pay for it again upon separation through the G.I. Bill. Lawmakers have been proactive in passing laws to make it easier for veterans to become licensed. The Commission learned, however, that there may be a disconnect between the intent of the laws that were passed and the reality on the ground.
- **Foreign-trained Workers:** Workers trained in other countries often possess the skill sets for occupations in which California faces shortages, but there are a number of obstacles preventing them from gaining licensure in the state. Many have gaps in their training or experience. But there are few gap, or bridge, education programs to quickly fill those gaps, forcing them to begin again. Even those fully qualified may not be able to practice due to licensing statutes and regulations. This matters because California not only needs qualified personnel to meet its impending shortages, but it particularly needs professionals who are fluent in languages other than English and familiar with other cultures – needs that foreign-trained workers can easily meet.

This chapter offers recommendations to help these groups more easily enter occupations, without overhauling California's regulatory regime or reducing standards. Further, these recommendations will help all Californians – not just those belonging to vulnerable groups – more easily enter licensed occupations: a rising tide that lifts all boats.

## Former Offenders

Approximately eight million Californians have criminal records.<sup>58</sup> Ninety-six percent of Californians who are sent to prison will re-enter their communities.<sup>59</sup> This figure does not include the thousands of Californians who are sent to county jails for lesser offenses, who also will re-enter their communities after completing their sentences. In 2012, more than 18,000 prisoners were paroled and nearly 29,000 offenders were released from prison to post-release community supervision.<sup>60</sup> Tens of thousands more are released from county jails every year. A 2015 survey found that nearly 35 percent of unemployed men had a criminal record.<sup>61</sup> Former offenders are most likely to recidivate in their first year after release.<sup>62</sup> A 2008 Urban Institute Justice Policy Center Study found that at fewer than half of the former offenders were employed at eight months after release.<sup>63</sup>

***“...no available evidence demonstrates that the mere existence of a criminal record is related to poor occupational performance or low-quality services. In other words, simply having some type of a past record does not predict an individual's ability to perform in an occupation.”***

Michelle Natividad Rodriguez, Senior Staff Attorney,  
National Employment Law Project

A job does not guarantee successful re-entry into society. That requires housing, mental and physical health care and other services tailored to the specific needs of the individual. But researchers have found employment is essential to helping former offenders. In addition to allowing former offenders to support themselves and their families, a job develops pro-social behavior, strengthens community ties, enhances self-esteem and improves mental health – all of which reduce recidivism.<sup>64</sup> These effects are strengthened the longer the individual holds the job and especially when it pays more than

minimum wage.<sup>65</sup> The ability of former offenders to hold stable jobs is enormously important to society.

Nationally, there is an ongoing bipartisan conversation about the loss of employment as a collateral consequence of incarceration. In November 2015, President Obama directed federal agencies to “ban the box.” Ban the box refers to not asking applicants about their convictions on the initial job application, instead waiting until later on in the hiring process to discuss convictions. Twenty-four states and more than 100 counties and cities also have adopted ban the box policies.<sup>66</sup> More than 100 companies, ranging from Google to Coca Cola, also have pledged to give people with convictions opportunities to work there through actions such as banning the box, providing internship opportunities to ex-offenders and hosting job fairs for former offenders.<sup>67</sup> Yet these efforts are limited in their effectiveness if people with convictions on their records face barriers to obtaining the credentials needed to work.

## The Problems Former Offenders Encounter in Being Licensed

Several levels of regulation and guidelines govern how former offenders may be licensed. Licenses issued by the entities under the Department of Consumer Affairs are regulated by the California Business and Professions Code, which states that a license may be denied if the offense is substantially related to “the qualifications, functions, or duties of the business or profession for which application is made.”<sup>68</sup> Convictions that are not substantially related are not supposed to be a cause for denial. The Business and Professions Code also says that licenses cannot be denied if applicants meet the criteria for rehabilitation. The Business and Professions Code goes on to give the boards, bureaus, commissions and programs under the Department of Consumer Affairs authority to develop the criteria for what constitutes “substantially related” and “rehabilitation.”<sup>69</sup>

The many licenses issued by other licensing authorities are governed by a patchwork of laws across many legal codes that, as one witness told the Commission, may allow license denial even for a conviction not substantially related to the duties of the occupation.<sup>70</sup> Under federal law for example, the Insurance Commissioner must provide permission for anyone convicted of a felony



involving dishonesty or breach of trust who wants to work in the business of insurance, including jobs without access to sensitive information.<sup>71</sup> Hearing witness CT Turney, a lawyer for the Los Angeles-based A New Way of Life Reentry Project, told the Commission that often licensing entities have internal guidelines that further determine how a former offender is evaluated. While these criteria usually can be obtained through a Freedom of Information Act request, they're sometimes not easily available to applicants.<sup>72</sup>

Applicants face similar challenges in some occupations that technically are non-licensed. California licenses many types of facilities, and the regulations governing the facilities' licenses may have employment requirements that make it difficult for former offenders to find employment. Witnesses cited the California Department of Social Services and the Department of Developmental Services as two examples for which employees would "provid[e] care for children, elderly, and developmentally disabled adults".<sup>73</sup> CT Turney emphasized that the ability to work in these types of jobs is important to the re-entry community.<sup>74</sup>

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***"When policies and decisions are made based on visceral fear rather than on a reasoned analysis of actual risk, they reach far beyond the justification of public safety. Instead they merely serve as additional punishment for a past offense. In the process, such policies impose greater burdens on individuals, who lose out on stable work and better pay, and on communities, who lose out on financially stable members as well as the services of otherwise qualified professionals."***

CT Turney, Senior Staff Attorney,  
A New Way of Life Reentry Project

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### **The Tradeoff Between Certainty and Flexibility**

There is a fine balance between outlining specific offenses that will disqualify an individual from licensure and leaving licensure requirements vague enough to allow for flexibility. For some occupations in California, there are a few crimes that automatically disqualify

people. For example, sex offenders may not be licensed as teachers.<sup>75</sup> Beyond that, however, it is often up to the discretion of the licensing entity. This is problematic for former offenders who must decide whether to invest in the education, training, and application process – which often requires an expensive test and fees – when there is no certainty they will be eligible for licensure. For example, individuals applying for employment at facilities licensed by the Department of Social Services technically may be denied employment for anything beyond a traffic violation.<sup>76</sup>

The problem, however, with creating a list of automatic disqualifications is the state loses the flexibility to assess applicants according to the nuances of their offenses. Awet Kidane, director of the Department of Consumer Affairs told the Commission, "There is a difference between a doctor who gets a DUI driving home after a shift versus a doctor who gets a DUI on the way to the operating room."<sup>77</sup> Licensing officials reiterated the need for flexibility throughout the Commission's study process. One licensing board cited the case of a woman convicted of assault that, when it examined the case, transpired to be a mother confronting someone who assaulted her child. By outright rejecting assault convictions, licensing officials warned, people who pose no legitimate threat to consumers also will get caught in that net.

Director Kidane told the Commission that his department constantly evaluates room for improvement in licensing former offenders. He said there is significant discussion about what "substantially related" means and of what constitutes "mitigating circumstances."<sup>78</sup> Representatives from other licensing entities also told the Commission that they, too, aim to improve their licensing processes for former offenders.

### **Background Checks**

Applicants with criminal convictions on their records face another barrier: what CT Turney called the candor trap. Applicants often are asked to list criminal convictions on their applications, as well as undergo background checks. If the convictions an applicant lists do not match the convictions on the background check, the applicant may be disqualified for lying. CT Turney explained there are reasons an applicant may unintentionally err when listing previous convictions. Many, particularly those who are less educated or legally unsophisticated, see three lines



on the application and assume they only need to write a broad overview instead of obtaining police reports and a lawyer to get the details right. People also often do not remember their conviction histories correctly. People with 30-year-old convictions or addiction or mental health issues, and those who have accepted plea agreements to charges differing from what they remember being arrested for, often unintentionally make misstatements on their application form. All of society loses when former offenders cannot get a good job because they were automatically disqualified due to unintentional misstatements not matching their background checks.

The Department of Insurance offers an alternative model to learn about applicants' criminal convictions. The department asks applicants to submit certified court documents regarding their convictions with their applications. In this way, applicants are not inadvertently caught in the candor trap. However, this model comes with a price: Applicants pay \$32 for a state background check, \$17 for a federal background check, plus fees charged by the live scan locations and the costs of procuring other requested documentation.<sup>79</sup> The state has a fee-waiver program for low-income applicants for the state background check, but there is room for improvement. Applicants must first apply for a fee waiver and cannot proceed with their background check until they receive a response, which can take several weeks. Then they must wait for the background check, which also takes several weeks.<sup>80</sup> Implementing instant responses to requests for fee waivers would make important progress in getting applicants to work faster, advocates said.<sup>81</sup>

### Complex Appeals Process

Application processes vary by licensing authority. But in general, when individuals with convictions on their records apply for licenses, their applications are flagged and reviewed by analysts, who are not necessarily legal professionals. In many cases, these analysts work with internal guidelines based on the licensing authority's interpretation of substantially-related duties and rehabilitation. Advocates working with former offenders said that sometimes denials seem arbitrary.<sup>82</sup>

Many applicants do not appeal denials because they are intimidated, advocates told the Commission.<sup>83</sup> When applicants do appeal, the process is expensive

and not straightforward. When applicants appeal denials, advocates said, they often believe they are simply meeting with licensing board officials to explain their convictions. In some cases, however, they find themselves in formal legal hearings overseen by administrative law judges with attorneys representing the licensing boards. There, they discover they need to present evidence and witnesses to prove they meet certain legal standards. People often do not understand the process, CT Turney said, and the client base A New Way of Life Reentry Project serves often cannot afford attorneys. Further, very few organizations provide *pro bono* occupational licensing-related legal services to low-income applicants. Applicants often lack the knowledge or experience to defend themselves against state attorneys, advocates said, and consequently, often lose.<sup>84</sup>

An intermediate review process would help mitigate some of the barriers these applicants face. That process, between an applicant's initial denial and an administrative law hearing, allows applicants to meet with licensing officials and explain why they believe their denial was erroneous. Advocates cited the good results of the Bureau of Security and Investigative Services' intermediate review program as a model for other licensing authorities.<sup>85</sup> Further, because administrative law proceedings require judges, lawyers, and court reporters, they are costly for the state. Instituting an intermediate review process between licensing entity officials and the applicant could save the state money.

### Steps to Help Former Offenders Gain Employment

The entire community benefits when former offenders are gainfully employed. Yet as a group they face severe obstacles when looking for work. Easing licensing barriers does not mean unconditionally allowing former offenders to work in any job. No one suggests allowing convicted child molesters to become schoolteachers or convicted elder abusers to become nurses. But a 10-year-old drug conviction should not keep individuals from finding a job to support themselves and their families.

As discussed in the previous chapter, a thorough review of all of California's occupational licensing regulations is needed and part of the review must include whether there are unnecessary barriers for ex-offenders. In the

meantime, the state can take steps to ease barriers to licensing for former offenders. Among them:

- Make the criteria licensing authorities use to evaluate former offenders more transparent. Some licensing authorities do this, and the rest should follow suit. The Commission recognizes that the final determination of whether a license is issued or not results from a conversation between the licensing authorities and the applicant. The Commission understands that addressing applicants with convictions on a case-by-case basis allows flexibility. But applicants should not have to file Freedom of Information Act requests to know the guidelines by which they will be evaluated. Having this information up front can help potential applicants make informed decisions about how to invest their time and resources.
- Follow the Department of Insurance model by relying on background checks and court documents for reviewing convictions. For occupations that require background checks, the licensing authority should not rely on applicants' recollection of convictions to make its decision. Requiring applicants to outline their criminal histories in addition to a background check serves no purpose. The state also could make its background check fee waiver more efficient for low-income applicants so they do not have to wait as long to begin working.
- Institute an intermediate review process within the licensing authorities that do not have one. Some licensing authorities keep the lines of communication open with applicants throughout the entire application process, while others do not. An intermediate review process allows applicants who are not legally sophisticated to discuss problems with their applications with licensing authorities before it turns into an administrative law hearing. This saves the state money as well.

Though the specific convictions that qualify as "substantially related" will vary by occupation, the principles guiding the development and application of those standards will not. As the umbrella organization over most of the state's licensing authorities, the

Department of Consumer Affairs is a logical choice to develop best practices for licensing former offenders. The Department of Consumer Affairs also should share its best practices with licensing authorities not under its purview, and periodically coordinate roundtables with these other authorities to promote the exchange of ideas and assess whether California is helping its eight million residents with criminal records find employment.

## Those Who Serve

Separating service members and military spouses also are hard hit by occupational licensing regulations. Every few years there is a burst of legislation designed to ease the barriers they face, yet on-the-ground reports say that little changes. The men and women who serve our country, as well as their families, deserve better than to be kept out of occupations for which they qualify. California must focus less on new legislation and more on implementing past legislation.

### Military Spouses

Military spouses are particularly vulnerable to state licensing laws. In the civilian population, approximately 1.1 percent of spouses move across state lines each year due to their spouse's job. In the military population, 14.5 percent of spouses move across state lines annually. Thirty-four percent of military spouses hold occupational licenses, and 19 percent of military spouses report challenges in maintaining their licenses through moves.<sup>86</sup>

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***"We know that most decisions to stay in the military are made around the kitchen table and not in the personnel office. To retain our trained and experienced military, we must retain the family. ... Sixty-eight percent of married service members reported their spouse's ability to maintain a career impacts their decision to remain in the military by a large or moderate extent, thus making the ability of the spouse to obtain a professional license in each state of assignment an influence on national security."***

Laurie Crehan, Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy

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This affects more than the military spouse, however. Sixty-eight percent of married service members report their spouse's ability to maintain a career affects their decision to remain in the military.<sup>87</sup> "We lose good service members and we see this as a national security issue," a Department of Defense witness told the Commission.<sup>88</sup> Military spouses report that employment is critical for two reasons. One, it is difficult to support a family on the service member's salary alone, particularly

for lower-ranking service members. Secondly, being employed, many military spouses report, provides a distraction and boosts their morale while the service member is deployed.<sup>89</sup>

## Veterans

More than one million service members are expected to leave military service and enter the civilian workforce between 2014 and 2020,<sup>90</sup> joining the approximately 11 million veterans of working age.<sup>91</sup> California, home to approximately 1.9 million veterans, has more veterans than any other state.<sup>92</sup> Though the unemployment rate for veterans in general is not significantly different from that of the civilian population, there is an important exception: Male veterans between the ages of 25 and 35 post-September 2001 (what the U.S. Bureau of Labor Statistics defines as the Gulf War II era) have a significantly higher unemployment rate than their civilian counterparts, at 6.8 percent versus 5.4 percent.<sup>93</sup> As nearly half of the veterans in the Gulf War II era are 25-35 years old,<sup>94</sup> their higher rate of unemployment is a challenge states must address.

The primary occupational licensing problem for separating service members is licensing boards' not accepting their military-acquired knowledge, skills and abilities toward credentialing requirements. This common roadblock impacts taxpayers as well as service members, noted Commission witness Laurie Crehan, of the Department of the Defense. Taxpayers foot the bill twice to train service members for the same job: the first time while they're in the military, then again following discharge to meet licensing requirements.<sup>95</sup>

The Department of Defense is taking steps to make it easier for state licensing boards to credit military experience and education to licensing requirements. In the past, each branch of the military had its own transcript for the education its service members received. The department now has a standardized transcript so that employers can more easily understand the document. The department has hired consultants to cross reference the knowledge, skills and abilities acquired in each military job to their civilian equivalent. Finally, the military is working with the American Council of Education to analyze military training to see if it meets the rigor, content and criteria for college credit. The goal is to prevent separating service members from having to

## HELPING MILITARY SPOUSES BECOME LICENSED

The Department of Defense asks state licensing boards to do three things to help military spouses gain licensure in a new state:

1. Endorse the license if a military spouse or separating service member holds a license significantly similar to the state's license. If military spouses must spend a year or two becoming re-credentialed, they become virtually unemployable – as employers know their service member spouse will soon be transferred again.
2. Issue temporary licenses. Allow military spouses to work under the direction of others who are fully licensed while they complete the state licensing process.
3. Expedite the licensing process. It takes too long to collect and validate paperwork, a problem compounded by licensing tests that are offered infrequently. The Department of Defense asks states to simply take the supporting documents applicants supply and allow them to practice instead of waiting while the documents are being verified. If there is a problem with the documents, the licensee's ability to practice can be revoked.

The Department of Defense stresses that it is not asking states to remove or dumb down standards, only to make the licensing process more flexible to support service members and their spouses.

Source: Laurie Crehan, Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy. February 12, 2016. Phone call with Commission staff.

start from scratch. Many need only “bridge education” (also called gap education) to fill in the gap between what they learned in the military and what they need to learn for their license.<sup>96</sup> However, even after all this work, the Department of Defense cannot force licensing boards to use these translations to credit veterans for their past experience or to provide bridge education programs.

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***“Taxpayers pay for the service member to be trained twice. Once while in the military, then again when the service member returns, through the GI Bill.”***

Laurie Crehan, Regional State Liaison, Southwest,  
Office of the Deputy Assistant Secretary of Defense,  
Military Community and Family Policy

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### Legislative Fixes, but What Progress?

Enacting legislation to make employing veterans and military spouses easier is popular. Since 2010, California has enacted numerous laws to ease licensing barriers for veterans and military spouses. Some are limited to specific occupations, while others are far-reaching, including:

- **SB 1226** (2014, Correa): Requires Department of Consumer Affairs (DCA) boards to expedite licensure of honorably-discharged veterans. Took effect July 1, 2016.
- **AB 186** (2014, Maienschein): Requires DCA boards to issue 12-month temporary licenses to military spouses with out-of-state licenses for the following occupations: registered nurse, vocational nurse, psychiatric technician, speech-language pathologist, audiologist, veterinarian, all licenses issued by the Board for Professional Engineers, Land Surveyors and Geologists and all licenses issued by the Medical Board.
- **AB 1057** (2013, Medina): Requires DCA boards to renew licenses that expire while an individual is on active duty without penalties or examination.
- **AB 1588** (2012, Atkins): Requires DCA boards to waive renewal fees for licenses that expire while the practitioner is on active duty.

- **AB 1904** (2012, Block): Requires DCA boards to expedite licensure for military spouses.
- **AB 2462** (2012, Block et al.): Requires the Chancellor of the California Community College to determine which courses should receive credit for prior military experience, using the descriptors and recommendations provided by the American Council on Education.
- **AB 2783** (2010, Salas et al.): Requires DCA boards to promulgate regulations to evaluate and credit military education, training, and experience if applicable to the profession.

Despite the state’s having enacted appropriate legislation, the Commission heard anecdotally that veterans and military spouses still face difficulties in becoming licensed. No studies or implementation tracking have been done to assess how effectively the legislation has been implemented. One glaring omission in the above legislation is state licensing authorities outside of the Department of Consumer Affairs.

Experts identify common problems in state laws nationwide intended to ease licensing barriers for veterans and military spouses:

- Broadly written laws provide too little guidance.
- Veterans may be unaware of their licensing eligibility.
- Legitimate skills gaps may go unaddressed.
- Insufficient partnerships between state, schools and the military.
- Lack of consistent metrics to measure licensure challenges.<sup>97</sup>

Many laws are in place in California. But we do not know if they are having the desired effect. Because the retention of experienced military personnel depends on spouses’ ability to hold a job – making military spouse licensure a national security concern – and because helping veterans secure gainful employment after their service is often stated as a policymaker priority, the Commission recommends that the Legislature authorize a research institute to work in collaboration with the Department of Defense to conduct a study on the implementation of the legislation listed on this page. The

review should identify gaps between the intent of the laws and practice outcomes, and issue recommendations for executive or legislative action on how to bridge those gaps. The review should examine and include recommendations on whether the legislative focus on the Department of Consumer is sufficient or whether policymakers should encourage other departments to prioritize veterans and military spouses. The review also should assess licensing authorities' outreach efforts to inform veterans that they are eligible for expedited licensing, and provide recommendations on how the state can better educate veterans about these benefits.

The beneficial effects of finding work are personal. A representative from Swords to Plowshares, a San Francisco-based nonprofit that provides wraparound services for veterans including employment assistance, told Commission staff that the impact of not being able to secure a job in the field that the veteran has been working in for perhaps the last eight or 10 years is significant. Being experienced in a field and leaving the military only to discover that they are considered unqualified to work in that field is a rude awakening, she said.<sup>98</sup>

## Foreign-Trained Workers

The impacts of occupational licensing regulations on out-of-state workers were discussed in the first chapter. This problem is magnified when it comes to foreign-trained workers. Foreign-trained workers can be a sensitive subject. To some it conjures images of undocumented immigrants. To others the topic brings to mind the questionable use of H-1B temporary work permits to hire foreign professionals, often in the information technology industry, at lower wages than Americans.<sup>99</sup> While these issues deserve thoughtful attention by policymakers, they should not obscure the fact that foreign-trained workers are a legal and dynamic part of California's workforce, and in many cases, are native or naturalized Californians who were educated or trained abroad.

High-skilled workers who are trained abroad typically have a post-secondary degree, are more likely than others to speak English or take classes to build English proficiency, and often work in a high-demand field. Currently that field is STEM, or Science, Technology, Engineering and Math.<sup>100</sup> The licensing difficulties they face are similar to those of veterans: An applicant may have the appropriate skill set for the occupation, but

the licensing board may not be able to translate the applicant's foreign education and experience to the board's requirements. Often, there will be differences between the education and experience an individual needs to successfully practice in an individual's country of origin and what the individual needs to practice successfully in California. A researcher from the Migration Policy Institute writes:

*"Perhaps the central problem that makes credential recognition difficult is that foreign professionals, especially the newly arrived, are not interchangeable with their locally trained counterparts. ... Professionals with the same job title do not always perform exactly the same set of tasks in different countries, creating real differences in knowledge and skills gained on the job. In the medical field, for example, different medical procedures and responsibilities may be delegated to nurses as compared to doctors, and to generalists as compared to specialists; certain medical devices are not as widely available in all countries, giving practitioners less experience in their use; institution or administrative functions such as medical referral processes can differ widely; and some health-care practitioners require relatively high levels of language proficiency to communicate with patients and colleges."*<sup>101</sup>

José Ramón Fernández-Peña, associate professor at San Francisco State University and policy chair of IMPRINT, an immigrant advocacy organization, testified that there are few options for bridge education for foreign-trained workers in California who meet all but a few licensing requirements.<sup>102</sup> Many find themselves having to start over. In some cases this borders on the absurd. Foreign-trained doctors with many years of experience, for example, must complete an entire residency program to be licensed in the United States, often enduring the same residency matching process and low pay as students freshly graduated from medical school.<sup>103</sup> A foreign-trained doctor cannot even work as a physician assistant in California without completing an approved physician assistant training program.<sup>104</sup> Dental hygienists can have equivalent experience in their home country and earn a perfect score on the exam, but cannot be licensed because they did not graduate from an accredited dental hygiene program.<sup>105</sup>

Foreign-trained dentists used to be able to become licensed in California after successfully passing dental exams, Mr. Fernández-Peña testified. But professional associations lobbied to have that right removed. Now there are two ways foreign-trained dentists can become licensed in California. They can attend a foreign dental program that has been approved by the Dental Board of California. As the program must teach California Occupational Safety and Health Standards, few foreign schools qualify. Currently, only the University de La Salle in Leon, Guanajuato, Mexico is approved.<sup>106</sup> The second way to qualify is to take a two-year Advanced Standing Program and earn a Doctor of Dental Surgery degree. There are four schools in California that offer this two-year program, with an average total cost of \$150,000, Mr. Fernández-Peña told the Commission.<sup>107</sup>

### **Why it Matters that Foreign-Trained Workers Face Barriers to Licensure**

By 2025, California will have a shortfall of one million workers with four-year degrees and 2.5 million workers with other levels of degrees, certificates and diplomas.<sup>108</sup> When qualified foreign-trained workers are stuck working lower-level jobs because they did not graduate from an accredited school or are missing a couple of classes, it hurts all Californians. Consumers have a harder time finding service providers and may have to pay more. Lesser-qualified Californians are pushed out of lower-skilled jobs and face unemployment or menial tasks. Then there are the impacts of a lower income on workers and their families. This is an inefficient use of resources and it exacerbates growing economic inequality.

### **Professional Shortages are Looming**

As described above, in fewer than 10 years, California will face a workforce shortfall of approximately 3.5 million workers with varying levels of education and expertise. Looking at shortfalls in specific industries gives a clearer picture of how this affects Californians. By 2030, California will have only two-thirds of the primary care physicians it needs to maintain its current physician-to-population ratio – which already is worse than the national average.<sup>109</sup> By 2030, according to projections, California will have 193,000 fewer registered nurses than it needs.<sup>110</sup> California already is 60,000 teachers short to maintain pre-recession student-teacher

ratios and 135,000 teachers short of national average student-teacher ratios.<sup>111</sup> The greatest deficiency is in mathematics, science and special education.<sup>112</sup> Mathematics and science are the fields in which current waves of high-skilled immigrants are trained.<sup>113</sup> Foreign-trained workers often possess many, if not all, the qualifications to fill these gaps, if the state eases barriers that keep them from practicing.

### **California Needs Professionals Fluent in Other Languages and Cultures**

California has a diverse population and needs professionals and workers who can fluently serve its diversity. Lack of diversity in the health workforce, for instance, is a contributing factor to racial and ethnic health disparities, witnesses testified.<sup>114</sup> In California, 37 percent of the population is Latino, yet only 5 percent of doctors, 8 percent of registered nurses and 7 percent of dentists are Latino.<sup>115</sup> By 2025, 48 percent of the senior population in California will be non-white.<sup>116</sup> Positive health outcomes will depend on access to geriatric care providers who can communicate with and understand them.

### **Inefficient Labor Market Outcomes Result in Lower Paychecks**

Many high-skilled immigrants take lower-skilled jobs for which they immediately qualify, or which require only minimal training, instead of the occupations they practiced in their countries of training. The Migration Policy Institute found that many people accept a lower-skilled position as a more attractive option than starting from the beginning again in their own profession.<sup>117</sup> California is home to approximately 1.7 million foreign-born, college-educated immigrants. (This figure includes foreign-born immigrants who were educated in California and excludes California-born residents who were educated abroad.) Of these, 400,000 are unemployed or working in low-skilled jobs.<sup>118</sup> Sometimes this may be a lower-skilled job within the individual's industry, such as a physician becoming a laboratory technician. Sometimes this means taking a low-paying job outside of the industry. IMPRINT offered the Commission numerous examples, such as foreign psychologists becoming housekeepers and doctors becoming car wash attendants in the U.S.<sup>119</sup> The problem is that these individuals and their families will live on less money than the market rate



for their skill sets, and they take lower-skilled jobs from those who legitimately have fewer qualifications. These situations aggravate California's upcoming shortages of trained professionals.

## Models to Get People Working

The state need not wait for a complete overhaul of occupational licensing regulation to reduce the barriers keeping people out of jobs. Several models exist that could be applied to other licensed occupations. Not all of these models are appropriate for all occupations. But collectively they present a variety of options for workers already qualified and licensed, and individuals who want to develop qualifications for upward mobility. The state could implement these programs now to help move people into good jobs. Moreover, none of these models require lessening requirements or abolishing licensing: They only require policy or statute changes to let people into the occupations.

### California Commission on Teacher Credentialing Model

The California Commission on Teacher Credentialing has a straightforward model for teachers who possess out-of-state licenses. It issues licenses to teachers with a provision that they meet all of California's education and training requirements during the five years before they are required to renew their licenses.<sup>120</sup> The state could use this model to allow people in other licensed occupations to work while meeting requirements.

### Medical Service Technician-to-Registered Nurse Model

In 2015, the Legislature enacted a bill, SB 466, requiring nursing programs to grant credit for military education and training to fast track veterans who were medical service technicians in the military to become registered nurses.<sup>121</sup> In this model, the Legislature took several steps to better position the initiative for success:

- It gave a deadline, January 1, 2017, for nursing programs to have their processes in place to begin fast tracking veterans.
- It gave the Board of Registered Nursing the authority to apply swift and severe sanctions to

nursing programs that fail to comply: Schools that are not in compliance by the deadline will be stripped of their approval to teach nursing.

- It required continuous monitoring of nursing programs' performance in fast tracking veterans. The Board of Registered Nursing must review schools' policies and procedures for granting credit to veterans for their military education and training at least once every five years.<sup>122</sup>

### THE STATE WORKFORCE PLAN: MID-SKILLED JOBS AS A PATH TO UPWARD MOBILITY

The Commission recommends piloting bridge education and apprenticeship programs in the state's own facilities. The state also should look to its own State Workforce Plan and concentrate resources on developing pathways for upward mobility within the areas of expected job needs. Below are the top 12 mid-skilled – defined as needing more than a high school education but less than a four-year degree – occupations with anticipated worker needs:

Occupation	Annual New Workers Needed, 2012-22
Registered Nurses	9,230
Teacher Assistants	4,470
Truck Drivers	4,410
Nursing Assistants	4,180
Medical Assistants	3,450
Licensed Vocational Nurses	3,040
Computer User	
Support Specialists	2,490
Preschool Teachers	1,820
Hairstylists / Cosmetologists	1,750
Dental Assistants	1,640
Actors	1,500
Dental Hygienists	1,060

Source: California Workforce Development Board. State Workforce Plan.



This bridge education model could be applied for other veteran employment categories, as well as for workers from outside California to rapidly complete missing requirements and begin working.

## The Apprenticeship Model

Though hundreds of years ago apprenticeships were gateways into the original guilds, which limited who could practice an occupation, today they represent an opportunity for inclusion into, instead of exclusion from, occupations. Instead of placing the burden of educational costs and training onto the job seeker, California's apprenticeship model pays job seekers while they complete their education and training and gain the experience and skills necessary to thrive in their jobs.

California has the largest apprenticeship program in the United States.<sup>123</sup> Its programs, overseen by the Division of Apprenticeship Standards (DAS) within the Department of Industrial Relations, are created through partnerships between post-secondary educational institutions and employers. There is a minimum requirement of 144 hours of training in the classroom with one year of on-the-job training. Most programs last 3.5 years.<sup>124</sup> Employers can, on an individual basis, give credit for past experience, making apprenticeships a potential

option to efficiently integrate veterans and others trained outside of California into the workforce. Additionally, there are apprenticeships designed to integrate former offenders into the workforce – sometimes starting while the offender is still in prison, through the Prison Industry Authority. These often operate as pre-apprenticeship programs focusing on training, with the offender eligible to join an apprenticeship program upon release.<sup>125</sup>

Approximately 70 percent of California's apprenticeships are in the construction industry.<sup>126</sup> The prevalence of construction apprenticeships likely can be attributed in part to California's requirements that public works projects include apprenticeship programs.<sup>127</sup> Outside of construction there are not many apprenticeships in licensed industries, Department of Apprenticeship Standards officials reported. In some practice areas, particularly healthcare occupations, scope-of-practice restrictions prevent it, they said.<sup>128</sup> Learners still gain hands-on experience. For example, nursing students are required to have clinical experience, but in the current nursing school model, they pay for the practical learning experience. Whereas in an apprenticeship, learners would be paid for their time and work.

There is, however, a new pilot program in the California Health Care Facility in Stockton to create a pathway for 50 licensed vocational nurses (LVNs) to become registered

## WHATS IN A NAME? MAKING APPRENTICESHIP PROGRAMS ACCESSIBLE

The Little Hoover Commission has long advocated clarity and plain language in state job titles and program descriptions. Most recently, in its 2015 report on customer interactions with government, the Commission wrote, "Government can perhaps most easily improve the customer experience by changing the way it communicates with the public: being succinct, clear, accurate, precise, as well as approachable, and easy to find and understand." In its 2014 report on civil service, the Commission detailed how job-seekers could not find state jobs by searching for commonly-used job titles, such as policy analyst. If they did not know the complicated language the state used for job titles, their state job search yielded zero results.

The Commission's call for clear, easily-understandable communication applies to the state's apprenticeship programs as well. The title of the state's new "Earn and Learn" program is catchy, but it does not immediately convey that it is an apprenticeship program. The term often is used to describe youth job programs. Job-seekers would not be blamed for thinking that it might refer to a college grant or tuition reimbursement program, or a typical work-study program not designed to build skills for an upwardly mobile career path. "Earn and Learn" is an apprenticeship program: The first step in recruiting people to it is to call it what it is.

Sources: Little Hoover Commission. October 2015. A Customer-Centric Upgrade for California Government. Page 43. Also, Little Hoover Commission. February 2014. From Hiring to Retiring: Strategies for Modernizing State Human Resources. Page 14.

## NONPARTISAN AND BIPARTISAN SUPPORT FOR OCCUPATIONAL LICENSING REFORM

Support for occupational licensing reform can be found in nonpartisan think tanks as well as institutions that span the political spectrum. Below is a list of recent studies calling for states to reevaluate their occupational licensing policies:

Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson. May 2012. [License to Work: A National Study on the Burdens of Occupational Licensing](#). Institute for Justice.

Kauffman Foundation. January 2012. [A License to Grow: Ending State, Local, and Some Federal Barriers to Innovation and Growth in Key Sectors of the U.S. Economy](#).

Morris M. Kleiner. January 2005. [Reforming Occupational Licensing Policies](#). The Brookings Institution Hamilton Project.

Michelle Natividad Rodriguez and Beth Avery. April 2016. [Unlicensed and Untapped: Removing Occupational Barriers to State Occupational Licenses for People with Records](#). National Employment Law Project.

Stephen Slivinski. February 2015. [Bootstraps Tangled in Red Tape](#). Goldwater Institute.

The White House. July 2015. [Occupational Licensing: A Framework for Policymakers](#).

nurses. In this apprenticeship program, called “Earn and Learn,” LVNs spend 20 hours a week in the classroom and 20 hours a week in hands-on training, and are paid for both the classroom and the practical portions. The demand to participate in this pilot program was overwhelming: Ninety-seven LVNs expressed interest in being chosen for one of the 50 spots.<sup>129</sup> This pilot program opens a path for upward mobility from a lower-paying occupation into a higher-paying profession, while also addressing some racial disparities. Statewide, 80 percent of LVNs are minorities, while only 33 percent of registered nurses are minorities.<sup>130</sup>

California’s apprenticeship programs are proving effective at reaching minorities. In 2014, 59 percent of the 53,000 Californians participating in apprenticeship programs were minorities.<sup>131</sup> The gender divide is bleaker: Women represented 5.3 percent of apprenticeship participants in 2014.<sup>132</sup> The concentration of apprenticeships within the construction sector explains a lot of the gender differentials, Department of Apprenticeship Standards officials said. They are working to counteract the inequity by promoting apprenticeships in other industries – and encouraging women to participate in construction apprenticeships.<sup>133</sup>

In April 2016, the Commission released a report on excess overtime for state healthcare personnel in state hospitals, correctional facilities, veterans’ homes and

developmental centers. It found that in 2014-15, state health professionals logged 3.75 million hours of overtime – at a cost to taxpayers of nearly \$179 million – often due to staffing shortages.<sup>134</sup> Instead of spending excessively on overtime, the state could better use the money to create apprenticeship programs within its own institutions. This would train a new generation of healthcare professionals to meet its staffing needs while helping more Californians move into better-paying jobs.

## Summary

Certain populations are more vulnerable to occupational licensing regulations than others. People with convictions on their records can face uncertainty in knowing whether they are eligible for the job in the first place, an application process that can seem arbitrary and confusing, and an intimidating appeals process. People who move across state lines face problems of licensing portability and may have to re-complete education or training. This is particularly challenging for military spouses who move more than most and may only have a limited amount of time at a new location. Veterans and foreign-trained workers face similar challenges in that their existing credentials may not be recognized by licensing authorities, or they may have completed most, but not all, of a state’s licensing requirements and there are no programs to help them quickly complete missing requirements and start working. Many laws have been passed to expedite

licensing for veterans and military spouses, but those laws primarily focus on occupations under the Department of Consumer Affairs and no one is tracking outcomes.

Though there should be a comprehensive review of California's licensing statutes and regulations, there are many ways to help Californians start working quickly and more easily without overhauling California's licensing system. Make the application process more transparent and straightforward. When conviction histories are needed, rely on background checks instead of applicants' memories, and make the fee-waiver process more customer-friendly. Give applicants a chance to explain red flags on their application before proceeding with an administrative law hearing. Create bridge education programs to help those who are mostly qualified swiftly complete the gaps in their education. Allow interim licensing so those who come to California with other states' qualifications can work under supervision while finishing California-specific requirements. Create apprenticeship programs to allow people to develop their skills through hands-on experience. California does not have to sacrifice consumer protection to make it easier for its residents to hold good jobs.

## Recommendations

***Recommendation 5: With the Department of Consumer Affairs serving as a clearinghouse of best practices and providing guidance to other departments as needed, all licensing authorities should take the following steps to make it easier for former offenders to gain employment:***

- Post on their website the list of criteria used to evaluate applicants with criminal convictions so that potential applicants can be better informed about their possibilities of gaining licensure before investing time and resources into education, training and application fees.
- When background checks are necessary, follow the Department of Insurance model and require applicants with convictions to provide certified court documents instead of manually listing convictions. This will prevent license denials due to unintentional reporting errors. The State of California also should expedite the fee-waiver process for all low-income applicants requesting background checks.

- Follow the Bureau of Security and Investigative Services model and create an informal appeals process between an initial license denial and an administrative law hearing.

***Recommendation 6: The Legislature should authorize a research institute, in conjunction with federal partners as needed, to study the implementation of recent legislation that requires the Department of Consumer Affairs to ease or waive licensing requirements for veterans and military spouses. The review should identify gaps between the intent of the laws and outcomes, and issue recommendations for executive or legislative action to bridge those gaps. The review also should assess the effectiveness of licensing authorities' outreach campaigns to inform veterans of their eligibility for expedited licensing.***

***Recommendation 7: The Legislature should require California colleges and training academies to create bridge education programs for veterans and workers trained outside of California to help them quickly meet missing educational requirements. Specifically:***

- California licensing boards and other departments providing licenses and credentials should identify common educational gaps between the qualifications of returning service members and state licensing requirements.
- California colleges should create and offer programs to fill these gaps and expedite enrollment – or risk losing authorization for these programs.

***Recommendation 8: The State of California should develop interim work and apprenticeship models to provide opportunities for people missing certain qualifications to work while meeting their requirements, and to promote upward mobility within career paths.***

## APPENDICES

### APPENDIX A

#### Public Hearing Witnesses

The lists below reflect the titles and positions of witnesses at the time of the hearings in 2016.

**February 4, 2016**

***Sacramento, California***

Dick Carpenter II, Ph.D., Director of Strategic Research,  
Institute for Justice

Morris Kleiner, Ph.D., Professor, Humphrey School of  
Public Affairs, University of Minnesota

Le Ondra Clark Harvey, Ph.D., Chief Consultant,  
Assembly Committee on Business and Professions

Sarah Mason, Consultant, Senate Committee on  
Business, Professions and Economic Development

Robert Fellmeth, Executive Director, Center for Public  
Interest Law, University of San Diego

Jason Wiens,\* Policy Director in Research and Policy,  
Ewing Marion Kauffman Foundation

**March 30, 2016**

***Culver City, California***

Laurie Crehan, Ed.D., Regional State Liaison,  
Southwest, Office of the Deputy Assistant Secretary of  
Defense, Military Community and Family Policy

Michelle Natividad Rodriguez, Senior Staff Attorney,  
National Employment Law Project

Deborah Davis, President & CEO, Deborah Davis  
Design

Tracy Rhine, Chief Deputy Director, Department  
of Consumer Affairs for Awet Kidane,\* Director,  
Department of Consumer Affairs

José Ramón Fernández-Peña, MD, MPA, Associate  
Professor, Health Education, San Francisco State  
University; Policy Chair, IMPRINT; Director, Welcome  
Back Initiative

Jane Schroeder, Regulatory Policy Specialist, California  
Nurses Association

Myra Irizarry Reddy, Government Affairs Director,  
Professional Beauty Association

CT Turney, Senior Staff Attorney, A New Way of Life  
Reentry Project

*\*Submitted written testimony but was unable to attend in person*

**APPENDIX B**

**Public Meeting Witnesses**

**The lists below reflect the titles and positions of witnesses at the time of the hearings in 2016.**

**Roundtable on Occupational Licensing  
June 30, 2016  
*Sacramento, California***

Shannon Carrion, Manager, Curriculum and Office Review Bureau, Department of Insurance

Adam Quiñonez, Assistant Deputy Director of Legislative and Regulatory Review, Department of Consumer Affairs

Vincent Chee, Consultant, Assembly Committee on Business and Professions

Assemblymember Rudy Salas, Chair, Assembly Committee on Business and Professions

Awet Kidane, Director, Department of Consumer Affairs

Joshua Speaks, Legislative Representative, California Commission on Teacher Credentialing

Keith Kuzmich, Chief, Licensing Services, Department of Insurance

Peter Williams, Deputy Secretary and General Counsel, California Business, Consumer Services and Housing Agency

Sarah Mason, Consultant, Senate Committee on Business, Professions and Economic Development



## NOTES

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- 7 Linda A. McCready and Billie Harris. 1995. "From Quackery to Quality Assurance: The First Twelve Decades of the Medical Board of California." *Medical Board of California*. Pages 3-5. <http://www.mbc.ca.gov/publications/quackery.pdf>. Accessed July 1, 2016.
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- 21 Deborah Davis, President & CEO, Deborah Davis Design. February 25, 2016. Phone call with Commission staff.
- 22 Lee McGrath, Managing Attorney, Institute for Justice. October 1, 2015. Phone call with Commission staff.
- 23 Morris Kleiner, Professor, Humphrey School of Public Affairs, University of Minnesota. February 4, 2016. Written testimony to the Commission.
- 24 Jane Schroeder, Regulatory Policy Specialist, California Nurses Association. February 16, 2016. Sacramento, CA. Meeting with Commission staff.
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- 27 Susan Stuart, Partner and Erin Evans-Fudem, Legislative Counsel, Capitol Advisors. February 22, 2016. Sacramento, CA. Meeting with Commission staff.
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# Little Hoover Commission Members

**CHAIRMAN PEDRO NAVA** (*D-Santa Barbara*) Appointed to the Commission by former Speaker of the Assembly John Pérez in April 2013. Government relations consultant. Former state Assembly member from 2004 to 2010. Former civil litigator, deputy district attorney and member of the state Coastal Commission. Elected chair of the Commission in March 2014.

**VICE CHAIRMAN JACK FLANIGAN** (*R-Granite Bay*) Appointed to the Commission by Governor Edmund G. Brown Jr. in April 2012. A member of the Flanigan Law Firm. Co-founded California Strategies, a public affairs consulting firm, in 1997.

**SCOTT BARNETT** (*R-San Diego*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in February 2016. Founder of Scott Barnett LLC, a public advocacy company, whose clients include local non-profits, public charter schools, organized labor and local businesses. Former member of Del Mar City Council and San Diego Unified School District Board of Trustees.

**DAVID BEIER** (*D-San Francisco*) Appointed to the Commission by Governor Edmund G. Brown Jr. in June 2014. Managing director of Bay City Capital. Former senior officer of Genentech and Amgen. Former counsel to the U.S. House of Representatives Committee on the Judiciary. Serves on the board of directors for the Constitution Project.

**SENATOR ANTHONY CANNELLA** (*R-Ceres*) Appointed to the Commission by the Senate Rules Committee in January 2014. Elected in November 2010 and re-elected in 2014 to represent the 12th Senate District. Represents Merced and San Benito counties and a portion of Fresno, Madera, Monterey and Stanislaus counties.

**ASSEMBLY MEMBER CHAD MAYES** (*R-Yucca Valley*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in September 2015. Elected in November 2014 to represent the 42nd Assembly District. Represents Beaumont, Hemet, La Quinta, Palm Desert, Palm Springs, San Jacinto, Twentynine Palms, Yucaipa, Yucca Valley and surrounding areas.

**DON PERATA** (*D-Orinda*) Appointed to the Commission in February 2014 and reappointed in January 2015 by the Senate Rules Committee. Political consultant. Former president pro tempore of the state Senate, from 2004 to 2008. Former Assembly member, Alameda County supervisor and high school teacher.

**ASSEMBLY MEMBER SEBASTIAN RIDLEY-THOMAS** (*D-Los Angeles*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in January 2015. Elected in December 2013 and re-elected in 2014 to represent the 54th Assembly District. Represents Century City, Culver City, Westwood, Mar Vista, Palms, Baldwin Hills, Windsor Hills, Ladera Heights, View Park, Crenshaw, Leimert Park, Mid City, and West Los Angeles.

**SENATOR RICHARD ROTH** (*D-Riverside*) Appointed to the Commission by the Senate Rules Committee in February 2013. Elected in November 2012 to represent the 31st Senate District. Represents Corona, Coronita, Eastvale, El Cerrito, Highgrove, Home Gardens, Jurupa Valley, March Air Reserve Base, Mead Valley, Moreno Valley, Norco, Perris and Riverside.

**JONATHAN SHAPIRO** (*D-Beverly Hills*) Appointed to the Commission in April 2010 and reappointed in January 2014 by the Senate Rules Committee. Writer and producer for FX, HBO and Warner Brothers. Of counsel to Kirkland & Ellis. Former chief of staff to Lt. Governor Cruz Bustamante, counsel for the law firm of O'Melveny & Myers, federal prosecutor for the U.S. Department of Justice Criminal Division in Washington, D.C., and the Central District of California.

**JANNA SIDLEY** (*D-Los Angeles*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. General counsel at the Port of Los Angeles since 2013. Former deputy city attorney at the Los Angeles City Attorney's Office from 2003 to 2013.

**HELEN TORRES** (*NPP-San Bernardino*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. Executive director of Hispanas Organized for Political Equality (HOPE), a women's leadership and advocacy organization.

**SEAN VARNER** (*R-Riverside*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. Managing partner at Varner & Brandt LLP where he practices as a transactional attorney focusing on mergers and acquisitions, finance, real estate and general counsel work.

**“Democracy itself is a process of change, and satisfaction and complacency are enemies of good government.”**

*Governor Edmund G. “Pat” Brown,  
addressing the inaugural meeting of the Little Hoover Commission,  
April 24, 1962, Sacramento, California*





## MEMORANDUM

DATE	July 16, 2017
TO	Members, Enforcement and Inspections Committee
FROM	Kristy Underwood, Executive Officer
SUBJECT	<b>Disciplinary Review Committee Membership</b>

Board staff is proposing to revise the membership requirements for the Disciplinary Review Committee (DRC) to allow non-Board members to serve and extend the authority to appoint DRC members and multiple DRCs to the full Board. Board staff is suggesting the following changes be made to the language of 974.1, California Code of Regulations:

### § 974.1 Disciplinary Review Committee

(a) ~~The A~~ disciplinary review committee of the Board shall be composed of three (3) members appointed for a term of two years by ef the board. ~~(b) The board president, in his or her discretion, may appoint multiple disciplinary review committees.~~

(b) Each committee shall include at least one member of the barbering and cosmetology industry and one member who is not associated professionally or financially with that industry.

(c) Each member of a disciplinary review committee may be removed before the end of his or her term by a majority vote of the Board.

~~The board president shall annually appoint members of the disciplinary review committee; the appointment will be made concurrently with the annual election of the Board President.~~

(d) Each committee shall meet as deemed necessary by the Board. Each committee member shall be paid a per diem pursuant to Section 103 of the Business and Professions Code and shall be reimbursed for any travel expenses according to the policies of the Department of Consumer Affairs and the laws of the State.

~~The board president shall select the dates and locations of the informal citation review hearings held before the disciplinary review committee.~~

NOTE: Authority cited: Sections 7312 and 7410, Business and Professions Code.  
Reference: Section 7410, Business and Professions Code.





## MEMORANDUM

DATE	July 16, 2017
TO	Members, Legislative and Budget Committee
FROM	Kristy Underwood, Executive Officer
SUBJECT	Form Updates

Board staff is seeking to amend Sections 910, 919, 931 and 937 of the California Code of Regulations because the form revision dates referenced in those sections have long been obsolete. Staff suggests making the following changes (staff will add the latest revision dates just before filing with the Office of Administrative Law):

### **§ 910. Out-of-State or Armed Services Applicants.**

(a) An applicant who desires to establish eligibility for examination for a license in this state upon the basis of practice, study or training outside this state, or supplementary training in a licensed school in this state, or any combination thereof, shall furnish proof of his or her qualifications to the board as follows:

(1) An applicant who desires credit for practices in another state or country shall file with the board, on the form prescribed by it provided by the board (Form #03E-145, Affidavit of Experience-Form C, Revised: 1/91 ~~XX/XX~~), an affidavit from a disinterested person verifying such practice, together with an authenticated statement from the licensing agency in the state or country where such practice took place showing that the applicant was licensed to engage in such practice, if a license was required therefor.

(2) An applicant who has completed any number of hours of study and training in a school in another state or country, and who desires credit for such hours toward study and training in this state, shall file with the board, on the form prescribed by it provided by the board (Form #03B-144, Out-of-State Beauty School Training Record-Form B, Revised: 8/94 ~~XX/XX~~), an authenticated statement from the school or the training took place showing the number of hours of study and training completed in each subject and when such study and training occurred.

(3) An applicant who desires credit for supplementary training completed in a licensed school in this State shall file with the board an authenticated statement from such school showing the number of hours of such training successfully completed in each subject.

(b) An applicant for examination who is employed on a military reservation to practice any profession licensed under Chapter 10 of Division 3 of the Business and Professions Code must present an authenticated statement from the military reservation verifying the employment and may use the practice obtained to qualify for examination.

(c) An applicant for examination who has applicable education, training, or experience obtained in the United States armed services may submit his or her Verification of Military Experience and Training (V-Met) records to the Board for evaluation, and the Board may use those records to qualify the applicant for examination.

*Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 35, 7321, 7321.5, 7324, 7326, 7330, 7331 and 7337, Business and Professions Code.*

#### **§ 919. Board Approved Trainers and Establishments.**

(a) A licensee who wishes to train an apprentice shall obtain board approval before employing or training an apprentice. An establishment wishing to train an apprentice in multiple location establishments which are under common ownership may request to participate in multiple location training. Common ownership includes corporate chains, individually owned multiple establishments, and franchise groups or partnerships. Application for approval of trainers and establishments shall be made on a form provided by the board (Form #35A-03, Application for Licensure as a Licensed Apprentice and for Approval of Trainers and Establishments, Revised: 5/94 XX/XX).

(1) Establishments participating in training an apprentice in multiple locations under common ownership shall provide as part of the application process, a list of the establishment names, locations, board issued license numbers, names of officers and or owners.

(b) Qualifications for apprentice trainer approval:

(1) Licensee shall possess a current, valid license issued by the board.

(2) Licensee shall have no disciplinary actions pending against him/her nor be on probation resulting from a board disciplinary action nor have completed probation resulting from past disciplinary action within the two year period immediately preceding his or her application to serve as an apprentice trainer.

(3) Licensee is not subject to denial pursuant to Section 480.

(4) The licensee has no unpaid fine issued pursuant to Article 12 of Chapter 10 of Division 3 of the Business and Professions Code.

(c) No apprentice shall work or train in an establishment until it has been approved by the board. Application for establishment approval shall be made on the same form specified in subdivision (a).

(d) Qualifications for establishment approval are:

(1) Establishment shall possess a current, valid license issued by the board.

(2) Establishment shall have no disciplinary actions pending against it nor be on probation resulting from a board disciplinary action nor have completed probation resulting from past disciplinary action within the two year period immediately preceding its application for establishment approval.

(3) Is not subject to denial pursuant to Section 480.

(4) The licensee has no unpaid fine issued pursuant to Article 12 of Chapter 10 of Division 3 of the Business and Professions Code.

(5) If the establishment is participating to train an apprentice in multiple locations under common ownership, there shall be an agreement between the establishments to employ the apprentice.

(e) The board shall inform every person applying for approval to act as an apprentice trainer or an apprentice establishment in writing, within ten (10) days of receipt of the application form (Form #35A-03, Application for Licensure as a Licensed Apprentice and for Approval of

Trainers and Establishments, Revised 5/94 ~~XX/XX~~), whether the application is complete or deficient and what specific information is required.

- (1) When the information for a deficient application is returned to the board, the board shall decide within five (5) days of receipt whether the application is complete.
- (2) If the application remains deficient, the board shall inform the applicant in writing, within five (5) days of receipt, of what specific information is required.
- (f) The board shall notify the applicant, in writing, within thirty-five (35) days after the completed application has been received, whether the applicant meets the requirements for approval.
- (g) The minimum, median and maximum times for processing a request for approval, from the time of receipt of the application until the Board of Barbering and Cosmetology decided to issue the license based upon actual performance of the board during the two years preceding the proposal of this section, were as follows:

- (1) Minimum: 1 day
- (2) Median: 15 days
- (3) Maximum: 48 days

*Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7332, 7333, 7334 and 7336, Business and Professions Code.*

### **§ 931. Interpreter and Interpreter/Model.**

- (a) An applicant for the barber, cosmetologist, esthetician, manicurist, or electrologist examination may use an Interpreter or an Interpreter/Model during examination if the applicant is unable to speak, read, or write in the English language at a 10th grade level.
- (b) The applicant shall file with the application for examination, or not later than thirty (30) days prior to the date of the examination, a notice of permission to use an Interpreter or Interpreter/Model on a form ~~prescribed~~ provided by the board (Form #03B-125, Form G, Request for Use of an Interpreter or Interpreter/Model, Revised: 8/94 ~~XX/XX~~) and executed by the applicant under penalty of perjury.
- (c) The person designated by the applicant to act as an Interpreter or an Interpreter/Model shall file with the board, not later than fifteen (15) days prior to the date of the examination and on a form ~~prescribed~~ provided by the board (Form #03A-126, Form H, Revised: ~~XX/XX~~) and executed by the person under oath or penalty of perjury, a request to act as an interpreter or an interpreter/model, along with two 1 1/2 x 1 1/2 inch signed photographs of himself or herself.
- (d) The Interpreter or Interpreter/Model shall be a person who is fluent both in English and in the native language of the applicant and must certify to this fact in writing under penalty of perjury.
- (e) An Interpreter may interpret only for the written portion of the examination.
- (f) An Interpreter/Model may interpret for the written and practical portions of the examination and shall serve as the model for the practical examination.
- (g) A person shall be allowed to act as an Interpreter or Interpreter/Model only once in two (2) years in any examination.
- (h) An Interpreter shall not be used in the barber or cosmetology instructor examinations.

(i) Disabled persons are entitled to access to examination activities in a manner that is equal to that offered non-disabled persons and reasonable accommodation will be provided all such persons with medically-certified documentation.

(j) The following persons are prohibited from acting as Interpreter or Interpreter/Models:

(1) Persons less than 15 years of age.

(2) Persons who are current or former students in barbering or any of the branches of cosmetology.

(3) Persons who are currently or have been formerly licensed as an operator or an instructor by this state or any other state in barbering or any of the branches of cosmetology.

(4) Persons who are currently or have been formerly enrolled in a barber apprentice training program.

(5) Persons who are currently or have been formerly enrolled in a cosmetologist apprentice training program.

(6) Persons who have been formerly Junior Operators or Junior Electrologists.

(7) Persons who are currently or have been formerly owners or employees of any school of barbering, cosmetology or electrology.

(k) For a period of one (1) year from the date that any person served as an Interpreter or Interpreter/Model, that person shall be ineligible to apply to the Board of Barbering and Cosmetology for a license in barbering or any of the branches of cosmetology from which he or she provided Interpreter or Model services.

(l) If the board determines that any of the information furnished pursuant to this section is false in a material respect, it may void the applicant's examination, if any.

(m) Persons who are only reading the examination to the applicant, but not interpreting to another language, will not be permitted.

(n) If the board determines that an Interpreter or Interpreter/Model is providing answers during the examination or any other material assistance to the applicant other than translating during the conduct of the examination, it shall disqualify the Interpreter or Interpreter/Model and void the applicant's examination.

*Note: Authority cited: Section 7312, Business and Professions Code. Reference: Sections 7338 and 7340, Business and Professions Code.*

### **§ 937. Licensing and Operation.**

(a) An application for a license to operate a mobile unit shall be on a form ~~prescribed and~~ provided by the board (Form #03A-202, Application for License to Operate A Mobile Unit, Revised- XX/XX), accompanied by such evidence, statements, or documents as required by Section 7355(b) of the Business and Professions Code.

(b) The geographical boundaries within which the mobile unit is licensed to operate shall include only the cities and counties within which the mobile unit has permits to provide services, and shall extend no further than a 50 mile radius from the permanent base address from which the mobile unit operates.

(c) All Health and Safety Rules governing barbering and cosmetology establishments (as contained in Article 12 of these regulations) shall apply to mobile units unless otherwise specified.

(d) All storage cabinet doors shall have safety catches.

- (e) All equipment which is not stored in storage cabinets shall be securely anchored to the mobile unit.
- (f) No services shall be performed while the mobile unit is in motion.
- (g) A ramp or lift shall be provided for access to the mobile unit if providing services for disabled individuals.
- (h) The owners of mobile units shall be responsible for adherence to all local, state and federal laws and regulations regarding the operation of vehicles to be used as mobile units.
- (i) An itinerary showing dates, locations, and times of service shall be made available, upon request, to an authorized representative of the board.
- (j) The board shall inform the applicant in writing that the application is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application within 10 calendar days of receipt of an application for a license to operate a mobile unit.
- (k) The board shall inform the applicant in writing of its decision regarding an application within 21 calendar days from the date of filing of a completed application. The decision is contingent upon the applicant scheduling an appointment with the board, or its representative, for an inspection of the mobile unit for final approval, pursuant to section 7355(a) of the Business and Professions Code, within seven calendar days of receipt of the notice of a completed application.
- (l) The inspection for final approval shall be conducted to ensure compliance with Sections 7345 and 7357(b) of the Business and Professions Code.

*Note: Authority cited: Sections 7312 and 7357, Business and Professions Code. Reference: Sections 7345, 7355 and 7357, Business and Professions Code.*





## MEMORANDUM

DATE	July 16, 2017
TO	Members, Legislative and Budget Committee
FROM	Kristy Underwood, Executive Officer
SUBJECT	Definition of "Access"

Board staff is seeking to amend Section 904 of the California Code of Regulations to include a more detailed definition of the "access" described in Section 7313, which reads, in part:

*"(a) (1) To ensure compliance with the laws and regulations of this chapter, the board's executive officer and authorized representatives shall, except as provided by Section 159.5, have access to, and shall inspect, any establishment or mobile unit during business hours or at any time in which barbering, cosmetology, or electrolysis are being performed. It is the intent of the Legislature that inspections be conducted on Saturdays and Sundays as well as weekdays, if collective bargaining agreements and civil service provisions permit.*

...

In order to stress that the Board's inspectors or representatives must have access to all areas of a shop or school, staff suggests the following amendment to Section 904:

### § 904. Enforcement

(a) The holder or holders of an establishment license or a mobile unit license, and the person in charge of any such establishment or mobile unit, shall be responsible for implementing and maintaining the Health and Safety Rules in such establishment or mobile unit individually and jointly with all persons in or employed by or working in or on the premises of such establishment or mobile unit.

(b) All licensed barbers, cosmetologists, estheticians, manicurists, electrologists, instructors, or apprentices shall be held individually responsible for implementation and maintenance of the Health and Safety Rules.

(c) All persons performing acts of a barber, cosmetologist, esthetician, manicurist or electrologist, except students in schools, shall, upon request of an authorized representative of the board, present satisfactory proof of identification. Satisfactory proof shall be in the form of a photographic driver's license or photographic identification card issued by any state, federal, or other recognized government entity.

(d) Failure to present valid proof of identification shall be grounds for disciplinary action.



(e) For the purposes of Section 7313 of the Business and Professions Code concerning the inspection of establishments, mobile units and schools where barbering, cosmetology or electrolysis are being performed, "access" means the ability of the executive officer and authorized representatives of the board to inspect all areas within the establishment, including, but not limited to, all rooms, drawers, cabinets, roll-about and closets.



**Board of Barbering and Cosmetology**

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## MEMORANDUM

TO: Members  
Licensing and Examination Committee

Date: July 9, 2017

FROM: Kristy Underwood, Executive Officer  
Board of Barbering and Cosmetology

SUBJECT: Proposed Language for Implementation of a Personal Service Permit

The attached language is a draft proposal that takes into consideration previous comments from members, industry representatives and public comments. The committee should determine if this language, or modified language, should be presented to the full Board.

## **Personal Service Permit-Application Requirements**

The Board shall issue a Personal Service Permit to a licensed individual who meets the following criteria:

- a) Be licensed as a cosmetologist, barber, manicurist, or esthetician with the Board and have taken and passed the written examination within the previous 2 years. Individuals who have taken the written examination more than two years prior to applying for a personal service permit shall take and pass the written examination.
- b) Maintain a valid personal license and not have any outstanding administrative fines or disciplinary actions.
- c) Maintain employment at a licensed establishment that does not have any outstanding administrative fines or prior disciplinary actions.
- d) The individual and establishment shall provide proof of liability insurance in the minimum amount of 1 million dollars respectively.
- e) Furnish the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.
- f) Submit the application (form XXX) accompanied by the required fee.

## **Criteria for Personal Service Permit**

The following services shall be provided by each licensing category, when being performed outside of a licensed establishment and under a personal service permit:

### **Cosmetology**

A licensed cosmetologist who has been issued a personal service permit shall provide the following services outside of a licensed establishment:

- a) Arranging, dressing, curling, cutting, non-chemical straightening, applying hair tonics to beautify the hair of any person.
- b) Giving facials, applying makeup, applying eyelashes and removing superfluous hair on the face, by the use of tweezers.
- c) Massaging, cleaning, beautifying or stimulating the face, neck, arms or upper part of the human body, by use of cosmetic cleansing preparations, antiseptics, tonics, lotions or creams.

- d) Cutting, trimming, polishing, tinting, coloring, cleansing or manicuring or pedicuring the nails of any person or massaging, cleansing, or beautifying from the elbow to the fingertips or the knee to the toes of any person.

A licensed Cosmetologist who has been issued a Personal Service Permit shall not provide the following services unless those services are performed in a licensed establishment:

- a) Any chemical hair services, including but not limited to: permanent waving, relaxing, coloring, chemical straightening or dyeing.
- b) Any exfoliation service, including but not limited to: chemical peels, microdermabrasion.
- c) Any form of artificial nail application or maintenance of artificial nails.

### **Barbering**

A licensed barber who has been issued a personal service permit shall provide the following services outside of a licensed establishment:

- a) Shaving or trimming the beard or cutting the hair.
- b) Giving facial and scalp massages or treatment with oils, creams, lotions, or other preparations either by hand or mechanical appliances.
- c) Arranging, styling, dressing, curling, cutting the hair of any person.
- d) Applying cosmetic preparations, antiseptics, powders oils, clays or lotions to the scalp, face or neck.

A licensed Barber who has been issued a Personal Service Permit shall not provide the following services unless those services are performed in a licensed establishment:

- a) Any chemical hair services, including but not limited to: permanent waving, relaxing, coloring, chemical straightening or dyeing.
- b) Any exfoliation service, including but not limited to: chemical peels, microdermabrasion.

### **Manicuring**

A licensed manicurist who has been issued a Personal Service Permit shall provide the following services outside of a licensed establishment:

- a) Cutting, trimming, polishing, tinting, coloring, cleansing or manicuring or pedicuring the nails of any person or massaging, cleansing, or beautifying from the elbow to the fingertips or the knee to the toes of any person.

A licensed manicurist who has been issued a personal service permit shall not provide the following services outside of a licensed establishment:

- a) Any form of artificial nail application or maintenance of artificial nails.

### **Esthetician**

A licensed Esthetician who has been issued a Personal Service Permit shall provide the following services outside of a licensed establishment:

- a) Giving facials, applying makeup, applying eyelashes and removing superfluous hair on the face, by the use of tweezers.
- b) Massaging, cleaning, beautifying or stimulating the face, neck, arms or upper part of the human body, by use of cosmetic cleansing preparations, antiseptics, tonics, lotions or creams.

A licensed Esthetician who has been issued a Personal Service Permit shall not provide the following services outside of a licensed establishment:

- a) Any exfoliation service, including but not limited to: chemical peels and microdermabrasion.

### **Personal Service Permit Standards**

The holder of a personal service permit shall:

- a) Provide each client with the Board's name, address and telephone number.
- b) Display both the individual license and the personal service permit at the location where services are being provided. The license and the permit must be in plain visible site for the consumer to easily view.
- c) Be subject to random inspections to verify compliance with health and safety laws and regulations.
- d) Adhere to all health and safety laws and regulations.
- e) Maintain a record of all services provided outside of a licensed establishment. Those records shall contain customers name, service provided, address where service was provided, and date of service. Records shall be maintained for a minimum of two years and may be subject to inspection by a Board representative.

### **Expiration of Personal Service Permit**

The personal service permit shall be valid for two years, however, if employment changes a new personal service permit must be obtained under a new licensed establishment.



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## **BOARD OF BARBERING & COSMETOLOGY**

### **BILL ANALYSIS**

**Author:** Assembly Member Salas

**Assembly Coauthors:** Chiu, Cunningham, Quirk,  
Cooper and Friedman

**Subject:** Physical and Sexual  
Abuse Awareness Training

**Bill Number:** AB 326

**Version:** June 22, 2017

#### **Existing Law:**

Provides the licensure and regulation of the practices of barbering, cosmetology and electrology by the California Board of Barbering and Cosmetology (Board) (BP&C\* §7312).

Requires the Board to admit to a licensing examination an applicant who meets certain qualifications, including course training as specified by the Board in a Board approved school (BP&C §§ 7321, 7321.5, 7324, 7326, 7330, 7362).

Requires the Board to determine by regulation the required subjects of instruction to be completed in all approved courses taught at schools approved by the Board. (BP&C § 7362 (b)).

Specifies in regulation, the curriculum requirements for barbers, cosmetologists, manicurists, estheticians and electrologists (CCR\*\* Title 16, Division 9, Article 4, Sections 950.1, 950.2, 950.3, 950.4, 950.5).

Specifies the related training requirements for apprentices (barber, cosmetology, skin care, nail care and electrolysis) (BP&C § 7334 (c),(d) and CCR Title 16, Division 9, Article 3, Section 915).

Requires the Board to establish a Health and Safety Advisory Committee to provide the Board with advice and recommendations on health, safety and labor issues impacting the industry. Operative July 1, 2017 (BP&C § 7314.3).

Requires the Board to develop or adopt a health and safety course on hazardous substances and basic labor laws to be taught in Board approved schools. The amendments to the law were operative on July 1, 2017 (BP&C § 7389).

Imposes criminal and civil liability on certain professionals, including child care providers, clergy, educators, law enforcement, and medical professionals, for the failure to report child abuse. Requires any person who reasonably believes that he or she has observed the commission of specified violent



crimes against a victim to notify a peace officer, as defined. (California Penal code §§ 11165.7 - 11167.7).

Imposes reporting requirements on certain professionals for the reporting of domestic violence. (California Penal code §§ 11160-11163.2).

### **This Bill:**

Establishes that the Health and Safety Advisory Committee shall provide the Board with advice and recommendations on how to ensure licensees receive awareness regarding physical and sexual abuse their clients may be experiencing. Upon adoption of this bill the requirements would be operative July 1, 2019.

Requires the Board develop or adopt a health and safety course on hazardous substances, basic labor laws and physical and sexual assault awareness, which shall be taught in Board approved schools. Requires board regulations be created for the requirements of the training.

Requires applicants to take one-hour awareness training on physical and sexual abuse as part of a Board-approved school course.

Requires the Board provide Instructor training classes and pilot testing of the revised Health and Safety Course.

Authorizes the Board to promote physical and sexual abuse awareness by means of mail, television, radio, motion picture, newspaper, book, Internet, or other electronic communication.

Specifies that licensees and their employers are not required to act on information obtained during the course of employment concerning potential physical and sexual abuse unless otherwise required by law.

### **Background:**

The California Partnership to End Domestic Violence website notes that 40% of California women experience physical intimate partner violence. The National Coalition against Domestic Violence factsheet, "Domestic Violence in California" notes that on a typical day the domestic violence hotline receives approximately 21,000 calls.

The Barbering and Beauty industry acknowledges the unique position that licensees maintain in being able to assist at-risk clients. Due to the intimate nature of the relationship between licensee and client, licensees may be able to recognize signs of physical and sexual abuse that may go unnoticed by onlookers. Campaigns such as "Cut It Out" administered by the Professional Beauty Association, seek to educate licensees on how to recognize the signs of physical abuse and offer assistance to at risk clients.

National state boards have begun to require specified training in Domestic Violence for instance, effective January 1, 2017, the Illinois Department of Financial and Professional Regulation now requires a one-hour, one-time continuing education course on Domestic Violence for all cosmetologists, cosmetology teachers, estheticians, esthetic teachers, hair braiders, hair braiding teachers, nail technicians, and nail technology teachers.

On February 9, 2017, Senate Bill 1030 was introduced by Senator Young of Maryland which if adopted will require beginning October 1, 2018 that an applicant for a license or license renewal from the State

Board of Cosmetologists complete a domestic violence and sexual assault awareness course approved by the Board of Maryland.

On June 8, 2016, Board representatives attended a joint informational hearing (Assembly and Senate Committees on Business and Professions), "The Role of Regulated Professions in Combatting Human Trafficking". It was noted that because of California's large and diverse immigrant communities, its large economic base and its proximity to international borders, California is considered one of the top four destinations for human trafficking. It was identified that nail salons, in particular offer a unique opportunity to sex and labor traffickers. This is in part to a large percentage of immigrant population, with limited English speaking abilities. The situation in New York provides a very public example of labor trafficking. During the hearing it was noted that dismantling human trafficking appears to be best addressed through partnerships between state, local governments, businesses, communities and non-governmental organizations.

Effective March 26, 2015, the Ohio State Board of Cosmetology requires licensees and students enrolled in a school of cosmetology receive one-hour training on human trafficking either while enrolled in a school of cosmetology or through a continuing education program.

### **Analysis:**

The Board's primary purpose is consumer protection. The education of future professionals on how to identify the signs of physical and sexual abuse and how to offer support to the victims along with the promotion of abuse awareness to licensees, validates this mission.

The bill specifies that the Board develops or adopts a course on physical and sexual abuse and that it is to be taught in Board approved schools, however, it does not make provisions to require Board approved apprentice sponsors to teach the course during the completion of the required pre apprentice related training (39 hours currently required).

If enacted, the following California Code of Regulation (CCR) sections may be affected and may need to be revised: 917, 921, 921.1, 921.2, 950.1, 950.2, 950.3, 950.4, 950.5 and 950.12.

### **Fiscal Impact:**

Costs involved in training instructors and pilot testing:

- 3 training sessions (Northern, Central, Southern locations) \$9,000.00
- Staff (travel, hotel, car, etc.) – \$3,500.00 per event (2 travel locations, 1 local)
- Location, equipment, etc. – \$1,000.00 (2 travel locations, 1 local)

Costs (mailing, public meetings, etc.) involved in promulgating regulations are estimated at \$1,000.00 per regulatory package. It is estimated the Board may submit two regulatory packages. Total cost: \$2,000.00

350 CD's purchased from Office of Publications and Design at \$2.00 per unit: \$700.00  
300 CD's sent out for initial mailing at \$2.60 per unit: \$780.00

Costs involved with mailing out printed materials: \$1,000.00

Costs involved with promoting abuse awareness to licensees are considered minor and absorbable by the Board as it would be included within the Board's allotted outreach funds.

Key IT Impacts:

- Update website with physical and sexual abuse awareness information

Presumptions:

- No regulations are required pertaining to the IT work
- Training requirement will be handled through existing "proof of training" document provided by the schools
- Training requirement will be processed via the existing checklist item in BreEZe

**Total Projected Fiscal Impact: \$17,980.00**

**Board Position:**

On May 15, 2017, the Board took a Support If Amended position regarding this bill. The members recommended the following amendments:

Keep section 1; amend section 2 (Department of Public Health to partner with local health departments for the education of salons in their specified areas; include language to the bill that would make it clear that licensees should be legally held harmless if they become aware of information regarding physical or sexual abuse.) Delete section 3.

On June 5, 2017, a letter was sent to the Honorable Senator Jerry Hill notifying the Senator of the Board's *Support If Amended* position.

\*BP&C refers to the California Business and Professions Code.

\*\*CCR refers to the California Code of Regulations.



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### AB-326 State Board of Barbering and Cosmetology: physical and sexual abuse awareness training. (2017-2018)

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Date Published: 06/22/2017 09:00 PM

AMENDED IN SENATE JUNE 22, 2017

AMENDED IN ASSEMBLY APRIL 06, 2017

AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE— 2017-2018 REGULAR SESSION

#### ASSEMBLY BILL

**No. 326**

Introduced by Assembly Member Salas

(Principal coauthors: Assembly Members Chiu, Cunningham, Quirk, Cooper, and Friedman)

February 07, 2017

An act to amend Section 7362 of, to amend, repeal, and add Sections 7314.3 and 7389 of, and to add Sections 7314.5 and 7319.7 to, the Business and Professions Code, relating to professions and vocations.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 326, as amended, Salas. State Board of Barbering and Cosmetology: physical and sexual abuse awareness training.

Existing law, the Barbering and Cosmetology Act, establishes the State Board of Barbering and Cosmetology for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices. Existing law requires the board to carry out a list of duties, including making rules and regulations, conducting and administering license examinations, issuing licenses to qualified applicants, and disciplining persons who violate the act. Existing law requires the board to admit to a licensing examination an applicant who meets certain qualifications, including having completed one or more approved courses, as specified. Existing law requires the board to determine by regulation the required subjects of instruction to be completed in all approved courses.

*Existing law requires the board to develop or adopt a health and safety course on hazardous substances which is required to be taught in schools approved by the board. Existing law, commencing July 1, 2017, requires the health and safety course to additionally cover basic labor laws.*

*This bill, commencing July 1, 2019, would require the health and safety course to additionally cover physical and sexual abuse awareness.*

~~This bill would require the board to require an applicant to take a one-hour training on physical and sexual abuse awareness, as specified, as part of an approved course. The bill would require the board to prescribe by regulation the requirements of the training. The bill would authorize the board to promote physical and sexual abuse awareness, as specified, by means of mail, television, radio, motion picture, newspaper, book, Internet, or other electronic communication.~~

*Existing law requires the board to establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board. Existing law, commencing July 1, 2017, requires the committee's advice and recommendation to be on health and safety issues before the board that impact licensees, including how to ensure licensees are aware of basic labor laws, as specified.*

*This bill, commencing July 1, 2019, would require the committee's advice and recommendation to additionally include how to ensure licensees have awareness about physical and sexual abuse, as specified, their clients may be experiencing.*

Existing law imposes criminal and civil liability on certain professionals, including child care providers, clergy, educators, law enforcement, and medical professionals, for the failure to report child abuse. Existing law requires any person who reasonably believes that he or she has observed the commission of specified violent crimes against a victim under 14 years of age to notify a peace officer, as defined.

This bill would specify that licensed barbers, cosmetologists, estheticians, manicurists, electrologists, and applicants for licensure, and their employers, are not required to act on information obtained during the course of employment concerning potential physical and sexual abuse unless otherwise required by law.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *Section 7314.3 of the Business and Professions Code, as amended by Section 3 of Chapter 409 of the Statutes of 2016, is amended to read:*

**7314.3.** (a) The board shall establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board that impact licensees, including how to ensure licensees are aware of basic labor laws. Basic labor laws include, but are not limited to, all of the following:

- (1) Key differences between the legal rights, benefits, and obligations of an employee and an independent contractor.
- (2) Wage and hour rights for hourly employees.
- (3) Antidiscrimination laws relating to the use of a particular language in the workplace.
- (4) Antiretaliation laws relating to a worker's right to file complaints with the Department of Industrial Relations.
- (5) How to obtain more information about state and federal labor laws.

~~(b) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017.~~

*(b) This section shall become inoperative on July 1, 2019, and, as of January 1, 2020, is repealed.*

**SEC. 2.** *Section 7314.3 is added to the Business and Professions Code, to read:*

**7314.3.** (a) *The board shall establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board that impact licensees, including how to ensure licensees are aware of basic labor laws and how to ensure licensees have awareness about physical and sexual abuse their clients may be experiencing.*

(b) For purposes of this section, basic labor laws include, but are not limited to, all of the following:

- (1) Key differences between the legal rights, benefits, and obligations of an employee and an independent contractor.
- (2) Wage and hour rights for hourly employees.
- (3) Antidiscrimination laws relating to the use of a particular language in the workplace.
- (4) Antiretaliation laws relating to a worker's right to file complaints with the Department of Industrial Relations.
- (5) How to obtain more information about state and federal labor laws.

(c) For purposes of this section, physical and sexual abuse includes, but is not limited to, the following:

- (1) Domestic violence.
- (2) Sexual assault.
- (3) Human trafficking.
- (4) Elder abuse.

(d) This section shall become operative on July 1, 2019.

**SECTION 4.** ~~SEC. 3.~~ Section 7314.5 is added to the Business and Professions Code, to read:

**7314.5.** The board may promote awareness of physical and sexual abuse, as described in Section 7362, by means of mail, television, radio, motion picture, newspaper, book, Internet, or other electronic communication.

~~SEC. 2.~~ **SEC. 4.** Section 7319.7 is added to the Business and Professions Code, to read:

**7319.7.** A licensee or an applicant for licensure who completes the physical and sexual abuse awareness training required by paragraph (2) of subdivision (b) of Section 7362, and his or her employer, shall not be required to act on information obtained during the course of employment concerning potential physical and sexual abuse unless otherwise required by law.

~~SEC. 3. Section 7362 of the Business and Professions Code is amended to read:~~

~~7362. (a) A school approved by the board is one that is first approved by the board and subsequently approved by the Bureau for Private Postsecondary Education or is a public school in this state, and provides a course of instruction approved by the board. However, notwithstanding any other law, both the board and the Bureau for Private Postsecondary Education may simultaneously process a school's application for approval.~~

~~(b)(1) The board shall determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum hours of technical instruction and minimum number of practical operations for each subject, and shall determine how much training is required before a student may begin performing services on paying patrons.~~

~~(2) The board shall require an applicant to take a one-hour training on physical and sexual abuse awareness as part of an approved course and shall prescribe by regulation the requirements of the training. Physical and sexual abuse includes, but is not limited to, the following:~~

- ~~(A) Domestic violence.~~
- ~~(B) Sexual assault.~~
- ~~(C) Human trafficking.~~
- ~~(D) Elder abuse.~~

~~(c) Notwithstanding any other law, the board may revoke, suspend, or deny approval of a school, in a proceeding that shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when an owner or employee of the school has engaged in any of the acts specified in paragraphs (1) to (8), inclusive.~~

~~(1) Unprofessional conduct which includes, but is not limited to, any of the following:~~



~~(A) Incompetence or gross negligence, including repeated failure to comply with generally accepted standards for the practice of barbering, cosmetology, or electrology, or disregard for the health and safety of patrons.~~

~~(B) Repeated similar negligent acts.~~

~~(C) Conviction of any crime substantially related to the qualifications, functions, or duties of the owner of an approved school, in which case, the records of conviction or a certified copy thereof shall be conclusive evidence of the conviction.~~

~~(2) Repeated failure to comply with the rules governing health and safety adopted by the board and approved by the State Department of Public Health, for the regulation of board-approved schools.~~

~~(3) Repeated failure to comply with the rules adopted by the board for the regulation of board-approved schools.~~

~~(4) Continued practice by a person knowingly having an infectious or contagious disease.~~

~~(5) Habitual drunkenness, or habitual use of, or addiction to the use of, any controlled substance.~~

~~(6) Obtaining or attempting to obtain practice in any occupation licensed and regulated under this chapter, or money, or compensation in any form, by fraudulent misrepresentation.~~

~~(7) Refusal to permit or interference with an inspection authorized under this chapter.~~

~~(8) Any action or conduct that would have warranted the denial of a school approval.~~

**SEC. 5.** *Section 7389 of the Business and Professions Code, as amended by Section 6 of Chapter 409 of the Statutes of 2016, is amended to read:*

7389. (a) The board shall develop or adopt a health and safety course on hazardous substances and basic labor laws, as specified in Section 7314.3, which shall be taught in schools approved by the board. Course development shall include pilot testing of the course and training classes to prepare instructors to effectively use the course.

~~(b) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017.~~

*(b) This section shall become inoperative on July 1, 2019, and, as of January 1, 2020, is repealed.*

**SEC. 6.** *Section 7389 is added to the Business and Professions Code, to read:*

7389. (a) The board shall develop or adopt a health and safety course on hazardous substances, basic labor laws, as specified in Section 7314.3, and physical and sexual assault awareness, as specified in Section 7314.3, which shall be taught in schools approved by the board. Course development shall include pilot testing of the course and training classes to prepare instructors to effectively use the course.

*(b) This section shall become operative on July 1, 2019.*





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## **BOARD OF BARBERING & COSMETOLOGY**

### **BILL ANALYSIS**

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**Author:** Assembly Member Gonzalez Fletcher

**Subject:** Gratuities

**Bill Number:** AB 1099

**Version:** May 30, 2017

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#### **Existing Law:**

Provides the licensure and regulation of the practices of Barbering, Cosmetology and Electrology by the California Board of Barbering and Cosmetology (Board). (BP&C\* § 7312)

Prohibits an employer from collecting, taking or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a client, or deduct any amount from wages due an employee on account of a gratuity. Provides that every gratuity is the sole property of the employee to whom it was paid. Requires an employer that permits clients to pay gratuities by credit card, pay the employee the full amount of the gratuity, without any deductions for any credit card payment processing fees. Requires employers provide payment of the gratuity to the employee no later than the next regular payday following the date the client authorized the credit card payment/gratuity. (Labor Code § 351)

Authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. (Labor Code § 1197.11)

#### **This Bill:**

Defines the term "entity" as referenced in this section as an organization that uses an online-enabled application or platform to connect workers with customers to engage the workers to provide labor services, including, but not limited to, a transportation network company as defined in Section 5431 of the Public Utilities Code. This bill requires an entity that permits a client to pay for services performed by a worker by debit or credit card to also accept a debit or credit card for payment of a gratuity. Payment of the gratuity to the worker should not be later than the next regular payday following the date the client authorized the payment. 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.

#### **Public Utilities Code, Section 5431:**

**5431.** (a) As used in this article, a transportation network company is an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.

(b) As used in this article, participating driver or driver is any person who uses a vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers.

(c) As used in this article, transportation network company insurance is a liability insurance policy that specifically covers liabilities arising from a driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform.

*(Added by Stats. 2014, Ch. 389, Sec. 1. Effective January 1, 2015.)*

### **Background:**

In the 2016 legislative session, Senate Bill 896, authored by Senate Member Nguyen and coauthored by Senate Member Mendoza and Assembly Member Chiu was introduced which required an establishment offering nail care services, if it accepts a debit or credit as payment for nail care services, to also accept a debit or credit card for payment of a tip, consistent with existing law.

The Board took an opposed position to SB 896 on 4/11/16, 4/26/17 and 7/17/16. On 6/15/16, a letter of opposition was sent to Senate Member Rudy Salas Jr., Chair of the Assembly Business and Professions Committee.

On 6/15/16, a letter of opposition was sent to Governor Jerry Brown Jr. In part that letter stated, "This bill is an unprecedented move to require the Board to enforce laws that are outside of our intended and statutorily mandated authority. The Board's sole purpose is to protect the health and safety of consumers receiving services in beauty and barbering establishments. This bill will require our staff to intervene with small business owners to ensure they are allowing a tip for service to be paid via a credit card...While we do understand the intent of the author is to ensure the workers in establishments are receiving tips regardless of how a consumer pays for their service, we do not believe that our Board is the appropriate entity to be regulating business owners on how they operate their system of payments for services." *On 8/29/16, SB 896 was vetoed by the Governor.*

TechNet (in formal opposition of the bill) writes, "While this bill presents as only requiring employers to allow for a gratuity via credit card or debit care, we oppose AB 1099 because it will classify workers of online-enabled applications or platforms as employees. The placement of this code section is squarely in the Labor Code section reserved for Employee Regulation and Supervision (sections 200-2699.5). This placement would result in a re-classification of workers from "independent contractors" to "employees". Any change regarding the classification of independent contractors, whether for an online application or platform or other business industries, should be the result of thoughtful and inclusive discussion, not in legislation regarding the permission of patrons leaving a gratuity for services."

### **Analysis:**

State of California Labor & Workforce Development Agency is an executive branch Agency, and the Secretary is a member of the Governor's Cabinet. The Secretary oversees seven major departments, boards and panels that serve California businesses and workers (including the Department of Industrial Relations [Labor Commissioner] and the Employment Development Department). In part, the goal of the Agency is the enforcement of California labor laws to protect workers and create an even playing field for employers. Since the bill pertains to the Labor Law the Board would not be involved in the enforcement of the specifics contained within the bill.

### **Fiscal Impact:**

No fiscal impact to the Board.

### **Board Position:**

On May 15, 2017 the Board took a "Watch" position on this bill.

\*BP&C refers to the California Business and Professions Code.



# California

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### AB-1099 Compensation: gratuities. (2017-2018)

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AMENDED IN ASSEMBLY MAY 30, 2017

AMENDED IN ASSEMBLY APRIL 05, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

## ASSEMBLY BILL

**No. 1099****Introduced by Assembly Member Gonzalez Fletcher****February 17, 2017****An act to add Section 352 to the Labor Code, relating to employment.**

### LEGISLATIVE COUNSEL'S DIGEST

AB 1099, as amended, Gonzalez Fletcher. Compensation: gratuities.

Existing law prohibits an employer or agent, as defined, from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee, as defined, by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Existing law declares a gratuity the sole property of the employee or employees to whom it was paid, given, or left for. Existing law requires an employer that permits patrons to pay gratuities by credit card to pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Existing law requires an employer to keep accurate records of all gratuities received by the employer and requires that these records be open to inspection at all reasonable hours by the Department of Industrial Relations. Existing law requires the department to enforce these provisions, and an employer who violates these provisions is guilty of a misdemeanor.

This bill would also require ~~employers in specific industries~~ *an entity, as defined*, that ~~permit~~ *permits* a patron to pay for services performed by ~~an employee~~ *a worker* by debit or credit card to also accept a debit or credit card for payment of gratuity. The bill would require payment of a gratuity made by a patron using a *debit or credit card* to be made to the ~~employee~~ *worker* not later than the next regular payday following the date the

patron authorized the *debit or* credit card payment. Because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

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

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

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### SECTION 1. Section 352 is added to the Labor Code, to read:

**352.** (a) As used in this section, ~~“employer” shall include only the following employers:~~ *“entity” means an organization that uses an online-enabled application or platform to connect workers with customers to engage the workers to provide labor services, including, but not limited to, a transportation network company as defined in Section 5431 of the Public Utilities Code.*

~~(1) A hotel. For purposes of this paragraph, “hotel” means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment.~~

~~(2) An employer in the car washing and polishing industry registered pursuant to Part 8.5 (commencing with Section 2050).~~

~~(3) An establishment licensed pursuant to the Barbering and Cosmetology Act (Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code).~~

~~(4) A massage establishment as defined in Section 4601 of the Business and Professions Code.~~

~~(5) A restaurant. For purposes of this paragraph, “restaurant” means any retail establishment serving food or beverages for onsite consumption.~~

~~(6) An organization that uses an online-enabled application or platform to connect workers with customers to engage the workers to provide labor services, including, but not limited to, a transportation network company as defined in Section 5431 of the Public Utilities Code.~~

(b) An ~~employer~~ *entity* that permits a patron to pay for services performed by ~~an employee~~ *a worker* by debit or credit card shall also accept a debit or credit card for payment of gratuity. Payment of a gratuity made by a patron using a *debit or* credit card shall be made to ~~an employee~~ *a worker* not later than the next regular payday following the date the patron authorized the *debit or* credit card payment.

**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.







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## **BOARD OF BARBERING & COSMETOLOGY**

### **BILL ANALYSIS**

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**Author:** Assembly Member Cunningham

**Subject:** Maintenance of the Codes

**Bill Number:** AB 1516

**Version:** February 17, 2017

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#### **Existing Law:**

Directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes. (Government Code §10242)

#### **This Bill:**

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature. In part, as pertaining to the Board of Barbering and Cosmetology (Board), amends the California Health and Safety Code § 25257.2 (g), and clarifies that the recognized Healthy Nail Salon must be in compliance with Article 12 commencing with Section 977 of Division 9 of Title 16 of the California Code of Regulations.

#### **Background:**

On September 24, 2016, AB 2125 was chaptered by Secretary of State (Chapter 564, Statutes of 2016) this law requires the State Department of Toxic Substances Control by January 1, 2018, to publish guidelines for cities, counties, and city and counties to implement local healthy nail salon recognition (HNSR) programs. This statute requires verification that potential recognized salons be in compliance with Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code and all applicable regulations enforced by the Board.

#### **Analysis:**

This bill clarifies the portion of Article 12 of the California Code of Regulations applicable to the requirement of maintaining the status of being a recognized Healthy Nail Salon participant.

#### **Fiscal Impact:**

No fiscal impact to the Board.

#### **Board Position:**

To be determined.

CALIFORNIA LEGISLATURE— 2017-2018 REGULAR SESSION

ASSEMBLY BILL

No. 1516

Introduced by Assembly Member Cunningham

February 17, 2017

An act to amend Sections 303, 2221.1, 4927, 7542, 7596.4, 10177, 19604, 19619, 22973.3, 22977.1, and 25600.3 of, to amend the heading of Chapter 3.5 (commencing with Section 19300) of Division 8 of, and to amend the heading of Division 8.6 (commencing with Section 22970) of, the Business and Professions Code, to amend Sections 19, 54.27, 56.06, 2079.13, and 4777 of the Civil Code, to amend Sections 9, 26, 469, and 1002 of the Code of Civil Procedure, to amend Sections 2282 and 16955 of the Corporations Code, to amend Sections 8482.8, 17296, 22955.1, 35710, 41580, 44253.4, 44259.1, 44265.6, 44332.5, 44332.6, 48204, 48204.3, 48240, 51225.3, 52052.3, 56601, 60227, 60605.5, 67102, 67432, 67434, and 92965 of, and to amend and renumber the heading of Chapter 16 (commencing with Section 67380) of Part 40 of Division 5 of Title 3 of, the Education Code, to amend Sections 3017, 10010, 21534, 21535, and 23002 of the Elections Code, to amend Sections 452.5 and 754 of the Evidence Code, to amend Sections 14103, 14556, and 22370 of the Financial Code, to amend Sections 31603, 46003, 46004.1, 46013.2, 52255.5, 52289, and 67132 of the Food and Agricultural Code, to amend Sections 4216.24, 7514.7, 8590.7, 8593.2, 8920, 8921, 8922, 8924, 9111, 12587.1, 12588, 12589, 12591, 15643, 18152, 20931, 20969.3, 27521, 30025, 31462.05, 31653, 50079, 65057, 65073, 65850.6, 66474.02, 68203, 70395, and 82002 of, to amend the heading of Article 5 (commencing with Section 8585) of Chapter 7 of Division 1 of Title 2 of, and to amend and renumber Section 8455 of, the Government Code, to amend Section 655.1 of the Harbors and Navigation Code, to amend Sections 443.2, 1250.11, 1256.1, 1259, 1502, 1502.2, 1502.21, 1505, 1522.41, 1531.1, 1797.197a, 9002, 11362.775, 11375.7, 11400, 11401, 25257.2, 38530, 38561, 38562, 38562.5, 38562.7, 39713, 39730.7, 43212, 44559.13, 50833, 101993, 101996, 103526, 103527.5, 103885, 111070.5, 116555, 123955, and 128371 of the Health and Safety Code, to amend Sections 38.6, 1063.135, 1063.14, and 10235.52 of the Insurance Code, to amend Sections 139.21, 201.3, 1072, 1285, 1286, 1288, 1290, 1291, 1299, 1301, 1302, 1303, 1304, 1305, 1308, 1308.3, 1308.11, 1309, 1310, 1311, 1312, 1390, 1391, 1393, 1393.5, 1394, 1398, 1399, 1420, 1433, 4603.2, 4616.4, and 4800 of, to repeal the heading of Article 2 (commencing with Section 1285) of Chapter 2 of Part 4 of Division 2 of, and to repeal the heading of Article 2 (commencing with Section 1390) of Chapter 3 of Part 4 of Division 2 of, the Labor Code, to amend Sections 800 and 803 of the Military and Veterans Code, to amend Sections 186.22, 308, 653w, 830.3, 832.18, 987.8, 991.5, 1001.87, 1170, 1170.18, 1347.1, 3409, 11105.04, 11105.08, 11106, 11174.32, 12021.5, 12022.2, 12022.4, 13835.4, 29180, 29181, and 29182 of, the Penal Code, to amend Section 20928.2 of the Public Contract Code, to amend Sections 3357, 5795.20, 25402.12, 30960, and 33204.8 of the Public Resources Code, to amend Sections 372, 399.4, 399.13, 454.55, 913.4, 913.8, 955.5, 972, 2827.10, 2870, 2881.4, 5445.2, 9605, 99684.5, 185020, and 185040 of the Public Utilities Code, to amend Sections 5097, 6366.4, 7094, 12258, 12491, 12636, 18708, 19854, 45153.5, 50112.1, 55042.5, 60207.5, and 60632 of, and to amend the heading of Part 20 (commencing with Section 41001) of Division 2 of, the Revenue and Taxation Code, to amend Section 5898.16 of the Streets and Highways Code, to amend Sections 1110, 2737, 11003, and 13002 of the Unemployment Insurance Code, to amend Sections 13353.6, 22513.1, 23301.5, 27427, and 34501.12 of, and to repeal Section 41501 of, the Vehicle Code, to amend Sections 366, 13321, and 71611.5 of the Water Code, to amend Sections 208.3, 361.2, 366.3, 727, 727.1, 4096.5, 4652.5, 5848.5, 5849.1, 5849.35, 5849.8, 5849.14, 5890, 5899, 10553.12, 10559, 10621, 11405, 14087.325, 14132.100, 14134.25, 14184.40, 14184.50, 14184.60, 14184.70, 14184.80, 14717.1, 14717.5.d 8250, and 18986.50 of, to amend the heading of Chapter 12.86 (commencing with Section 18987.6) of Part 6 of Division 9 of, to amend and renumber Sections 18986.60, 18986.86, 18986.87, and 18986.89 of, and to amend and renumber the heading of Chapter 12.9 (commencing with Section 18986.40) and the heading of Chapter 12.95 (commencing with Section 18986.50) of Part 6 of Division 9 of, the Welfare and Institutions Code, to amend Section 5 of Chapter 10 of the Statutes of 2016, to amend Section 1 of Chapter 283 of the Statutes of 2016, to amend Section 501 of the North Fork Kings Groundwater Sustainability Agency (Chapter 392 of the Statutes of 2016), and to amend Section 3 of Chapter 535 of the Statutes of 2016, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1516, as introduced, Cunningham. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

## DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: NO Local Program: NO

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## BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### SEC. 113.

Section 25257.2 of the Health and Safety Code is amended to read:

#### **25257.2.**

(a) The department shall, by January 1, 2018, publish guidelines for healthy nail salon recognition (HNSR) programs voluntarily implemented by local cities and counties.

(b) The guidelines for an HNSR program adopted pursuant to subdivision (a) may include, but shall not be limited to, all of the following:

(1) A list of specific chemical ingredients that should not be used by a nail salon seeking recognition. In determining whether to include a chemical on the list, the department shall consider:

(A) Whether the chemical is identified as a candidate chemical pursuant to the regulations adopted pursuant to Section 25252.

(B) Whether an existing healthy nail salon program has restricted the use of the chemical.

(C) The potential for exposure of nail salon workers and customers to the chemical.

(D) The availability of existing, safer alternatives to the chemical in products available to nail salons in California.

(2) Specific best practices for minimizing exposure to hazardous chemicals, including:

(A) A list of specific personal protective equipment that should be used by personnel in a salon seeking recognition and guidance on when and how to use it.

(B) Engineering controls that should be adopted by salons seeking recognition, including specific ventilation practices and equipment.

(C) Prohibiting nail polishes that contain dibutyl phthalate, formaldehyde, or toluene.

(D) Prohibiting nail polish thinners that contain methyl ethyl ketone or toluene.

(E) Prohibiting nail polish removers that contain ethyl or butyl acetate.

(3) A list of specific training topics for salon owners and staff, whether on payroll or contract, on safer practices delineated in the HNSR program guidelines.

(4) Criteria for the use of outside products brought in by clients.

(5) Verification that a salon seeking recognition is in compliance with Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code, and all applicable regulations enforced by the State Board of Barbering and Cosmetology.

(6) Any other guidelines or best practices determined by the department to further the goals of an HNSR program.

(c) The guidelines adopted pursuant to subdivision (a) shall include criteria for cities and counties that adopt an HNSR program. These criteria may cover, but are not limited to:

(1) Coordination with other local HNSR programs to assist businesses in achieving and moving beyond regulatory compliance.

(2) Training and certification requirements for the salon owners and staff to ensure thorough knowledge of safe and environmentally friendly procedures.

(3) Issuance of an approved seal or certificate to salons that have met certification requirements.

(4) The process by which a salon can enroll in an HNSR program and be verified by the local entity.

(5) The frequency at which the local entity shall verify continued compliance by a salon that has previously met all specified requirements.

(d) In developing guidelines pursuant to subdivision (a), the department shall consult with the Division of Occupational Safety and Health, the State Department of Public Health, and the State Board of Barbering and Cosmetology.

(e) In collaboration with existing healthy nail salon programs, the department shall promote the HNSR guidelines developed pursuant to subdivision (a) by doing all of the following:

(1) Developing and implementing a consumer education program.

(2) Presenting the HNSR guidelines to local health officers, local environmental health departments, and other local agencies as appropriate.

(3) Developing and either distributing or posting on its Internet Web site information for local entities, including, but not limited to, suggestions for successful implementation of HNSR programs and resource lists that include names and contact information of vendors, consultants, or providers of financial assistance or loans for purchases of ventilation equipment.

(4) Developing an Internet Web site or a section on the department's Internet Web site that links to county HNSR Internet Web sites.

(f) The department may prioritize its outreach to those counties that have the greatest number of nail salons.

(g) The State Board of Barbering and Cosmetology may notify the city, county, or city and county if a recognized salon is found in violation of Article 12 of the State Board of Barbering and Cosmetology regulations, (commencing with Section 977) of Division 9 of Title 16 of the California Code of Regulations. A violation shall result in the removal of healthy nail salon recognition from that salon.

(h) ~~Nothing in this~~ This section ~~shall~~ does not prevent the adoption or enforcement of any local rules or ordinances.







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## **BOARD OF BARBERING & COSMETOLOGY**

### **BILL ANALYSIS**

**Author:** Assembly Member Kalra  
**Assembly Co Author:** Chiu  
**Senate Co Author:** Jackson

**Subject:** Professional Cosmetic  
Labeling Requirements

**Bill Number:** AB 1575

**Version:** July 10, 2017

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#### **Existing Law:**

Defines the term 'ingredient' as any single chemical entity or mixture used as a component in the manufacture of a cosmetic product. (Section 700.3 of Part 700 of Chapter 1 of Title 21 of the Code of Federal Regulations)

Establishes that a cosmetic is adulterated if it bears or contains any poisonous or deleterious substance that may render it injurious to users under the conditions of use prescribed in the labeling or advertisement of the cosmetic, or under conditions of use as are customary or usual. (Health and Safety Code §111670)

Requires a manufacturer of any cosmetic product subject to regulation by the federal Food and Drug Administration that is sold in California shall, on a schedule and in electronic or other format, as determined by the division, provide the division with a complete and accurate list of its cosmetic products that, as of the date of submission, are sold in the state and that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity. (Health and Safety Code §111792)

Requires the label on each package of a cosmetic bear a declaration of the name of each ingredient in descending order of predominance, except that fragrance or flavor. (21 Code of Federal Regulations (CFR) 701.3)

The Federal Fair Packaging Act requires all household consumer commodities to be labeled with a statement identifying the commodity, e.g., detergent, sponges, etc.; the name and place of business of the manufacturer, packer, or distributor and the net quantity of contents in terms of weight, measure, or numerical count (measurement must be in both metric and inch/pound units). (16 CFR Parts 500, 501, 502, 503)

The Toxic Substances Control Act of 1976 (TSCA) provides the Environmental Protection Agency with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides. (15 United States Code § 2601 et seq.)

**This Bill:**

Requires a professional cosmetic manufactured on or after July 1, 2019, for sale in California, to have a label affixed on the container that satisfies all of the labeling requirements necessary for any other cosmetic pursuant to the Federal Food, Drug and Cosmetic Act and the Federal Fair Packaging and Labeling Act.

Defines the terms: Ingredient, Professional, and Professional Cosmetic. Defines "Professional" as a person that has been granted a license by the State Board of Barbering and Cosmetology to practice in the field of cosmetology, nail care, barbering or esthetics.

**Analysis:**

Board licensees working in the professions are oftentimes exposed to compounded chemicals throughout the average working day. Studies conducted to establish safe exposure limits to do not generally reflect the type of compounded exposure to multiple chemicals Board licensees experience within the average working day. Federal law does not regulate professional cosmetics in the same manner as retail cosmetics. Chemical ingredients in professional cosmetics do not have to be listed on product labels. Federal law requires that retail cosmetics have the ingredients listed on the product label. This bill would require ingredients to be listed on the professional products.

The bill's author notes, "Many employers can get information from products Safety Data Sheets (SDS). The California Division of Occupational Safety and Health's (CalOSHA) Hazard Communication Standard requires product manufacturers to provide salon owners with an SDS for each product used in the salon that may contain a hazardous chemical at 1% or more (or at 0.1% or more for chemicals that may cause cancer) or that could be released into the air above limits set by CalOSHA or the American Conference of Governmental Industrial Hygienists. The SDS explains the health risks of the product and lists precautions for worker protection. In general, the SDS must provide information about the hazard of chemicals in the product. The challenge is that employees may request SDSs from their employer, but they are difficult to obtain and do not necessarily have all the ingredients listed. Additionally, many workers are characterized as 'independent contractors' and therefore do not have the same rights under occupational safety and health law as 'employees' to demand those from salon owners."

In defining the term "Professional" the bill has inadvertently excluded the Board's Electrology licensees.

**Fiscal Impact:**

No fiscal impact to the Board.

**Board Position:**

To be determined.

\*BP&C refers to the California Business and Professions Code.



# California

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### AB-1575 Professional cosmetics: labeling requirements. (2017-2018)

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AMENDED IN SENATE JULY 10, 2017

AMENDED IN SENATE JUNE 26, 2017

AMENDED IN SENATE JUNE 21, 2017

AMENDED IN ASSEMBLY MAY 30, 2017

AMENDED IN ASSEMBLY APRIL 27, 2017

AMENDED IN ASSEMBLY APRIL 20, 2017

AMENDED IN ASSEMBLY MARCH 30, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

## ASSEMBLY BILL

**No. 1575**

Introduced by Assembly Member Kalra  
(Principal coauthor: Senator Jackson)  
(Coauthor: Assembly Member Chiu)

February 17, 2017

An act to add Section 110371 to the Health and Safety Code, relating to professional cosmetics.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1575, as amended, Kalra. Professional cosmetics: labeling requirements.

(1) The Sherman Food, Drug, and Cosmetic Law, among other things, regulates the labeling of cosmetics and authorizes the State Department of Public Health to require a cosmetic label to list ingredients under specified circumstances. The law generally defines the term "cosmetic" as an article, or its components, intended to be applied to the human body, or any part of the human body, for cleansing, beautifying, promoting attractiveness, or altering the appearance. The law makes a violation of its provisions a crime.

This bill would require a professional cosmetic manufactured on or after July 1, 2019, for sale ~~to a professional for use in this state to declare its ingredients on the container label by having the content of the container label~~

~~comply with the requirements in the same manner as required for a cosmetic that is regulated by~~ *in this state to have a label affixed on the container that satisfies all of the labeling requirements required for any other cosmetic pursuant to* specific federal laws. By expanding the requirements of this law, the bill would expand the scope of a crime, and thus would impose a state-mandated local program. The bill would define terms for its purposes and make legislative findings in support of its provisions.

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

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

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) According to the State Board of Barbering and Cosmetology, there are over 129,000 licensed manicurists, and almost 53,000 licensed salon businesses, many of which provide manicure services. There are over 312,000 licensed cosmetologists who are licensed to provide nail and hair services.

(b) Most cosmetologists and manicurists are of reproductive age and, therefore, are particularly vulnerable to chemical exposures.

(c) It is estimated that as many as 59 to 80 percent of manicurists in California are Vietnamese immigrants, many with limited English skills.

(d) Existing federal law does not regulate professional cosmetics in the same manner as cosmetics sold to consumers. Information on the ingredients in professional salon products is essential to ensuring that workers and owners can make safer product choices and take steps to protect themselves and their customers against harmful exposures.

### SEC. 2. Section 110371 is added to the Health and Safety Code, to read:

**110371.** (a) A professional cosmetic manufactured on or after July 1, 2019, for sale ~~to a professional for use in this state shall declare its ingredients on the container label by having the content of the container label comply with the requirements in the same manner as required for a cosmetic that is regulated by~~ *in this state shall have a label affixed on the container that satisfies all of the labeling requirements required for any other cosmetic pursuant to* the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301, et seq.), and the federal Fair Packaging and Labeling Act (15 U.S.C. Sec. 1451, et seq.).

(b) The following definitions shall apply to this section:

(1) "Ingredient" has the same meaning as in Section 111791.5.

(2) "Professional" means a person that has been granted a license by the State Board of Barbering and Cosmetology to practice in the field of cosmetology, nail care, barbering, or esthetics.

(3) "Professional cosmetic" means a cosmetic product as it is defined in Section 109900 that is intended or marketed to be used only by a professional on account of a specific ingredient, increased concentration of an ingredient, or other quality that requires safe handling, or is otherwise used by a professional.

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





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**Board of Barbering and Cosmetology-Department of Consumer Affairs**

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## **BOARD OF BARBERING & COSMETOLOGY**

### **BILL ANALYSIS**

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**Author:** Senate Member Moorlach

**Subject:** Deregulation of  
Barbers/Makeup

**Bill Number:** SB 247

**Version:** April 17, 2017

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#### **Existing Law:**

Provides the licensure and regulation of the practices of barbering, cosmetology, esthetics, manicuring and electrology by the California Board of Barbering and Cosmetology. (Board)(BP&C\* §7312)

Defines the scope of practice for barbers, cosmetologists, estheticians, manicurists and electrologists. (BP&C §7316)

Requires the Board to develop or adopt a health and safety course on hazardous substances and basic labor laws, as specified in Section 7314.3, which is taught in schools approved by the board. (BP&C §7389)

Requires the board establish a Health and Safety Advisory Committee to provide the board with advice and recommendations on health and safety issues before the board that impact licensees, including how to ensure licensees are aware of basic labor laws. Basic labor laws include, but are not limited to, all of the following:

- (1) Key differences between the legal rights, benefits, and obligations of an employee and an independent contractor.
  - (2) Wage and hour rights for hourly employees.
  - (3) Antidiscrimination laws relating to the use of a particular language in the workplace.
  - (4) Antiretaliation laws relating to a worker's right to file complaints with the Department of Industrial Relations.
  - (5) How to obtain more information about state and federal labor laws.
- (b) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2017. (BP&C §7314.3)

#### **This Bill:**

This bill would remove the application of makeup from the specialty branch of skin care (cosmetology/esthetics) and would eliminate the license requirement for the practice of barbering.



## **Analysis:**

It is the vision of the Board to set and enforce the highest level of health and safety standards and provide an environment where consumers will obtain barbering and cosmetology services with the confidence and security that their health and safety will be protected. This is accomplished, in part by licensing individuals who have demonstrated minimum competency within the Barbering and Cosmetology scope of practices.

Future professionals within the Barbering prevue are required to complete 1500 hours of training before sitting for the licensing examination. The instruction includes training in hairstyling, permanent waving, chemical straightening, hair color and bleaching, hair cutting and shaving.

Cosmetologist are required to spend 200 hours in the instruction and practical training in esthetics with 25 hours dedicated to makeup and eyebrow beautification. The instruction includes training in skin analysis, complete and corrective makeup, the application of false eyelashes and lash/brow tinting.

Estheticians are required to spend 20 of the 600 hours required on technical and practical training in makeup. The instruction includes skin analysis, basic and corrective application, and the application of false eyelashes.

Each license type (Cosmetology, Barber, Esthetician) is required to complete 200 hours in Health and Safety instruction. This training includes instruction on hazardous substances, how to prevent chemical injuries, health and safety laws, bacteriology and preventing communicable diseases including HIV/AIDS and Hepatitis B. It includes instruction on proper disinfection and sanitation procedures to protect the health and safety of the consumer as well as the licensee. In addition, the training includes instruction on the human anatomy and physiology.

The primary avenue used to ensure licensees are holding to a continued standard of health and safety learned within their required training is done by the issuance of citations when violations are noted by inspections held by board inspectors. As noted below, the citations issued to Barbers have doubled from 2012 to 2016. It is of some concern that if barbers and makeup application were de-licensed there may be a rapid decline in health and safety procedures substantially increasing the threat to consumers.

<b>Chart 2 - Citations Issued by Year</b>					
<b>License Type</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Barbers	654	543	1041	993	1205
Cosmetologists	3955	2738	4245	4273	4462

In an Advocacy statement from the Professional Beauty Association it was noted that "The vast majority of voters say that quality and safety would decline if states ended licensing professions like hair stylists, barbers, nail technicians and estheticians. More than four in five (82%) say safety would decline and more than three in four (76%) voters say quality would decline without licensing. (Results taken from the 2012 Penn Schoen Berland National Post Election Study)."

The chart below represents some of the consumer harm allegation categories related to barbers, cosmetologist/estheticians (who may perform makeup services).

<b>Chart 3 - Consumer Harm Allegations Received by Year</b>					
<b>Allegation Types</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
ALLERGIC REACTION	3	1	0	4	2
BRUISING	0	1	0	1	1
BURN	0	2	0	0	0
CUT	39	35	0	0	0
FACIAL ALLERGIC REACTION	3	3	4	7	3
FACIAL BURN	12	9	13	11	8
FACIAL CUT	2	0	1	2	0
FACIAL INFECTION	6	6	1	3	0
FACIAL MRSA	0	7	5	1	0
HAIR BRAIDING	0	0	0	0	1
HAIR FUNGUS (RINGWORM)	7	11	10	3	1
HAIR INFESTATION (LICE)	0	1	1	3	1
INCOMPETENCE/NEGLIGENCE	0	0	0	0	1
INFECTION	95	62	1	6	2
OVER PROCESSED	32	18	25	42	52
PERMANENT MAKE-UP	0	0	0	0	2
SCALP BURN	19	17	12	24	24
SKIN ALLERGIC REACTION	0	0	5	3	0
SKIN BURN	0	0	1	5	0
SKIN CUT	14	12	8	10	10
SKIN INFECTION	0	1	2	1	1
Total	232	186	89	126	109

The Board actively uses its resources to follow up on these consumer harm allegations by opening an enforcement case and working with the licensee to educate the licensee back into compliance. Again, the Board has had a measure of success in this avenue as it rarely becomes necessary to formally discipline (probation and/or revocation of license). Professional licensing and inspections help ensure that the health and safety of consumers is being protected by proper cleanliness and sanitation practices.

On July 1, 2017, under current law the Board is required to develop or adopt a health and safety course on hazardous substances and basic labor laws to be taught in Board approved schools. This training will replace the previously adopted "Health and Safety Curriculum for Hair Care Professionals." The previous curriculum has been expanded to include a section on Workers' Rights. The curriculum is designed to educate students on key differences between the legal rights, benefits, and obligations of an employee and an independent contractor, explain wage and hour rights for hourly employees, address antiretaliation and antidiscrimination laws relating to a worker's right to file complaints with the Department of Industrial Relations and how to obtain more information about state and federal labor laws. If de-licensing occurs the board sees a possibility that there may be an increase in the abuse of workers' rights in the barbering and makeup artistry community as this timely training will not be required of individuals or shop owners.

While the health and safety of the California consumer is the Board's primary mission, it is of some concern the impact that the de-licensing may inflict on the California economy as noted below by the Bureau of Labor Statistic, Monthly Labor Review, May 2015:

"Should de-licensing occur, wages may be expected to fall immediately with the inflow of the new workers' with lower qualification into the occupation. The net result is that the immediate losses to practitioners from de-licensing are likely to be greater that the gains from licensing. Hence, the resistance to de-licensing is likely to be greater as well."

In an Advocacy statement issued by the Professional Beauty Association it was noted that "More than nine in ten voters say they support requiring their stylist, barber, nail technician or esthetician to be licensed."

### **Fiscal Impact:**

The de-licensing of barbers and removal of the application of makeup from the specialty branch of skin care (cosmetology/esthetics) will have a significant revenue impact upon the board and upon the industry.

Currently, the board has 151 approved schools that offer a barbering program (tuition is approximately 16,000 per student). In addition, the board has 32 apprentice sponsors offering a barber apprenticeship program (tuition is approximately \$1,900 – 2,500 per apprentice). Since the board does not separate the makeup application portion from the cosmetology school requirement, the fiscal impact to the cosmetology schools is unknown. However, the programs (barbering and makeup) would be deleted from use, significantly impacting the schools, staff, students and communities.

The board currently has 28,036 barbers and 986 barber apprentices. The revenue generated by barbers per year is as follows:

Pre application (446 per year) – \$4,014.00  
Initial license fee and exam (approximately 751 per year) – \$93,875  
Re-exam (approximately 1,093 per year) – \$81,975  
Apprentice (approximately 308 per year) – \$7,700  
Reciprocity (approximately 79 per year) – \$3,950  
Licensing Renewal fees – approximately \$700,000 per year.

Approximate revenue amount of fines imposed to barbers per year: \$153,441.00  
Approximate revenue amount of fines imposed to barber apprentices per year: \$31,258.00

The board impact from removing the application of makeup from the specialty branch of skin care is currently unknown as there is no way to identify how many students will refrain from taking a cosmetology course in order to pursue the application of makeup without a license.

### **Board Position:**

On May 15, 2017, the Board took an opposed position to this bill.

### **Bill Status:**

On April 24, 2017, the bill failed to pass the Senate Business, Professions and Economic Development Committee (Ayes – 2, Noes – 6, NVR – 1) however, upon a motion, reconsideration was granted (Ayes – 9). The reconsideration allows this bill to be heard again in committee or on the Senate floor. This is a two year bill.

\*BP&C refers to the California Business and Professions Code.



# California

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### SB-247 Professions and vocations: license requirement: business: surety bond requirement. (2017-2018)

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AMENDED IN SENATE APRIL 17, 2017

AMENDED IN SENATE MARCH 20, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

## SENATE BILL

**No. 247**
**Introduced by Senator Moorlach**
**February 06, 2017**

An act to amend Sections 655.2, 2538.10, 2538.12, 2538.16, 2538.18, 2538.19, 2538.23, 2538.33, 2538.34, 2538.35, 2538.36, 2538.37, 2538.38, 2538.39, 2538.49, 2538.51, 2538.52, 2539.1, 6980, 6980.12, 6980.13, 6980.14, 6980.15, 6980.33, 6980.42, 6980.44, 6980.47, 6980.48, 6980.53, 6980.54, 6980.55, 6980.58, 6980.62, 6980.64, 6980.68, 6980.69, 6980.82, 7316, 7317, ~~and 7533~~ 7321, 7334, 7396, 7403, 7423, 7533, 7672.2, 7672.6, 19051, 19059.5, 19060.6, and 19170 of, to add Sections 460.5 and 7048.5 to, and to repeal Sections 2538.17, 2538.20, 2538.24, 2538.25, 2538.26, 2538.27, 2538.28, 2538.29, 2538.30, 2538.31, 3538.32, 2538.40, 2538.41, 2538.42, 2538.43, 2538.44, 2538.45, 2538.46, 2538.47, 2538.48, 2538.50, 2538.53, 2538.54, 2538.55, 2538.56, 2538.57, 6980.4, 6980.7, 6980.10, 6980.17, 6980.19, 6980.20, 6980.21, 6980.22, 6980.24, 6980.26, 6980.27, 6980.28, 6980.29, 6980.30, 6980.31, 6980.32, 6980.34, 6980.35, 6980.37, 6980.38, 6980.39, 6980.40, 6980.41, 6980.49, 6980.50, 6980.59, 6980.60, 6980.61, 6980.63, 6980.65, 6980.71, 6980.72, 6980.73, 6980.74, 6980.76, 6980.79, 6980.80, 6980.83, 6980.84, 7321.5, 7672, 7672.1, 7672.8, 7672.9, 7672.10, 7730.1, 7730.2, and 19052 of, the Business and Professions Code, *and to amend Sections 1812.607 and 1812.608 of*, and to repeal Section 1812.600 ~~of~~ of, the Civil Code, relating to occupations.

LEGISLATIVE COUNSEL'S DIGEST



SB 247, as amended, Moorlach. Professions and vocations: license requirement: business: surety bond requirement.

(1) Existing law, the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act, makes it unlawful for an individual to engage in the practice of fitting or selling hearing aids, or to display a sign or in any other way to advertise or hold himself or herself out as being so engaged without having first obtained a license from the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

This bill would repeal this license requirement.

(2) Existing law provides for the licensure and regulation of locksmiths and the registration of employees of locksmiths by the Bureau of Security and Investigative Services. Existing law prohibits a person from engaging within this state in the activities of a locksmith unless the person holds a valid locksmith license, is registered as an employee, or is exempt from these provisions. *Existing law requires a licensee who maintains or proposes to maintain a branch office, as defined, to apply and qualify for a branch office registration.*

This bill would repeal these license and registration requirements as well as related crimes.

(3) Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law requires licensed contractors to be classified and authorizes them to be classified as, among other things, a C-27 landscaping contractor and a D-49 tree service contractor. A landscape contractor constructs, maintains, repairs, installs, or subcontracts the development of landscape systems and facilities for public and private gardens and other areas that are designed to aesthetically, architecturally, horticulturally, or functionally improve the grounds within or surrounding a structure or a tract or plot of land. A tree service contractor prunes trees, removes trees, limbs or stumps, including grinding, and engages in tree or limb guying.

Existing law provides that the law does not apply to any work or operation on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items is less than \$500, that work or those operations being considered of casual, minor, or inconsequential nature.

This bill would additionally provide that the law does not apply to any work or operation by a C-27 landscaping contractor or D-49 tree service contractor on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items, is less than ~~\$25,000~~: \$5,000.

(4) Existing Law, the Barbering and Cosmetology Act, provides for the licensure and regulation of the practice of barbering and cosmetology by the State Board of Barbering and Cosmetology. The practice of barbering is all or any combination of shaving or trimming the beard or cutting the hair, giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances, singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics, applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck, and hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling. Within the practice of cosmetology, there is the specialty branch of skin care, which includes the application of makeup.

This bill would remove the application of makeup from the specialty branch of skin care and would also eliminate the license requirement for the practice of barbering.

(5) Existing law, the Private Investigator Act, prohibits a person from engaging in a business regulated by the act, acting or assuming to act as, or representing himself or herself to be, a licensee unless he or she is licensed under this act by the Bureau of Security and Investigative Services. Existing law requires each licensee to file with the bureau the complete address of his or her principal place of business, including the name and number of the street, or, if the street where the business is located is not numbered, the number of the post office box. The director may require the filing of other information for the purpose of identifying the principal place of business.

This bill would specify that no California office is required.

(6) Existing law, the Cemetery and Funeral Act, prohibits a person from disposing of or offering to dispose of any cremated human remains unless registered as a cremated remains disposer by the Cemetery and Funeral Bureau.

This bill would repeal this registration requirement.

(7) Existing law, the Home Furnishings and Thermal Insulation Act, requires every custom upholsterer, unless he or she holds a furniture and bedding manufacturer's license, to hold a custom upholsterer's license.

This bill would repeal this license requirement.

(8) Existing law requires every auctioneer and auction company to maintain a specified bond issued by a surety company admitted to do business in this state.

This bill would repeal that bond requirement and related provisions.

(9) Existing law prohibits a city, county, or city and county from prohibiting a person or group of persons, authorized by one of the agencies in the Department of Consumer Affairs with a license, certificate, or other means to engage in a particular business, from engaging in that business, occupation, or profession or any portion of that business, occupation, or profession. Existing law prohibits a city, county, or city and county from prohibiting a healing arts licensee from engaging in any act or performing any procedure that falls within the professionally recognized scope of practice of that licensee. However, existing law does not prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, or reasonable health and safety requirements for establishments or businesses of a licensee.

This bill, on or after January 1, 2018, would prohibit a city, county, or city and county from imposing any licensing requirement or fee on any profession or vocation if that profession or vocation is not already subject to a city, county, or city and county licensing requirement or fee on January 1, 2018, but the bill would authorize a city, county, or city and county to continue to regulate any profession or vocation that is subject to its licensing requirement or fee on January 1, 2018. The bill would declare the intention of the Legislature to occupy the whole field of the licensure and regulation of professions and vocations.

*(10) This bill would make various nonsubstantive and conforming changes in order to carry out the provisions of this bill.*

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### SECTION 1. The Legislature finds and declares as follows:

(a) Occupational licensing laws are important tools that, when used correctly, help protect public health and safety. Many current laws, however, do little to help public health or safety and result in barriers to entry that prevent people from making a living in their chosen occupation.

(b) The Little Hoover Commission and the President Obama White House both released recent reports that recognized the need for extensive reform to these anticompetitive laws.

(c) This act is consistent with recommendations to reduce barriers to entry into occupations that do not pose a significant risk to public health and safety. Thus, this act allows hard-working Californians to enter occupations without first having to comply with prohibitively expensive licensing and education requirements that serve no public good.

### SEC. 2. Section 460.5 is added to the Business and Professions Code, to read:

**460.5.** (a) Notwithstanding any other law, on or after January 1, 2018, a city, county, or city and county may not impose any licensing requirement or fee on any profession or vocation if that profession or vocation is not already subject to a city, county, or city and county licensing requirement or fee on January 1, 2018, but the city, county, or city and county may continue to regulate any profession or vocation that is subject to its licensing requirement or fee on January 1, 2018.

(b) Except as provided in subdivision (a), it is the intention of the Legislature to occupy the whole field of the licensure and regulation of professions and vocations.

### *SEC. 3. Section 655.2 of the Business and Professions Code is amended to read:*

**655.2.** (a) (1) No physician and surgeon or medical corporation licensed under Chapter 5 (commencing with Section 2000), nor any audiologist who is not a licensed dispensing audiologist or hearing aid dispenser shall employ any individual ~~licensed pursuant to~~ *described in* Article 8 (commencing with Section 2538.10) of Chapter 5.3 for the purpose of fitting or selling hearing aids.

(2) No individual ~~licensed pursuant to~~ *described in* Article 8 (commencing with Section 2538.10) of Chapter 5.3 shall employ any physician and surgeon or any audiologist who is not a licensed dispensing audiologist or a



hearing aid dispenser, or contract with a medical corporation licensed under Chapter 5 (commencing with Section 2000), for the purpose of fitting or selling hearing aids.

(b) This section shall not apply to any physician and surgeon or medical corporation that contracts with or is affiliated with a comprehensive group practice health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, as set forth in Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

**SEC. 4. Section 2538.10 of the Business and Professions Code is amended to read:**

**2538.10.** For the purposes of this article, the following definitions shall apply:

(a) "Advertise" and its variants include the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio, or television announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of fitting or selling of hearing aids.

~~(b) "License" means a hearing aid dispenser's license issued pursuant to this article and includes a temporary license.~~

~~(c) "Licensee" means a person holding a license.~~

~~(d)~~

(b) "Hearing aid" means any wearable instrument or device designed for, or offered for the purpose of, aiding or compensating for impaired human hearing.

~~(e)~~

(c) "Fund" means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.

**SEC. 5. Section 2538.12 of the Business and Professions Code is amended to read:**

**2538.12.** A ~~licensee~~ *hearing aid dispenser* may conduct hearing screenings at a health fair or similar event by the application of a binary puretone screening at a preset intensity level for the purpose of identifying the need for further hearing or medical evaluation.

Upon the conclusion of each hearing screening, the ~~licensee~~ *hearing aid dispenser* shall present to the person whose hearing was screened a written statement containing the following provisions:

"Results of a hearing screening are not a medical evaluation of your ear nor a diagnosis of a hearing disorder but are only the identification of the need for further medical or hearing evaluation."

A ~~licensee~~ *hearing aid dispenser* conducting hearing screenings pursuant to this section shall not make or seek referrals for testing, fitting, or dispensing of hearing aids.

**SEC. 6. Section 2538.16 of the Business and Professions Code is amended to read:**

**2538.16.** The board shall keep a record of all prosecutions for violations of this ~~article and of all examinations held for applicants for licenses together with the names and addresses of all persons taking examinations and of their success or failure to pass them.~~ *article.*

**SEC. 7. Section 2538.17 of the Business and Professions Code is repealed.**

~~2538.17. The board may recommend the preparation of and administration of a course of instruction concerned with the fitting and selection of hearing aids. The board may require applicants to first complete the required course of instruction or otherwise satisfy the board that the applicant possesses the necessary background and qualifications to fit or sell hearing aids. If the board promulgates regulations to implement this section to require a course of instruction concerned with fitting and selling hearing aids, the board shall obtain the advice of persons knowledgeable in the preparation and administration of a course of instruction.~~

~~The board may publish and distribute information concerning the examination requirements for obtaining a license to engage in the practice of fitting and selling hearing aids within this state.~~

**SEC. 8. Section 2538.18 of the Business and Professions Code is amended to read:**

~~2538.18. All holders of licenses to sell or fit hearing aids~~ *hearing aid dispensers* shall continue their ~~education after receiving the license~~ *education*. The board shall provide by ~~regulation, as a condition to the renewal of a license,~~ *regulation* that ~~licensees~~ *hearing aid dispensers* shall submit documentation satisfactory to the board that they have informed themselves of current practices related to the fitting of hearing aids by having pursued courses of study satisfactory to the board or by other means defined as equivalent by the board.

Continuing education courses shall be subject to monitoring to ensure compliance with the regulations adopted by the board pursuant to this section.

**SEC. 9.** *Section 2538.19 of the Business and Professions Code is amended to read:*

**2538.19.** (a) The board may prosecute any and all persons for any violation of this article.

(b) The board shall hear and decide all ~~matters, including, but not limited to, any contested case or any petition for reinstatement or modification of probation,~~ *matters* or may assign any of those matters to an administrative law judge in accordance with the Administrative Procedure Act. Except as otherwise provided in this chapter, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

~~SEC. 3.~~ **SEC. 10.** *Section 2538.20 of the Business and Professions Code is repealed.*

**SEC. 11.** *Section 2538.23 of the Business and Professions Code is amended to read:*

**2538.23.** (a) Hearing aids may be sold by catalog or direct mail provided that:

(1) The seller is ~~licensed as~~ a hearing aid dispenser in this state.

(2) There is no fitting, selection, or adaptation of the instrument and no advice is given with respect to fitting, selection, or adaptation of the instrument and no advice is given with respect to the taking of an ear impression for an earmold by the seller.

(3) The seller has received a statement which is signed by a physician and ~~surgeon, audiologist, surgeon licensed by the State of California, audiologist licensed by the State of California,~~ *surgeon licensed by the State of California, audiologist licensed by the State of California,* or a hearing aid dispenser, ~~licensed by the State of California~~ which verifies that Section 2538.36 ~~and subdivision (b) of Section 2538.49~~ *have* has been complied with.

(b) A copy of the statement referred to in paragraph (3) of subdivision (a) shall be retained by the seller for the period provided for in Section 2538.38.

(c) A ~~licensed~~ hearing aid dispenser who sells a hearing aid under this section shall not be required to comply with subdivision (b) of Section 2538.49.

**SEC. 12.** *Section 2538.24 of the Business and Professions Code is repealed.*

~~2538.24. Each person desiring to obtain a license to engage in the practice of fitting or selling hearing aids shall make application to the board. The application shall be made upon a form and shall be made in the manner as is provided by the board and shall be accompanied by the fee provided for in Section 2538.57.~~

**SEC. 13.** *Section 2538.25 of the Business and Professions Code is repealed.*

~~2538.25. (a) The board shall prepare, approve, grade, and conduct examinations of applicants for a hearing aid dispenser's license. The board may provide that the preparation and grading of the examination be conducted by a competent person or organization other than the board, provided, however, that the board shall establish the guidelines for the examination and shall approve the actual examination.~~

~~(b) Each applicant shall take and pass a written examination and a practical examination compiled at the direction of the board covering the critical tasks involved in the practice of fitting and selling hearing aids and the knowledge, skills, and abilities needed to perform those tasks safely and competently.~~

**SEC. 14.** *Section 2538.26 of the Business and Professions Code is repealed.*

~~2538.26. The board shall issue a license to all applicants who have satisfied this chapter, who are at least 18 years of age, who possess a high school diploma or its equivalent, who have not committed acts or crimes constituting grounds for denial of licensure under Section 480, and who have paid the fees provided for in Section 2538.57. No license shall be issued to any person other than an individual.~~

**SEC. 15. Section 2538.27 of the Business and Professions Code is repealed.**

~~2538.27.(a)An applicant who has fulfilled the requirements of Section 2538.24 and has made application therefor, may have a temporary license issued to him or her upon satisfactory proof to the board that the applicant holds a hearing aid dispenser's license in another state, that the licensee has not been subject to formal disciplinary action by another licensing authority, and that the applicant has been engaged in the fitting and sale of hearing aids for the two years immediately prior to application.~~

~~(b)A temporary license issued pursuant to this section shall be valid for one year from date of issuance and is not renewable. A temporary license shall automatically terminate upon issuance of a license prior to expiration of the one-year period.~~

~~(c)The holder of a temporary license issued pursuant to this section who fails either license examination shall be subject to and shall comply with the supervision requirements of Section 2538.28 and any regulations adopted pursuant thereto.~~

**SEC. 16. Section 2538.28 of the Business and Professions Code is repealed.**

~~2538.28.(a)An applicant who has fulfilled the requirements of Section 2538.24, and has made application therefor, and who proves to the satisfaction of the board that he or she will be supervised and trained by a hearing aid dispenser who is approved by the board may have a temporary license issued to him or her. The temporary license shall entitle the temporary licensee to fit or sell hearing aids as set forth in regulations of the board. The supervising dispenser shall be responsible for any acts or omissions committed by a temporary licensee under his or her supervision that may constitute a violation of this chapter.~~

~~(b)The board shall adopt regulations setting forth criteria for its refusal to approve a hearing aid dispenser to supervise a temporary licensee, including procedures to appeal that decision.~~

~~(c)A temporary license issued pursuant to this section is effective and valid for six months from date of issue. The board may renew the temporary license for an additional period of six months. Except as provided in subdivision (d), the board shall not issue more than two renewals of a temporary license to any applicant. Notwithstanding subdivision (d), if a temporary licensee who is entitled to renew a temporary license does not renew the temporary license and applies for a new temporary license at a later time, the new temporary license shall only be issued and renewed subject to the limitations set forth in this subdivision.~~

~~(d)A new temporary license may be issued pursuant to this section if a temporary license issued pursuant to subdivision (c) has lapsed for a minimum of three years from the expiration or cancellation date of the previous temporary license. The bureau may issue only one new temporary license under this subdivision.~~

**SEC. 17. Section 2538.29 of the Business and Professions Code is repealed.**

~~2538.29.A temporary licensee under Section 2538.28 shall take the license examination within the first 10 months after the temporary license is issued. Failure to take the license examination within that time shall result in expiration of the temporary license, and it shall not be renewed unless the temporary licensee has first taken the licensure examination. The board, however, may in its discretion renew the temporary license if the licensee failed to take the necessary examination due to illness or other hardship.~~

**SEC. 18. Section 2538.30 of the Business and Professions Code is repealed.**

~~2538.30.(a)A temporary licensee shall not be the sole proprietor of, manage, or independently operate a business which engages in the fitting or sale of hearing aids.~~

~~(b)A temporary licensee shall not advertise or otherwise represent that he or she holds a license as a hearing aid dispenser.~~

**SEC. 19. Section 2538.31 of the Business and Professions Code is repealed.**

~~2538.31.Practical examinations shall be held by the board at least twice a year. The time and place of any practical examination shall be fixed by the board at least 45 days prior to the date it is to be held.~~

**SEC. 20. Section 2538.32 of the Business and Professions Code is repealed.**

~~2538.32.Every applicant who obtains a passing score determined by the Angoff criterion referenced method of establishing the point in each examination shall be deemed to have passed that examination. An applicant shall pass the written examination before he or she may take the practical examination. An applicant shall obtain a passing score on both the written and the practical examination in order to be issued a license.~~



**SEC. 21.** *Section 2538.33 of the Business and Professions Code is amended to read:*

**2538.33.** (a) Before engaging in the practice of fitting or selling hearing aids, each ~~licensee~~ *hearing aid dispenser* shall notify the board in writing of the address or addresses where he or she is to engage, or intends to engage, in the practice of fitting or selling hearing aids, and of any changes in his or her place of business within 30 days of engaging in that practice.

(b) If a street address is not the address at which the ~~licensee~~ *hearing aid dispenser* receives mail, the ~~licensee~~ *hearing aid dispenser* shall also notify the board in writing of the mailing address for each location where the ~~licensee~~ *hearing aid dispenser* is to engage, or intends to engage, in the practice of fitting or selling hearing aids, and of any change in the mailing address of his or her place or places of business.

**SEC. 22.** *Section 2538.34 of the Business and Professions Code is amended to read:*

**2538.34.** (a) Every ~~licensee~~ *hearing aid dispenser* who engages in the practice of fitting or selling hearing aids shall have and maintain an established retail business address to engage in that fitting or selling, routinely open for service to customers or clients. The address of the ~~licensee's~~ *hearing aid dispenser's* place of business shall be registered with the ~~bureau~~ *board* as provided in Section 2538.33.

(b) Except as provided in subdivision (c), if a ~~licensee~~ *hearing aid dispenser* maintains more than one place of business within this state, he or she shall apply for and procure a duplicate license for each branch office maintained. The application shall state the name of the person and the location of the place or places of business for which the duplicate license is desired.

(c) A hearing aid dispenser ~~may, without obtaining a duplicate license for a branch office, may~~ engage on a temporary basis in the practice of fitting or selling hearing aids at the primary or branch location of another ~~licensee's~~ *hearing aid dispenser's* business or at a location or facility that he or she may use on a temporary basis, provided that the hearing aid dispenser notifies the board in advance in writing of the dates and addresses of those businesses, locations, or facilities at which he or she will engage in the practice of fitting or selling hearing aids.

**SEC. 23.** *Section 2538.35 of the Business and Professions Code is amended to read:*

**2538.35.** A ~~licensee~~ *hearing aid dispenser* shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt, signed by or on behalf of the ~~licensee, hearing aid dispenser,~~ containing all of the following:

(a) The date of consummation of the sale.

(b) Specifications as to the make, serial number, and model number of the hearing aid or aids sold.

(c) The address of the principal place of business of the ~~licensee, hearing aid dispenser,~~ and the address and office hours at which ~~the licensee~~ *hearing aid dispenser* shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.

(d) A statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact.

~~(e) The number of the licensee's license and the name and license number of any other hearing aid dispenser or temporary licensee who provided any recommendation or consultation regarding the purchase of the hearing aid.~~

~~(f)~~

(e) The terms of any guarantee or written warranty, required by Section 1793.02 of the Civil Code, made to the purchaser with respect to the hearing aid or hearing aids.

**SEC. 24.** *Section 2538.36 of the Business and Professions Code is amended to read:*

**2538.36.** (a) Whenever any of the following conditions are found to exist either from observations by the ~~licensee~~ *hearing aid dispenser* or on the basis of information furnished by the prospective hearing aid user, a ~~licensee~~ *hearing aid dispenser* shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual in writing that his or her best interests would be served if he or she would consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to a duly licensed physician:

- (1) Visible congenital or traumatic deformity of the ear.
- (2) History of, or active drainage from the ear within the previous 90 days.
- (3) History of sudden or rapidly progressive hearing loss within the previous 90 days.
- (4) Acute or chronic dizziness.
- (5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- (6) Significant air-bone gap (when generally acceptable standards have been established).
- (7) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.
- (8) Pain or discomfort in the ear.

(b) No referral for medical opinion need be made by any ~~licensee~~ *hearing aid dispenser* in the instance of replacement only of a hearing aid that has been lost or damaged beyond repair within one year of the date of purchase. A copy of the written recommendation shall be retained by the ~~licensee~~ *hearing aid dispenser* for the period provided for in Section 2538.38. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the ~~licensee~~ *hearing aid dispenser* for the period provided for in Section 2538.38. Nothing in this section required to be performed by a ~~licensee~~ *hearing aid dispenser* shall mean that the ~~licensee~~ *hearing aid dispenser* is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of this code.

**SEC. 25. Section 2538.37 of the Business and Professions Code is amended to read:**

**2538.37.** No hearing aid shall be sold by ~~an individual licensed under this chapter,~~ *a hearing aid dispenser*, to a person 16 years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by both a board-certified, or a board-eligible physician specializing in otolaryngology, and by a state licensed audiologist. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

**SEC. 26. Section 2538.38 of the Business and Professions Code is amended to read:**

**2538.38.** A ~~licensee~~ *hearing aid dispenser* shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his or her office or place of business at all times and each record shall be kept and maintained for a seven-year period. All records related to the sale and fitting of hearing aids shall be open to inspection by the bureau or its authorized representatives upon reasonable notice. The records kept shall include:

- (a) Results of test techniques as they pertain to fitting of the hearing aid.
- (b) A copy of the written receipt required by Section 2538.35 and the written recommendation and receipt required by Section 2538.36 when applicable.
- (c) Records of maintenance or calibration of equipment used in the practice of fitting or selling hearing aids.

**SEC. 27. Section 2538.39 of the Business and Professions Code is amended to read:**

**2538.39.** A hearing aid dispenser who is the owner, manager, or franchisee at a location where hearing aids are fit or sold, shall be responsible for the adequacy of the fitting or selling of any hearing aid fit and sold by any ~~licensee or licensees~~ *hearing aid dispenser* at that location.

**SEC. 28. Section 2538.40 of the Business and Professions Code is repealed.**

~~2538.40. Upon denial of an application for license, the board shall notify the applicant in writing, stating (1) the reason for the denial and (2) that the applicant has a right to a hearing under Section 2533.2 if he or she makes written request therefor within 60 days after notice of denial. Service of the notice required by this section may be made by certified mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise.~~

**SEC. 29. Section 2538.41 of the Business and Professions Code is repealed.**

~~2538.41. Before setting aside the revocation or suspension of any license or modifying the probation of any licensee, the board may require the petitioner to pass the regular examination given for applicants for licenses.~~

**SEC. 30. Section 2538.42 of the Business and Professions Code is repealed.**

~~2538.42. Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.~~

**SEC. 31. Section 2538.43 of the Business and Professions Code is repealed.**

~~2538.43. It is unlawful to sell or barter, or offer to sell or barter, any license issued by the board.~~

**SEC. 32. Section 2538.44 of the Business and Professions Code is repealed.**

~~2538.44. It is unlawful to purchase or procure by barter any license issued by the board with intent to use the same as evidence of the holder's qualification to practice the fitting or selling of hearing aids.~~

**SEC. 33. Section 2538.45 of the Business and Professions Code is repealed.**

~~2538.45. It is unlawful to alter with fraudulent intent in any material regard a license issued by the board.~~

**SEC. 34. Section 2538.46 of the Business and Professions Code is repealed.**

~~2538.46. It is unlawful to use or attempt to use any license issued by the board that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid license.~~

**SEC. 35. Section 2538.47 of the Business and Professions Code is repealed.**

~~2538.47. It is unlawful to willfully make any false statement in a material regard in an application for an examination before the board for a license.~~

**SEC. 36. Section 2538.48 of the Business and Professions Code is repealed.**

~~2538.48. It is unlawful to engage in the practice of fitting or selling hearing aids in this state without having at the time of so doing a valid, unrevoked, and unexpired license or temporary license.~~

**SEC. 37. Section 2538.49 of the Business and Professions Code is amended to read:**

2538.49. It is unlawful for a ~~licensed~~ hearing aid dispenser to fit or sell a hearing aid unless he or she first does all of the following:

- (a) Complies with all provisions of state laws and regulations relating to the fitting or selling of hearing aids.
- (b) Conducts a direct observation of the purchaser's ear canals.
- (c) Informs the purchaser of the address and office hours at which the ~~licensee~~ *hearing aid dispenser* shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.

**SEC. 38. Section 2538.50 of the Business and Professions Code is repealed.**

~~2538.50. It is unlawful to advertise by displaying a sign or otherwise or hold himself or herself out to be a person engaged in the practice of fitting or selling hearing aids without having at the time of so doing a valid, unrevoked license or temporary license.~~

**SEC. 39. Section 2538.51 of the Business and Professions Code is amended to read:**

2538.51. It is unlawful to engage in the practice of fitting or selling hearing aids without the ~~licensee~~ *hearing aid dispenser* having and maintaining an established business address, routinely open for service to his or her clients.

**SEC. 40. Section 2538.52 of the Business and Professions Code is amended to read:**

2538.52. When tests are conducted by ~~persons licensed~~ *hearing aid dispensers* under this article in connection with the fitting and selling of hearing aids, the provisions of this article shall apply.

**SEC. 41. Section 2538.53 of the Business and Professions Code is repealed.**



~~2538.53.(a) A license issued under this article expires at midnight on its assigned renewal date.~~

~~(b) To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.~~

~~(c) Temporary license holders shall renew their licenses in accordance with Section 2538.27, and apply for that renewal on a form provided by the board, accompanied by the prescribed renewal fee for temporary licenses.~~

~~(d) Each duplicate license issued for a branch office shall expire on the same date as the permanent license of the hearing aid dispenser to whom the duplicate license was issued. These duplicate licenses shall be renewed according to subdivision (b).~~

**SEC. 42. Section 2538.54 of the Business and Professions Code is repealed.**

~~2538.54. Except as otherwise provided in this article, an expired license may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 2538.53 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.~~

**SEC. 43. Section 2538.55 of the Business and Professions Code is repealed.**

~~2538.55. A license which has been suspended is subject to expiration and shall be renewed as provided in this article but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the fitting or selling of hearing aids, or in any other activity or conduct in violation of the order or judgment by which the license was suspended. A license which has been revoked is subject to expiration, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.~~

**SEC. 44. Section 2538.56 of the Business and Professions Code is repealed.**

~~2538.56. A license that is not renewed within three years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, but the holder of the expired license may apply for and obtain a new license if all of the following apply:~~

~~(a) He or she has not committed acts or crimes constituting grounds for denial of licensure under Section 480;~~

~~(b) He or she pays all the fees that would be required of him or her if he or she were then applying for a license for the first time;~~

~~(c) He or she takes and passes the examination that would be required of him or her if he or she were then applying for a license for the first time, or otherwise establishes to the satisfaction of the board that he or she is qualified to engage in the practice of fitting or selling hearing aids. The board may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a license is issued without an examination under this section.~~

**SEC. 45. Section 2538.57 of the Business and Professions Code is repealed.**

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

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

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

~~(c) The initial temporary license fee is one hundred dollars (\$100). The fee for renewal of a temporary license is one hundred dollars (\$100) for each renewal.~~

~~(d) The initial permanent license fee is two hundred eighty dollars (\$280). The fee for renewal of a permanent license is not more than two hundred eighty dollars (\$280) for each renewal.~~

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

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

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

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

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

**SEC. 46. Section 2539.1 of the Business and Professions Code is amended to read:**

2539.1. (a) (1) On and after January 1, 2010, in addition to satisfying the licensure and examination requirements described in Sections 2532 and 2532.2, no licensed audiologist shall sell hearing aids unless he or she completes an application for a dispensing audiology license, pays all applicable fees, and passes an examination, approved by the board, relating to selling hearing aids.

(2) The board shall issue a dispensing audiology license to a licensed audiologist who meets the requirements of paragraph (1).

~~(b) (1) On and after January 1, 2010, a licensed audiologist with an unexpired license to sell hearing aids pursuant to Article 8 (commencing with Section 2538.10) may continue to sell hearing aids pursuant to that license until that license expires pursuant to Section 2538.53, and upon that expiration the licensee shall be deemed to have satisfied the requirements described in subdivision (a) and may continue to sell hearing aids pursuant to his or her audiology license subject to the provisions of this chapter. Upon the expiration of the audiologist's license to sell hearing aids, the board shall issue him or her a dispensing audiology license pursuant to paragraph (2) of subdivision (a). This paragraph shall not prevent an audiologist who also has a hearing aid dispenser's license from maintaining dual or separate licenses if he or she chooses to do so.~~

~~(2) A licensed audiologist whose license to sell hearing aids, issued pursuant to Article 8 (commencing with Section 2538.10), is suspended, surrendered, or revoked shall not be authorized to sell hearing aids pursuant to this subdivision and he or she shall be subject to the requirements described in subdivision (a) as well as the other provisions of this chapter.~~

~~(c)~~

~~(b)~~ A licensed hearing aid dispenser who meets the qualifications for licensure as an audiologist shall be deemed to have satisfied the requirements of paragraph (1) of subdivision (a) for the purposes of obtaining a dispensing audiology license.

~~(d)~~

~~(c)~~ For purposes of subdivision (a), the board shall provide the hearing aid dispenser's examination provided by the former Hearing Aid Dispensers Bureau until such time as the next examination validation and occupational analysis is completed by the Department of Consumer Affairs pursuant to Section 139 and a determination is made that a different examination is to be administered.

**SEC. 47. Section 6980 of the Business and Professions Code is amended to read:**

6980. The following terms as used in this chapter have the meaning expressed in this article:

~~(a) "Branch office" means any additional physical location, other than the principal place of business of a licensee, where any locksmith service is provided. Branch office includes the California office of any out-of-state business conducting, directing, dispatching, or managing a locksmith business, service, or service providers in California. A telephone answering service or a telephone call-forwarding device, for routing calls within the immediate geographic area, shall not be deemed to be a branch office.~~

~~(b)~~

~~(a)~~ "Bureau" means the Bureau of Security and Investigative Services.

~~(c)~~

~~(b)~~ "Chief" means the Chief of the Bureau of Security and Investigative Services.

~~(d)~~

(c) "Department" means the Department of Consumer Affairs.

~~(e)~~

(d) "Director" means the Director of the Department of Consumer Affairs.

~~(f)~~

(e) "Employer" means a person who employs an individual for wages or salary, lists the individual on the employer's payroll records, and withholds all legally required deductions and contributions.

~~(g)~~

(f) "Employee" means an individual who works for an employer, is listed on the employer's payroll records, and is under the employer's direction and control. An independent contractor is not an employee pursuant to this chapter.

~~(h)~~

(g) "Employer-employee relationship" means an individual who works for another and where the individual's name appears on the payroll records of the employer.

~~(i) "Licensee" means a business entity, whether an individual, partnership, or corporation, licensed under this chapter.~~

~~(j)~~

(h) "Locksmith" means any person who, for any consideration or compensation whatsoever, engages, directly or indirectly and as a primary or secondary object, in the business of rekeying, installing, repairing, opening, modifying locks, or who originates keys for locks, including, but not limited to, electronic cloning of transponder keys and any other electronic programming of automotive keys and electronic operating devices, such as key fobs, door and ignition key devices, and successive electronic and other high-security key technology. *A locksmith may be a business entity, whether an individual, partnership, or corporation.* A "locksmith" does not mean a person whose activities are limited to making a duplicate key from an existing key.

~~(k)~~

(i) "Person" means any individual, firm, company, association, organization, partnership, or corporation.

~~(j) "Registrant" means an employee registered pursuant to the provisions of this chapter.~~

~~(m)~~

(j) "Lock" means any mechanical, electromechanical, electronic, or electromagnetic device, or similar device, including any peripheral hardware, that is designed to control access from one area to another, or that is designed to control the use of a device, including, but not limited to, a safe, vault, or safe deposit box.

~~(n)~~

(k) "Recombination" means changing the combination of any combination-actuated lock.

~~(o)~~

(l) "Master key system" means any system in which a lock is rekeyed so that the lock can be operated by its own individual key and can also be operated by a key that can operate other locks if the other locks cannot be operated with the lock's individual key.

~~(p)~~

(m) "Key duplication machine" means any tool whose only capability is to manufacture a new key by using an existing key as a guide, which includes, but is not limited to, any of the following:

(1) Standard key duplication machines that are limited to duplication of a metallic key from an existing metallic key, standard single- or double-sided key, including a plastic "credit card" emergency key.

(2) High-security key machines that include the duplication of restricted keys, such as sidewinders and laser cut styles of machines.

(3) Transponder cloning and reprogramming machines that transfer electronic codes and signals and successive technology to keys, fobs, and door and ignition operating devices.

~~(g)~~

(n) "Key blank" means a key that has not been altered or cut and does not include depth keys.

~~(r)~~

(o) "Pin kit" means a container that holds only the following lock parts and materials:

(1) Bottom pins.

(2) Top pins (not including master pins).

(3) Springs.

(4) Plug follower.

(5) Proprietary tools, provided by a lock manufacturer, designed for the purpose of rekeying a lock.

~~(s)~~

(p) "Locksmith tool" means (1) any tool designed for the purpose of opening, bypassing, altering, rekeying, servicing, or repairing any lock, or (2) any burglar tool, as described in Section 466 of the Penal Code.

~~(t)~~

(q) "Motor service vehicle" means any vehicle, as defined in Section 6161 of the Vehicle Code, or other mode of transportation, that is used in the business of rekeying, installing, repairing, opening, or modifying locks, or originating keys for locks.

**SEC. 48. Section 6980.4 of the Business and Professions Code is repealed.**

~~6980.4. The chief shall gather evidence of violations of this chapter and of any rule or regulation established under this chapter by unlicensed persons who engage in a business for which a license is required under this chapter, and shall furnish the evidence to prosecuting officers of any county, city, or city and county for the purpose of prosecuting those violations.~~

**SEC. 49. Section 6980.7 of the Business and Professions Code is repealed.**

~~6980.7. (a) The director may adopt and enforce rules and regulations as may be reasonable and necessary for issuing licenses to applicants, for the conduct of the licensees, or for the general enforcement of this chapter in the protection of the public.~~

~~(b) These rules and regulations shall be adopted in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

**~~SEC. 4.~~ SEC. 50. Section 6980.10 of the Business and Professions Code is repealed.**

**SEC. 51. Section 6980.12 of the Business and Professions Code is amended to read:**

**6980.12.** This chapter does not apply to the following persons:

(a) A person, or his or her agent or employee, who is the manufacturer of a product, other than locks and keys, and who installs, repairs, opens, or modifies locks or who makes keys for the locks of that product as a normal incident to its marketing.

(b) An employee who is an industrial or institutional locksmith, provided that the employee provides locksmith services only to a single employer that does not provide locksmith services for hire to the public for any consideration or compensation whatsoever.

(c) A tow truck driver who does not originate keys for locks and whose locksmith services are limited to opening motor vehicles.



(d) A person employed exclusively and regularly by a state correctional institution, or other state or federal agency, and who does not provide locksmith services for hire to the public for any consideration or compensation whatsoever.

(e) (1) A person registered with the bureau pursuant to Chapter 11 (commencing with Section 7500) if the duties of that person's position that constitute locksmithing are ancillary to the primary duties and functions of that person's position.

(2) A person licensed, certified, or registered pursuant to Chapter 11.6 (commencing with Section 7590) if the duties of that person's position that constitute locksmithing are performed in combination with the installation, maintenance, moving, repairing, replacing, servicing, or reconfiguration of an alarm system, as defined in subdivision (n) of Section 7590.1, and limited to work on electronic locks or access control devices that are controlled by an alarm system control device, including the removal of existing hardware.

(f) An agent or employee of a retail establishment that has a primary business other than providing locksmith services, providing all of the following criteria are met:

(1) The services provided by the retail establishment are limited to rekeying and recombination of locks.

(2) All rekeying, recombination, and installation of locks must take place on the premises of the retail establishment.

(3) All rekeying, recombination, and installation services provided by the retail establishment subject to this chapter are limited to locks purchased on the retail establishment's premises and are conducted prior to purchasers taking possession of the locks.

(4) An ~~unlicensed~~ agent or employee of the retail establishment shall not advertise or represent himself or herself to be ~~licensed~~ a locksmith under this chapter, and an agent or employee of the retail establishment shall not advertise or represent himself or herself to be a locksmith.

(5) An agent or employee of the retail establishment shall not design or implement a master key system, as defined in subdivision ~~(e)~~ (l) of Section 6980.

(6) An agent or employee of the retail establishment shall not rekey, change the combination of, alter, or install any automotive locks.

(7) The retail establishment shall not have on its premises any locksmith tool, as defined in subdivision ~~(s)~~ (p) of Section 6980, other than the following:

(A) Standard key duplication machines.

(B) Key blanks.

(C) Pin kits.

(g) A law enforcement officer employed by any city, county, city and county, state, or federal law enforcement agency, if all services are performed during the course of the officer's professional duties.

(h) A firefighter or emergency medical person employed by any city, county, city and county, district, or state agency, if all services are performed during the course of duties as a firefighter or emergency medical person.

(i) A new motor vehicle dealer, as defined in Section 426 of the Vehicle Code, and an employee of a new motor vehicle dealer acting within the scope of employment at a dealership.

**SEC. 52. Section 6980.13 of the Business and Professions Code is amended to read:**

**6980.13.** (a) Any person who violates any provision of this chapter, or who conspires with another person to violate any provision of this chapter, or who knowingly engages a nonexempt ~~or unlicensed~~ locksmith after being notified in writing by the bureau of the individual's ~~unlicensed~~ status with the bureau, is guilty of a misdemeanor, punishable by a fine of ten thousand dollars (\$10,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment, except as otherwise provided in this chapter.

(b) A proceeding to impose the fine specified in subdivision (a) may be brought in any court of competent jurisdiction in the name of the people of the State of California by the Attorney General or by any district attorney or city attorney, or with the consent of the district attorney, the city prosecutor in any city or city and county having a full-time city prosecutor for the jurisdiction in which the violation occurred. If the action is brought by the district attorney, the penalty collected shall be paid to the treasurer of the county in which the

judgment is entered. If the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered. If the action is brought by the Attorney General, all of the penalty collected shall be deposited in the Private Security Services Fund.

(c) Any person who is convicted of a violation of this section ~~or Section 6980.10~~ shall not be ~~issued a license a~~ *locksmith* for a period of one year following a first ~~conviction and shall not be issued a license for a period of five years following a second or subsequent conviction of this section or Section 6980.10 or any combination of these sections.~~ *conviction*.

(d) It is the intent of the Legislature that the prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within his or her jurisdiction.

**SEC. 53.** *Section 6980.14 of the Business and Professions Code is amended to read:*

6980.14. (a) The superior court in and for the county where any person has engaged or is about to engage in any act that constitutes a violation of this ~~chapter, or where any person engages in the business of a locksmith after the revocation or expiration of any license or during the period of suspension of any license,~~ *chapter*, may, upon application of the chief or any ~~person licensed~~ *locksmith* under these provisions or any association representing those ~~licensees~~ *locksmiths* or any member of the general public, issue an injunction or other appropriate order restraining this conduct and may impose civil fines not exceeding ten thousand dollars (\$10,000). The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that there shall be no requirement to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable injury.

(b) During the period of revocation, expiration, or suspension, any business telephone number used to conduct, direct, operate, dispatch, manage, or utilize an ~~illegal, nonexempt, or unlicensed~~ *illegal or nonexempt* locksmith business, locksmith service, service provider, or related activity, may be disconnected by ruling of the chief.

(c) The superior court for the county in which any person has engaged in any act that constitutes a violation of this chapter may, upon a petition filed by the chief with the approval of the director, order this person to make restitution to persons injured as a result of the violation.

(d) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a), or subject to an order requiring restitution pursuant to subdivision (c), to reimburse the bureau for expenses incurred by the bureau in its investigation related to its petition.

(e) A proceeding to impose the fine specified in subdivision (a) and enjoin the ~~unlicensed~~ operation may be brought in any court of competent jurisdiction in the name of the people of the State of California by the Attorney General or by any district attorney or city attorney, or with the consent of the district attorney, the city prosecutor in any city or city and county having a full-time city prosecutor for the jurisdiction in which the violation occurred. If the action is brought by the district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered. If the action is brought by the Attorney General, all of the penalty collected shall be deposited in the Private Security Services Fund.

(f) The remedy provided for by this section shall be in addition to any other remedy provided for in this chapter.

**SEC. 54.** *Section 6980.15 of the Business and Professions Code is amended to read:*

6980.15. No person engaged in performing any *locksmith* service ~~requiring a license under this chapter~~ may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or agreement, without alleging and proving, that the person was ~~duly licensed a~~ *locksmith* at all times during the performance of the act or agreement.

**SEC. 55.** *Section 6980.17 of the Business and Professions Code is repealed.*

~~6980.17. (a) An application for a locksmith license shall be made in writing to, and filed with, the chief in the form as may be required by the director, and shall be accompanied by the application fee prescribed by this chapter. The chief may require the submission of any other relevant information, evidence, statements, or documents.~~



~~(b) Every application for a locksmith license shall state, among other things that may be required, the name of the applicant, the name under which the applicant will do business, and the location by street, number, and city of the office of the business for which the license is sought.~~

~~(c) No license shall be issued in any fictitious name that may be confused with, or that is similar to, any federal, state, county, or municipal governmental function or agency, or to any law enforcement agency, or in any name that may tend to describe any business function or enterprise not actually engaged in by the applicant.~~

~~(d) No license shall be issued in any fictitious name that is misleading or would constitute false advertising.~~

**SEC. 56. Section 6980.19 of the Business and Professions Code is repealed.**

~~6980.19. If the applicant for a license is an individual, the application shall state the full name of the individual, the full residence address of the applicant, and that the applicant is to be personally and actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by the applicant, under penalty of perjury.~~

**SEC. 57. Section 6980.20 of the Business and Professions Code is repealed.**

~~6980.20. If the applicant for a license is a partnership, the application shall state the true names and addresses of all the general partners and the name of the partner to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed under penalty of perjury by all of the general partners.~~

**SEC. 58. Section 6980.21 of the Business and Professions Code is repealed.**

~~6980.21. (a) If the applicant for a license is a corporation, the application shall state the true names and complete residence addresses of the chief executive officer, secretary, chief financial officer, and any other corporate officer who will be active in the business to be licensed. The corporation identification number issued by the Secretary of State shall be indicated on the application. The application shall also state the name and address of a designated person to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by a duly authorized officer of the applicant under penalty of perjury.~~

~~(b) Except as herein otherwise provided, no individual shall be placed in active charge of the business if the individual has ever had a license revoked for cause or has ever been disqualified from further employment in the locksmith business pursuant to this chapter.~~

**SEC. 59. Section 6980.22 of the Business and Professions Code is repealed.**

~~6980.22. No new or original license shall be issued to any applicant pending final disposition of any disciplinary action previously filed against the person or applicant or partner, or officer of the applicant, or pending final disposition of any disciplinary action related to the locksmith business previously filed in another state against the person or applicant or partner, or officer of the applicant.~~

**SEC. 60. Section 6980.24 of the Business and Professions Code is repealed.**

~~6980.24. The director shall issue a license, the form and content of which ~~shall be as follows:~~ In accordance with Section 164. In addition, the director shall issue a "Certificate of Licensure" to any licensee, upon request, with the fee prescribed in this chapter. A "Certificate of Licensure" shall include an embossed seal of the State of California and the signature of the chief or his or her designated representative.~~

**SEC. 61. Section 6980.26 of the Business and Professions Code is repealed.**

~~6980.26. (a) Each locksmith license, together with the current renewal certificate, if any, shall at all times be conspicuously displayed at the place of business, each branch office, and in each mobile service vehicle for which the license is issued.~~

~~(b) The director may assess a fine of two hundred fifty dollars (\$250) per violation of subdivision (a). These fines shall be deposited in the Private Security Services Fund.~~

**SEC. 62. Section 6980.27 of the Business and Professions Code is repealed.**

~~6980.27. Every locksmith license shall expire at 12 midnight of the last day of the month two years following the date of issuance unless renewed; provided however, that the bureau may establish procedures, pursuant to Sections 152.5 and 152.6, for the administration of a staggered license renewal program. To renew an unexpired license or registration, the licensee shall apply for renewal on a form prescribed by the director, pay~~

~~any and all fines assessed by the chief or the director which are not pending appeal, and pay the renewal fee prescribed by this chapter. On renewal, such evidence of renewal of the license or registration as the director may prescribe shall be issued to the licensee. The bureau shall send to each licensee a notice of renewal at least 45 calendar days prior to the expiration of each unexpired license.~~

**SEC. 63. Section 6980.28 of the Business and Professions Code is repealed.**

~~6980.28. A locksmith license not renewed within three years following its expiration may not be renewed thereafter. Renewal of the license within three years, or issuance of an original license thereafter, shall be subject to payment of any and all fines assessed by the chief or the director which are not pending appeal and all other applicable fees.~~

**SEC. 64. Section 6980.29 of the Business and Professions Code is repealed.**

~~6980.29. A suspended locksmith license is subject to expiration and shall be renewed as provided in this article, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended. The bureau shall not issue a license renewal certificate on a suspended license until the period of suspension has terminated.~~

**SEC. 65. Section 6980.30 of the Business and Professions Code is repealed.**

~~6980.30. A locksmith whose license has been canceled pursuant to this article, may obtain a new license only upon compliance with all of the provisions of this chapter relating to the issuance of an initial license.~~

**SEC. 66. Section 6980.31 of the Business and Professions Code is repealed.**

~~6980.31. No license issued pursuant to this chapter shall be transferred to another person.~~

**SEC. 67. Section 6980.32 of the Business and Professions Code is repealed.**

~~6980.32. Every licensee shall notify the bureau, in writing, within 30 days, of any change of residence or business address.~~

**SEC. 68. Section 6980.33 of the Business and Professions Code is amended to read:**

**6980.33.** A licensee, *locksmith*, or a partner or officer of a licensee, *locksmith*, shall carry a valid pocket identification card, issued by the bureau pursuant to Section 6980.23, and either a valid driver's license issued pursuant to Section 12811 of the Vehicle Code or a valid identification card issued pursuant to Section 13000 of the Vehicle Code, at all times the licensee, *locksmith*, or partner or officer, is engaged in the work of a locksmith, as defined in this chapter, whether on or off the premises of the licensee's *locksmith's* place of business. Every person, while engaged in any *locksmith* activity ~~for which licensure is required~~, shall display his or her valid pocket card, and driver's license or identification card, as provided by regulation.

**SEC. 69. Section 6980.34 of the Business and Professions Code is repealed.**

~~6980.34. (a) Every application for a locksmith license in which the person applying desires to have the license issued under a fictitious business name shall include a certified copy of the fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.~~

~~(b) A licensee desiring to operate a locksmith business under one or more fictitious business names shall apply and qualify for an initial license for each fictitious business name.~~

~~(c) No licensee shall indicate, or cause to be indicated, in any printed matter, or in any directory or listing, that he or she conducts a locksmith business under any name, other than the name for which he or she is licensed.~~

~~(d) An application for a license for an additional fictitious business name shall be in the same form, and the applicant shall meet the same requirements, as for an initial license.~~

**SEC. 70. Section 6980.35 of the Business and Professions Code is repealed.**

~~6980.35. A locksmith desiring to operate a locksmith business at a location other than the principal place of business shall apply for a branch office registration for each additional location as set forth in this chapter.~~

**SEC. 71. Section 6980.37 of the Business and Professions Code is repealed.**

~~6980.37. A locksmith who maintains or proposes to maintain a branch office as defined in this article, shall apply and qualify for a branch office registration.~~

**SEC. 72.** *Section 6980.38 of the Business and Professions Code is repealed.*

~~6980.38. An application for a branch office registration under this article shall be on a form prescribed by the director and shall be accompanied by the fee as set forth in this chapter.~~

**SEC. 73.** *Section 6980.39 of the Business and Professions Code is repealed.*

~~6980.39. An application for a branch office registration shall include:~~

~~(a) The full name and address of, and the telephone number at, the principal business location;~~

~~(b) The address of, and the telephone number at, the branch office.~~

**SEC. 74.** *Section 6980.40 of the Business and Professions Code is repealed.*

~~6980.40. Upon receipt of the application for a branch office registration, the chief shall issue a "Branch Office Registration." The registration shall be posted in a conspicuous place at the branch office location.~~

**SEC. 75.** *Section 6980.41 of the Business and Professions Code is repealed.*

~~6980.41. Every branch office registration issued under this chapter shall be subject to the same renewal provisions which apply to a license as provided in this chapter.~~

**SEC. 76.** *Section 6980.42 of the Business and Professions Code is amended to read:*

~~6980.42.~~ (a) Within seven days after commencing employment, any employee of a locksmith ~~who is not currently registered with the bureau and~~ who is performing the services of a locksmith shall submit to the bureau ~~a completed application for registration,~~ two classifiable fingerprint cards, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background ~~check, and the appropriate registration fee.~~ *check.* No application is required to be submitted if the employee terminated employment within seven days. "Within seven days" means 168 hours from the time an employee provides any service for which he or she shall be compensated by a ~~licensee, locksmith.~~

~~(b) Except as provided in subdivision (c), an employee of a licensee may be assigned to work with a temporary registration card issued by the licensee until the bureau issues a registration card or denies the application for registration. A temporary registration card shall in no event be valid for more than 120 days. However, the director may extend the expiration date beyond the 120 days if there is an abnormal delay in processing applications for locksmith employees. For purposes of this section, the 120-day period shall commence on the date the applicant signs the application.~~

~~(c) An employee who has been convicted of a crime prior to applying for a position as a locksmith employee performing the services of a locksmith shall not be issued a temporary registration card and shall not be assigned to work as a locksmith until the bureau issues a permanent registration card. This subdivision shall apply only if the applicant for registration has disclosed the conviction to the bureau on his or her application form, or if the fact of the conviction has come to the attention of the bureau through official court or other governmental documents.~~

~~(d)~~

~~(b)~~ The bureau may impose a fee not to exceed three dollars (\$3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

**SEC. 77.** *Section 6980.44 of the Business and Professions Code is amended to read:*

6980.44. The application shall be verified and shall include the following:

(a) The full name, residence address, telephone number, and date of birth of the employee.

(b) The name, address, *and* telephone number, ~~and license number of the employer,~~ and the date the employment commenced.

(c) A statement as to whether the employee has been arrested or convicted of a misdemeanor, excluding minor traffic violations.

(d) A statement as to whether the employee has been convicted of a felony.



**SEC. 78.** *Section 6980.47 of the Business and Professions Code is amended to read:*

**6980.47.** If the director determines that continued employment of ~~an applicant or registrant,~~ *employee*, in his or her current capacity, may present an undue hazard to public safety, the ~~licensee,~~ *locksmith*, upon proper notification from the director, shall suspend the ~~applicant or registrant~~ *employee* from employment in that capacity.

**SEC. 79.** *Section 6980.48 of the Business and Professions Code is amended to read:*

**6980.48.** (a) Upon determining that the applicant is qualified ~~for registration~~ pursuant to this chapter, the bureau shall issue a pocket ~~registration~~ card to the employee. The applicant may request to be issued an enhanced pocket card that shall be composed of durable material and may incorporate technologically advanced security features. The bureau may charge a fee sufficient to reimburse the department for costs for furnishing the enhanced pocket card. The fee charged may not exceed the actual cost for system development, maintenance, and processing necessary to provide the service, and may not exceed six dollars (\$6). If the applicant does not request an enhanced card, the department shall issue a standard card at no cost to the applicant.

(b) The ~~registrant~~ *employee* shall carry a valid ~~registration~~ card issued by the bureau under this section, and either a valid driver's license issued pursuant to Section 12811 of the Vehicle Code or a valid identification card issued pursuant to Section 13000 of the Vehicle Code, at all times the ~~registrant~~ *employee* is engaged in the work of a locksmith whether on or off the premises of the ~~licensee's~~ *locksmith's* place of business. Every person, while engaged in any ~~activity for which licensure is required,~~ *locksmith activity*, shall display his or her valid pocket card, and driver's license or identification card, as provided by regulation.

**SEC. 80.** *Section 6980.49 of the Business and Professions Code is repealed.*

~~6980.49. A licensee shall at all times be responsible for ascertaining that his or her employees subject to registration are currently registered or have made proper application for registration as provided in this article. The licensee shall not have in his or her employment a person performing the services of a locksmith whose registration has expired, or been revoked, denied, suspended, or canceled.~~

**SEC. 81.** *Section 6980.50 of the Business and Professions Code is repealed.*

~~6980.50. (a) All registrations shall be placed on a cyclical renewal and shall expire two years following the date of issuance or assigned renewal date.~~

~~(b) At least 60 days prior to the expiration of a registration, a registrant who desires to renew his or her registration shall forward to the bureau a copy of his or her current registration card, along with the renewal fee as set forth in this chapter.~~

~~(c) An expired registration may still be renewed within 30 days from the date of expiration provided the registrant pays a delinquency fee provided by this chapter. A registration not renewed within 30 days following its expiration may not be renewed thereafter. The holder of an expired registration may obtain a new registration only on compliance with all the provisions of this chapter relating to the issuance of an original registration. The holder of an expired registration shall not engage in any activity requiring registration under this chapter until the bureau issues a renewal or new registration.~~

~~(d) If the renewed registration card has not been delivered to the registrant, prior to the date of expiration of the prior registration, the registrant may present evidence of renewal to substantiate continued registration, for a period not to exceed 90 days after the date of expiration.~~

~~(e) A registration shall not be renewed until any and all fines, not pending appeal, assessed by the chief or the director have been paid.~~

**SEC. 82.** *Section 6980.53 of the Business and Professions Code is amended to read:*

**6980.53.** A locksmith ~~licensed by the bureau~~ shall be subject to the provisions of Sections 466.6 and 466.8 of the Penal Code requiring verification of identification of clients and maintenance of work orders containing required client information. A copy of each work order completed pursuant to Sections 466.6 and 466.8 of the Penal Code shall be retained for two years, shall include the name ~~and license number~~ of the locksmith performing the service, and shall be open to inspection by the bureau or any peace officer during business hours or submitted to the bureau upon request.

**SEC. 83.** *Section 6980.54 of the Business and Professions Code is amended to read:*

**6980.54.** (a) A locksmith ~~licensed by the bureau~~ shall be subject to the provisions of Section 466.6 of the Penal Code, and shall be able to duplicate any key for any vehicle from another key.

(b) A locksmith ~~licensed by the bureau~~ shall be subject to the provisions of Section 466.8 of the Penal Code, and shall be able to duplicate any key for a residence, commercial establishment, or personal property from another key, except as follows:

(1) Duplication is prohibited when a key is stamped, imprinted, marked, or incised with the wording "Do Not Duplicate" or "Unlawful To Duplicate" and includes the originator's company name and telephone number.

(2) Duplication is prohibited when a key is a Restricted Key or a High Security Key and includes the originator's company name and telephone number or registration number.

**SEC. 84.** *Section 6980.55 of the Business and Professions Code is amended to read:*

**6980.55.** (a) Any locksmith who knowingly and willfully opens any residence, or commercial establishment for another by any method involving an on-site inspection of a door or entrance, whether or not for compensation, shall obtain the street address of the residence or commercial establishment, and the signature of the person for whom the residence or commercial establishment was opened on a work order form. The following information regarding the person requesting entry to the residence or commercial property shall be recorded on a work order form:

(1) Name.

(2) Address.

(3) Telephone Number.

(4) Date of Birth.

(5) Driver's license or identification number. A copy of each work order form shall be retained for two years, shall include the name ~~and license number~~ of the locksmith performing the service, and shall be open for inspection by any peace officer or by the bureau during business hours or submitted to the bureau upon request.

(b) Any locksmith who makes keys capable of opening a motor vehicle or personal property registered under the Vehicle Code for another by any method, whether or not for compensation, shall obtain the name, date of birth, and driver's license number or identification number of the person requesting entrance, and the registration or identification number of the vehicle or personal property registered under the Vehicle Code for which entrance is requested. This information together with the date the service was performed, and the signature of the person requesting entrance, shall be set forth on a work order. A copy of each work order form shall be retained for two ~~years, shall include the license number of the locksmith performing the service, years~~ and shall be open for inspection by a peace officer or by the bureau during business hours or submitted to the bureau upon request.

**SEC. 85.** *Section 6980.58 of the Business and Professions Code is amended to read:*

**6980.58.** A ~~licensee~~ *locksmith* shall at all times be responsible for those actions of his or her employees performed in violation of this chapter, when acting within the course and scope of his or her employment.

**SEC. 86.** *Section 6980.59 of the Business and Professions Code is repealed.*

~~6980.59. (a) A licensee shall notify the bureau within 30 days of any change of its officers required to be named pursuant to Section 6980.21 and of the addition of any new partners. Applications, on forms prescribed by the director, shall be submitted by all new officers and partners. The director may deny the application of a new officer or partner if the director determines that the officer or partner has committed any act which constitutes grounds for the denial of a license pursuant to Section 6980.71.~~

~~(b) A Notice of Warning shall be issued for the first violation of this section. Thereafter, the director shall assess a fine of five hundred dollars (\$500) for each subsequent violation of this section.~~

**SEC. 87.** *Section 6980.60 of the Business and Professions Code is repealed.*

~~6980.60. No licensee or employee shall conduct business from any location other than the location for which a license or branch office registration was issued.~~

**SEC. 88.** *Section 6980.61 of the Business and Professions Code is repealed.*

~~6980.61. No licensee shall conduct a business as an individual, partnership, or corporation, unless the licensee holds a valid license issued to the same individual, partnership, or corporation.~~

**SEC. 89.** *Section 6980.62 of the Business and Professions Code is amended to read:*

6980.62. (a) Each ~~licensee~~ **locksmith** shall maintain a file or record containing the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when an employee is terminated. The files and records, together with usual payroll records, shall be available for inspection by the bureau, and copies thereof and information pertaining thereto or contained therein shall be submitted to the bureau upon written request.

(b) A ~~licensee~~ **locksmith** shall respond to the bureau's request to forward copies of the files or records and information pertaining thereto or contained therein within 30 days of the bureau's request.

**SEC. 90.** *Section 6980.63 of the Business and Professions Code is repealed.*

~~6980.63. Within seven days, each locksmith shall verify proof of current and valid registration issued by the bureau for each employee who is subject to registration, or shall require an employee to complete and submit an application for registration, pursuant to Section 6980.42, after employing an individual who does not possess a current and valid registration from the bureau.~~

**SEC. 91.** *Section 6980.64 of the Business and Professions Code is amended to read:*

6980.64. (a) Every advertisement by a ~~licensee~~ **locksmith** soliciting or advertising business shall contain his or her business name, business address, or business telephone ~~number, and license number as they appear in the records of the bureau: number.~~

(b) For the purpose of this section, "advertisement" includes any business card, stationery, brochure, flyer, circular, newsletter, fax form, printed or published paid advertisement in any media form, directory listing, or telephone book listing.

(c) The director may assess a fine of five hundred dollars (\$500) for the first violation of this section and one thousand dollars (\$1,000) for each subsequent violation. These fines shall be deposited in the Private Security Services Fund.

**SEC. 92.** *Section 6980.65 of the Business and Professions Code is repealed.*

~~6980.65. No licensee or person shall aid and abet an unlicensed or nonexempt locksmith in any activity for which a license is required. For purposes of this section, to aid or abet includes, but is not limited to, the falsification of documents or facilitation of the acquisition of locksmith tools. Any licensee or person found in violation of this section shall be subject to Section 6980.14. A person shall not be subject to this section if he or she reasonably held a copy of a license, registration, pocket registration, or pocket identification card.~~

**SEC. 93.** *Section 6980.68 of the Business and Professions Code is amended to read:*

6980.68. No ~~licensee~~ **locksmith** shall willfully or deliberately disregard any building or safety laws of the state or any political subdivision thereof.

**SEC. 94.** *Section 6980.69 of the Business and Professions Code is amended to read:*

6980.69. No ~~licensee~~ **locksmith** shall fail in any material respect to complete the installation, repair, opening, or modification of a lock for the price stated in the contract for services.

**SEC. 95.** *Section 6980.71 of the Business and Professions Code is repealed.*

~~6980.71. (a) The director may deny a license or registration regulated by this chapter on the grounds that the applicant has done any of the following:~~

~~(1) Knowingly made a false statement of fact required to be revealed in the application for a license;~~



~~(2) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the bureau is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.~~

~~(3) Committed any act involving dishonesty, fraud, or deceit, with the intent to substantially benefit himself, herself, or another, or to substantially injure another.~~

~~(4) Committed any act which, if done by a licensee, would be grounds for suspension or revocation of a license.~~

~~(5) Been refused a license under this chapter or had a license revoked.~~

~~(6) Been an officer, partner, or manager of any person who has been refused a license under this chapter or whose license has been suspended or revoked.~~

~~(b) The bureau may deny a license or registration pursuant to this section only if the crime or act is substantially related to the qualifications, functions, or duties of the license or registration for which application has been made.~~

~~(c) The denial of a license or registration shall be in writing and shall describe the basis for the denial. The denial shall inform the applicant that if he or she desires a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the review shall be requested within 30 days of the issuance of the denial.~~

~~(d) Notwithstanding any other provision of this chapter, no person shall be denied a license or registration solely on the basis that he or she has been convicted of a felony, if he or she has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, or solely on the basis that he or she has been convicted of a misdemeanor, if he or she has met all applicable requirements of the criteria of rehabilitation as provided in Section 6980.72.~~

**SEC. 96. Section 6980.72 of the Business and Professions Code is repealed.**

~~6980.72. (a) When considering the denial, suspension, or revocation of a license or registration for which application has been made under this chapter, the chief, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license or registration, shall consider all the following criteria:~~

~~(1) The nature and severity of the act or crime under consideration as grounds for denial.~~

~~(2) The applicant's total criminal record.~~

~~(3) Evidence of any act committed subsequent to the act or crime under consideration as grounds for denial, suspension, or revocation which also could be considered as grounds for denial under Section 6980.71.~~

~~(4) The time that has elapsed since commission of the act or crime referred to in paragraph (1) or (2).~~

~~(5) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.~~

~~(6) Evidence, if any, of rehabilitation submitted by the applicant.~~

~~(b) When considering a petition for reinstatement of a license or registration, the chief shall evaluate evidence of rehabilitation, considering those criteria of rehabilitation listed in subdivision (a).~~

**SEC. 97. Section 6980.73 of the Business and Professions Code is repealed.**

~~6980.73. (a) The license or registration of a locksmith shall be automatically suspended if the locksmith is convicted of any crime which is substantially related to the functions, duties, and responsibilities of a locksmith. The automatic suspension shall be effectuated by the mailing of a notice of conviction and suspension of license to be sent by the bureau to the licensee at his or her address of record.~~

~~(b) The notice shall contain a statement of preliminary determination by the director or his or her designee that the crime stated is reasonably related to the functions, duties, and responsibilities of a locksmith.~~

~~(c) In enacting this section, the Legislature finds and declares that locksmiths convicted of crimes reasonably related to the functions, duties, and responsibilities of a locksmith shall be subject to automatic suspension of their license and that summary suspension is justified by compelling state interests of public safety and security.~~

~~within the meaning of the California Supreme Court's decision in Eye-Dog Foundation v. State Board of Guide Dogs for the Blind, 67 Cal. 2d 536.~~

**SEC. 98. Section 6980.74 of the Business and Professions Code is repealed.**

~~6980.74.(a)The bureau may suspend or revoke a license issued pursuant to this chapter for acts including, but not limited to, any of the following acts which shall also be unlawful:~~

- ~~(1)Misrepresentation or concealment of a material fact in a license application;~~
  - ~~(2)Interference with authorized personnel engaged in the enforcement or administration of this chapter;~~
  - ~~(3)Knowingly using or permitting the use of any of his or her skills, tools, or facilities for the commission of any crime;~~
  - ~~(4)Conviction of a crime substantially related to the qualifications, functions, or duties of a locksmith;~~
  - ~~(5)A violation of this chapter or the rules and regulations adopted under the authority of this chapter;~~
- ~~(b)The bureau may suspend or revoke a license issued to a corporation or to a partnership for the commission of any act listed in subdivision (a) by an officer of the corporation or by a partner in the partnership.~~

**SEC. 99. Section 6980.76 of the Business and Professions Code is repealed.**

~~6980.76.The proceedings of the bureau to deny a license application, or to revoke or suspend a license, shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.~~

**SEC. 100. Section 6980.79 of the Business and Professions Code is repealed.**

~~6980.79.The fees prescribed by this chapter are those fixed in the following schedule:~~

- ~~(a)A locksmith license application fee may not exceed thirty dollars (\$30);~~
- ~~(b)An original license and renewal fee for a locksmith license may not exceed forty five dollars (\$45);~~
- ~~(c)A branch office registration fee and branch office renewal fee may not exceed thirty five dollars (\$35);~~
- ~~(d)Notwithstanding Section 163.5, the reinstatement fee as required by Section 6980.28 is the amount equal to the renewal fee plus a penalty of 50 percent thereof;~~
- ~~(e)An initial registration fee for an employee may not exceed twenty dollars (\$20);~~
- ~~(f)A registration renewal fee for an employee performing the services of a locksmith may not exceed twenty dollars (\$20);~~
- ~~(g)The fingerprint processing fee is that amount charged the bureau by the Department of Justice;~~
- ~~(h)All applicants seeking a license pursuant to this chapter shall also remit to the bureau the fingerprint fee that is charged to the bureau by the Department of Justice;~~
- ~~(i)The fee for a "Certificate of Licensure" may not exceed twenty dollars (\$20);~~
- ~~(j)A delinquency fee is the amount equal to the renewal fee plus a penalty of 50 percent thereof;~~

**SEC. 101. Section 6980.80 of the Business and Professions Code is repealed.**

~~6980.80.The initial application fee is considered an earned fee at the time an application for a license is received by the bureau. No refund shall be made to the applicant in the event that the applicant is found to lack the required qualifications, or is otherwise denied a license pursuant to this chapter.~~

**SEC. 102. Section 6980.82 of the Business and Professions Code is amended to read:**

**6980.82.** The director shall furnish one copy of ~~the licensing law~~ *this chapter* and rules and regulations to any ~~applicant or licensee~~ *locksmith* without charge. The director shall charge and collect a fee equivalent to the cost of producing such laws, rules and regulations, manuals, or guides, plus sales tax for each additional copy which may be furnished on request to any ~~applicant or licensee~~ *locksmith*, and for each copy furnished on request to any other person. All moneys derived pursuant to this section, except for any sales tax collected, shall be used to cover the costs of producing copies of these laws, rules and regulations, manuals, or guides. All moneys collected for sales tax shall be remitted to the State Board of Equalization.

**SEC. 103.** Section 6980.83 of the Business and Professions Code is repealed.

~~6980.83. Application of licensee fees shall not be refunded except in accordance with Section 158.~~

**SEC. 104.** Section 6980.84 of the Business and Professions Code is repealed.

~~6980.84. (a) There shall be a separate budget and expenditure statement, and a separate revenue statement, outlining all moneys derived from, and expended for, the licensing and regulation of locksmiths and registrants in accordance with the provisions of this chapter.~~

~~(b) If, at the end of any fiscal year, the moneys derived from the licensing of locksmiths and registrants is in surplus in an amount equal or greater than the moneys necessary for the regulation of locksmiths and registrants for the next two fiscal years, license or other fees shall be reduced during the following fiscal year by an amount that will reduce any surplus moneys derived from the licensing of locksmiths and registrants to an amount less than the moneys expended for the regulation of locksmiths and registrants for the next two fiscal years.~~

~~SEC. 6.~~ **SEC. 105.** Section 7048.5 is added to the Business and Professions Code, to read:

7048.5. This chapter does not apply to any work or operation by a C-27 landscaping contractor or D-49 tree service contractor on one undertaking or project by one or more contracts, the aggregate contract price which for labor, materials, and all other items is less than ~~twenty-five thousand dollars (\$25,000);~~ *five thousand dollars (\$5,000).*

~~SEC. 6.~~ **SEC. 106.** Section 7316 of the Business and Professions Code is amended to read:

7316. (a) The practice of barbering is all or any combination of the following practices:

- (1) Shaving or trimming the beard or cutting the hair.
- (2) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.
- (3) Singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.
- (4) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.
- (5) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.

(b) The practice of cosmetology is all or any combination of the following practices:

- (1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.
- (2) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (3) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (4) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.
- (5) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.
- (6) Massaging, cleansing, treating, or beautifying the hands or feet of any person.

(c) Within the practice of cosmetology there exist the specialty branches of skin care and nail care.

(1) Skin care is any one or more of the following practices:

(A) Giving facials, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person.

(B) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(C) Massaging, cleaning, or stimulating the face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(2) Nail care is the practice of cutting, trimming, polishing, coloring, tinting, cleansing, manicuring, or pedicuring the nails of any person or massaging, cleansing, or beautifying from the elbow to the fingertips or the knee to the toes of any person.

(d) The practice of barbering and the practice of cosmetology do not include any of the following:

(1) The mere sale, fitting, or styling of wigs or hairpieces.

(2) Natural hair braiding. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include haircutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

(3) Threading. Threading is a technique that results in removing hair by twisting thread around unwanted hair and pulling it from the skin and the incidental trimming of eyebrow hair.

(e) Notwithstanding paragraph (2) of subdivision (d), a person who engages in natural hairstyling, which is defined as the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practices of barbering or cosmetology, is subject to regulation pursuant to this chapter and shall obtain and maintain a ~~barbering or~~ cosmetology license as applicable to the services respectively offered or performed.

(f) Electrolysis is the practice of removing hair from, or destroying hair on, the human body by the use of an electric needle only.

"Electrolysis" as used in this chapter includes electrolysis or thermolysis.

**SEC. 7. SEC. 107.** Section 7317 of the Business and Professions Code is amended to read:

**7317.** Except as provided in this article, it is unlawful for any person, firm, or corporation to engage in cosmetology, or electrolysis for compensation without a valid, unexpired license issued by the board, or in an establishment or mobile unit other than one licensed by the board, or conduct or operate an establishment, or any other place of business in which ~~barbering, cosmetology,~~ cosmetology or electrolysis is practiced unless licensed under this chapter. Persons licensed under this chapter shall limit their practice and services rendered to the public to only those areas for which they are licensed. Any violation of this section is subject to an administrative fine and may be subject to a misdemeanor.

**SEC. 108.** Section 7321 of the Business and Professions Code is amended to read:

**7321.** The board shall admit to examination for a license as a cosmetologist to practice cosmetology any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:

(a) Is not less than 17 years of age.

(b) Has completed the 10th grade in the public schools of this state or its equivalent.

(c) Is not subject to denial pursuant to Section 480.

(d) Has done any of the following:

(1) Completed a course in cosmetology from a school approved by the board.

(2) Practiced cosmetology as defined in this chapter outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in cosmetology from a school the curriculum of which complied with requirements adopted by the board. Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1) of this subdivision.

(3) ~~Holds a license as a barber in this state and has~~ Has completed a cosmetology crossover course in a school approved by the board.



- (4) Completed a barbering course in a school approved by the board and has completed a cosmetology crossover course in a school approved by the board.
- (5) Completed the apprenticeship program in cosmetology specified in Article 4 (commencing with Section 7332).

**SEC. 109.** *Section 7321.5 of the Business and Professions Code is repealed.*

~~7321.5. The board shall admit to examination for a license as a barber to practice barbering, any person who has made application to the board in proper form, paid the fee required by this chapter, and is qualified as follows:~~

- ~~(a) Is not less than 17 years of age;~~
- ~~(b) Has completed the 10th grade in the public schools of this state or its equivalent;~~
- ~~(c) Is not subject to denial pursuant to Section 480;~~
- ~~(d) Has done any of the following:~~
- ~~(1) Completed a course in barbering from a school approved by the board;~~
- ~~(2) Completed an apprenticeship program in barbering approved by the board as conducted under the provisions of the Shelley-Maloney Apprentice Labor Standards Act of 1939, Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code;~~
- ~~(3) Practiced barbering as defined in this chapter outside of this state for a period of time equivalent to the study and training of a qualified person who has completed a course in barbering from a school the curriculum of which complied with requirements adopted by the board; Each three months of practice shall be deemed the equivalent of 100 hours of training for qualification under paragraph (1);~~
- ~~(4) Holds a license as a cosmetologist in this state and has completed a barber crossover course in a school approved by the board;~~
- ~~(5) Completed a cosmetology course in a school approved by the board and has completed a barber crossover course in a school approved by the board;~~
- ~~(6) Completed comparable military training as documented by submission of Verification of Military Experience and Training (V-MET) records;~~

**SEC. 110.** *Section 7334 of the Business and Professions Code is amended to read:*

**7334.** (a) The board may license as an apprentice in ~~barbering~~, cosmetology, skin care, or nail care any person who has made application to the board upon the proper form, has paid the fee required by this chapter, and who is qualified as follows:

- (1) Is over 16 years of age.
- (2) Has completed the 10th grade in the public schools of this state or its equivalent.
- (3) Is not subject to denial pursuant to Section 480.
- (4) Has submitted evidence acceptable to the board that any training the apprentice is required by law to obtain shall be conducted in a licensed establishment and under the supervision of a licensee approved by the board.
- (b) The board may license as an apprentice in electrolysis any person who has made application to the board upon the proper form, has paid the fee required by this chapter, and who is qualified as follows:
- (1) Is not less than 17 years of age.
- (2) Has completed the 12th grade or an accredited senior high school course of study in schools of this state or its equivalent.
- (3) Is not subject to denial pursuant to Section 480.
- (4) Has submitted evidence acceptable to the board that any training the apprentice is required by law to obtain shall be conducted in a licensed establishment and under the supervision of a licensee approved by the board.

(c) All persons making application as an apprentice in barbering shall also complete a minimum of 39 hours of preapprentice training in a facility approved by the board prior to serving the general public.

(d) All persons making application as an apprentice in cosmetology, skin care, nail care, or electrology shall also complete minimum preapprentice training for the length of time established by the board in a facility approved by the board prior to serving the general public.

(e) Apprentices may only perform services on the general public for which they have received technical training.

(f) Apprentices shall be required to obtain at least the minimum hours of technical instruction and minimum number of practical operations for each subject as specified in board regulations for courses taught in schools approved by the board, in accordance with Sections 3074 and 3078 of the Labor Code.

**SEC. 111.** *Section 7396 of the Business and Professions Code is amended to read:*

**7396.** The form and content of a license issued by the board shall be determined in accordance with Section 164.

The license shall prominently state that the holder is licensed as a ~~barber~~, cosmetologist, esthetician, manicurist, electrologist, or apprentice, and shall contain a photograph of the licensee.

**SEC. 112.** *Section 7403 of the Business and Professions Code is amended to read:*

**7403.** (a) Notwithstanding any other provision of law, the board may revoke, suspend, or deny at any time any license required by this chapter on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

(c) In addition to the requirements provided in Sections 485 and 486, upon denying a license to an applicant, the board shall provide a statement of reasons for the denial that does the following:

(1) Evaluates evidence of rehabilitation submitted by the applicant, if any.

(2) Provides the board's criteria relating to rehabilitation, formulated pursuant to Section 482, that takes into account the age and severity of the offense, and the evidence relating to participation in treatment or other rehabilitation programs.

(3) If the board's decision was based on the applicant's prior criminal conviction, justifies the board's denial of a license and conveys the reasons why the prior criminal conviction is substantially related to the qualifications, functions, or duties of a ~~barber or~~ cosmetologist.

(d) Commencing July 1, 2009, all of the following shall apply:

(1) If the denial of a license is due at least in part to the applicant's state or federal criminal history record, the board shall, in addition to the information provided pursuant to paragraph (3) of subdivision (c), provide to the applicant a copy of his or her criminal history record if the applicant makes a written request to the board for a copy, specifying an address to which it is to be sent.

(A) The state or federal criminal history record shall not be modified or altered from its form or content as provided by the Department of Justice.

(B) The criminal history record shall be provided in such a manner as to protect the confidentiality and privacy of the applicant's criminal history record and the criminal history record shall not be made available by the board to any employer.

(C) The board shall retain a copy of the applicant's written request and a copy of the response sent to the applicant, which shall include the date and the address to which the response was sent.

(2) The board shall make this information available upon request by the Department of Justice or the Federal Bureau of Investigation.



(e) Notwithstanding Section 487, the board shall conduct a hearing of a license denial within 90 days of receiving an applicant's request for a hearing. For all other hearing requests, the board shall determine when the hearing shall be conducted.

(f) In any case in which the administrative law judge recommends that the board revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee to pay the board the reasonable costs of the investigation and adjudication of the case. For purposes of this section, "costs" include charges by the board for investigating the case, charges incurred by the office of the Attorney General for investigating and presenting the case, and charges incurred by the Office of Administrative Hearings for hearing the case and issuing a proposed decision.

(g) The costs to be assessed shall be fixed by the administrative law judge and shall not, in any event, be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(h) The board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(i) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(j) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the board's contingent fund as a scheduled reimbursement in the fiscal year in which the costs are actually recovered.

**SEC. 113.** *Section 7423 of the Business and Professions Code is amended to read:*

**7423.** The amounts of the fees required by this chapter relating to licenses for individual practitioners are as follows:

(a) (1) Cosmetologist application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) A cosmetologist initial license fee shall not be more than fifty dollars (\$50).

(b) (1) An esthetician application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) An esthetician initial license fee shall not be more than forty dollars (\$40).

(c) (1) A manicurist application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) A manicurist initial license fee shall not be more than thirty-five dollars (\$35).

~~(d)(1) A barber application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.~~

~~(2) A barber initial license fee shall be not more than fifty dollars (\$50).~~

~~(e)~~

(d) (1) An electrologist application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.

(2) An electrologist initial license fee shall be not more than fifty dollars (\$50).

~~(f)~~

(e) An apprentice application and license fee shall be not more than twenty-five dollars (\$25).

~~(g)~~

(f) The license renewal fee for individual practitioner licenses that are subject to renewal shall be not more than fifty dollars (\$50).

(g)

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

(h)

(h) Any preapplication fee shall be established by the board in an amount sufficient to cover the costs of processing and administration of the preapplication.

**SEC. 8. SEC. 114.** Section 7533 of the Business and Professions Code is amended to read:

**7533.** Each licensee shall file with the bureau the complete address of his or her principal place of business including the name and number of the street, or, if the street where the business is located is not numbered, the number of the post office box. The director may require the filing of other information for the purpose of identifying the principal place of business. A California office is not required to comply with this section.

**SEC. 9. SEC. 115.** Section 7672 of the Business and Professions Code is repealed.

**SEC. 116.** Section 7672.1 of the Business and Professions Code is repealed.

~~7672.1. (a) Registration shall be on the form prescribed by the bureau and shall include, but not be limited to, the full name of the registrant, business and residence addresses, description and identification of aircraft or boats which may be used in dispensing cremated human remains, and the area to be served. Each registration application shall be accompanied by the cremated remains disposal fee.~~

~~(b) Every registered cremated remains disposer who dispenses human remains by air shall post a copy of his or her current pilot's license, and the address of the cremated remains storage area at his or her place of business. Every registered cremated remains disposer who dispenses human remains by boat shall post a copy of his or her current boating license and the address of the cremated remains storage area at his or her place of business.~~

**SEC. 117.** Section 7672.2 of the Business and Professions Code is amended to read:

**7672.2.** The bureau shall prepare and deliver to each ~~registered~~ cremated remains disposer a booklet that includes, but is not limited to, the following information: ~~details about the registration and renewal requirements for cremated remains disposers;~~ requirements for obtaining state permits to dispose of cremated human remains; state storage requirements, if any; statutory duties pursuant to this article, and other applicable state laws.

**SEC. 118.** Section 7672.6 of the Business and Professions Code is amended to read:

**7672.6.** (a) Every cremated remains disposer shall do both of the following:

(1) Dispose of cremated remains within 60 days of the receipt of those remains, unless a written signed reason for a delay is presented to the person with the right to control the disposition of the remains under Section 7100 of the Health and Safety Code.

(2) Provide the bureau with the address and telephone number of any storage facility being used by the ~~registrant~~ cremated remains disposer to store cremated remains. Cremated remains shall be stored in a place free from exposure to the elements, and shall be responsibly maintained until disposal. The bureau and its representatives shall conduct, on an annual basis, random inspections of the operations of 5 to 10 percent of the ~~registered~~ cremated remains disposers, and is authorized to inspect any place used by a cremated remains disposer for the storage of cremated remains without notice to the cremated remains disposer.

(b) A violation of the requirements of this section is grounds for disciplinary action.

**SEC. 119.** Section 7672.8 of the Business and Professions Code is repealed.

~~7672.8. All cremated remains disposer registrations shall expire at midnight on September 30 of each year. A person desiring to renew his or her registration shall file an application for renewal on a form prescribed by the bureau accompanied by the required fee. A registration that has expired may be renewed within 60 days of its expiration upon payment of all accrued and unpaid renewal fees. The bureau shall not renew the registration of any person who has not filed the required annual report until he or she has filed a complete annual report with the department.~~

**SEC. 120.** *Section 7672.9 of the Business and Professions Code is repealed.*

~~7672.9. If a person fails to apply for renewal of his or her cremated remains disposer registration prior to midnight of September 30 of the year for which the registration was issued, no renewal shall be issued except upon payment of the delinquent renewal fee required under Section 7729.2.~~

**SEC. 121.** *Section 7672.10 of the Business and Professions Code is repealed.*

~~7672.10. Any person who scatters cremated human remains without a valid registration and who is not otherwise exempt from this article shall be guilty of a misdemeanor. The remains of each person scattered shall constitute a separate violation.~~

**SEC. 122.** *Section 7730.1 of the Business and Professions Code is repealed.*

~~7730.1. The cremated remains disposer registration fee shall be one hundred dollars (\$100).~~

**SEC. 123.** *Section 7730.2 of the Business and Professions Code is repealed.*

~~7730.2. The renewal fee for a cremated remains disposer registration shall be fifty dollars (\$50).~~

**SEC. 124.** *Section 19051 of the Business and Professions Code is amended to read:*

19051. Every upholstered furniture retailer, unless he or she holds an importer's license, a furniture and bedding manufacturer's license, a wholesale furniture and bedding dealer's license, ~~a custom upholsterer's license~~, or a retail furniture and bedding dealer's license shall hold a retail furniture dealer's license.

(a) This section does not apply to a person whose sole business is designing and specifying for interior spaces, and who purchases specific amenable upholstered furniture items on behalf of a client, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer. This section does not apply to a person who sells "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2.

(b) This section does not apply to a person who is licensed as a home medical device retail facility by the State Department of Health Services, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer.

**SEC. 125.** *Section 19059.5 of the Business and Professions Code is amended to read:*

19059.5. Every sanitizer shall hold a sanitizer's license unless he or she is licensed as a home medical device retail facility by the State Department of Health Services or as an upholstered furniture and bedding manufacturer, retail furniture and bedding dealer, ~~or retail bedding dealer, or custom upholsterer, dealer.~~

**SEC. 126.** *Section 19060.6 of the Business and Professions Code is amended to read:*

19060.6. (a) Except as provided in subdivision (b), every person who, on his or her own account, advertises, solicits or contracts to manufacture, repair or renovate upholstered furniture or bedding, and who either does the work himself or herself or has others do it for him or her, shall obtain the particular license required by this chapter for the particular type of work that he or she solicits or advertises that he or she will do, regardless of whether he or she has a shop or factory.

(b) Every person who, on his or her own account, advertises, solicits or contracts to repair or renovate upholstered furniture and who does not do the work himself or herself nor have employees do it for him or her ~~but does have the work done by a licensed custom upholsterer need not obtain a license as a custom upholsterer but~~ shall obtain a license as a retail furniture dealer. However, nothing in this section shall exempt a retail furniture dealer from complying with Sections 19162 and 19163.

**SEC. 127.** *Section 19052 of the Business and Professions Code is repealed.***SEC. 128.** *Section 19170 of the Business and Professions Code is amended to read:*

19170. (a) The fee imposed for the issuance and for the biennial renewal of each license granted under this chapter shall be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

	Maximum fee	Minimum fee
Importer's license .....	\$940	\$120

Furniture and bedding manufacturer's license .....	940	120
Wholesale furniture and bedding dealer's license .....	675	120
Supply dealer's license .....	675	120
<del>Custom upholsterer's license</del>	<del>450</del>	<del>80</del>
Sanitizer's license .....	450	80
Retail furniture and bedding dealer's license .....	300	40
Retail furniture dealer's license .....	150	20
Retail bedding dealer's license .....	150	20

(b) Individuals who, in their own homes and without the employment of any other person, make, sell, advertise, or contract to make pillows, quilts, quilted pads, or comforters are exempt from the fee requirements imposed by subdivision (a). However, these individuals shall comply with all other provisions of this chapter.

(c) Retailers who only sell "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2 are exempt from the fee requirements imposed by subdivision (a). Those retailers are also exempt from the other provisions of this chapter.

(d) A person who makes, sells, or advertises upholstered furniture and bedding as defined in Sections 19006 and 19007, and who also makes, sells, or advertises furniture used exclusively for the purpose of physical fitness and exercise, shall comply with the fee requirements imposed by subdivision (a).

(e) A person who has paid the required fee and who is licensed ~~either~~ as an upholstered furniture and bedding manufacturer ~~or a custom upholsterer~~ under this chapter shall not be required to additionally pay the fee for a sanitizer's license.

~~SEC. 14.~~ **SEC. 129.** Section 1812.600 of the Civil Code is repealed.

**SEC. 130.** *Section 1812.607 of the Civil Code is amended to read:*

**1812.607.** Every auction company and auctioneer shall do all of the following:

(a) Disclose his or her name, trade or business name, ~~and telephone number, and bond number~~ **number** in all advertising of auctions. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of seventy-five dollars (\$75); and a third or subsequent violation is subject to a fine of one hundred dollars (\$100). This section shall not apply to business cards, business stationery, or to any advertisement that does not specify an auction date.

(b) Post a sign, the dimensions of which shall be at least 18 inches by 24 inches, at the main entrance to each auction, stating that the auction is being conducted in compliance with Section 2328 of the Commercial Code, Section 535 of the Penal Code, and the provisions of the California Civil Code. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of seventy-five dollars (\$75); and a third or subsequent violation is subject to a fine of one hundred dollars (\$100).

(c) Post or distribute to the audience the terms, conditions, restrictions, and procedures whereby goods will be sold at the auction, and announce any changes to those terms, conditions, restrictions, and procedures prior to the beginning of the auction sale. A first violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50); a second violation is subject to a fine of one hundred dollars (\$100); and a third or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(d) Notify the Secretary of State of any change in address of record within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(e) Notify the Secretary of State of any change in the officers of a corporate license within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(f) Notify the Secretary of State of any change in the business or trade name of the auctioneer or auction company within 30 days of the change. A violation of this subdivision is an infraction subject to a fine of fifty dollars (\$50).

(g) Keep and maintain, at the auctioneer's or auction company's address of record, complete and correct records and accounts pertaining to the auctioneer's or auction company's activity for a period of not less than two years. The records shall include the name and address of the owner or consignor and of any buyer of goods at any auction sale engaged in or conducted by the auctioneer or auction company, a description of the goods, the terms and conditions of the acceptance and sale of the goods, all written contracts with owners and consignors, and accounts of all moneys received and paid out, whether on the auctioneer's or auction company's own behalf or as agent, as a result of those activities. A first violation of this subdivision is a misdemeanor subject to a fine of five hundred dollars (\$500); and a second or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(h) Within 30 working days after the sale transaction, provide, or cause to be provided, an account to the owner or consignor of all goods that are the subject of an auction engaged in or conducted by the auctioneer or auction company. A first violation of this subdivision is a misdemeanor subject to a fine of five hundred dollars (\$500); and a second or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(i) Within 30 working days after a sale transaction of goods, pay or cause to be paid all moneys and proceeds due to the owner or the consignor of all goods that were the subject of an auction engaged in or conducted by the auctioneer or auction company, unless delay is compelled by legal proceedings or the inability of the auctioneer or auction company, through no fault of his or her own, to transfer title to the goods or to comply with any provision of this chapter, the Commercial Code, or the Code of Civil Procedure, or with any other applicable provision of law. A first violation of this subdivision is a misdemeanor subject to a fine of one thousand dollars (\$1,000); a second violation is subject to a fine of one thousand five hundred dollars (\$1,500); and a third or subsequent violation is subject to a fine of two thousand dollars (\$2,000).

(j) Maintain the funds of all owners, consignors, buyers, and other clients and customers separate from his or her personal funds and accounts. A violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250).

(k) Immediately prior to offering any item for sale, disclose to the audience the existence and amount of any liens or other encumbrances on the item, unless the item is sold as free and clear. For the purposes of this subdivision, an item is "free and clear" if all liens and encumbrances on the item are to be paid prior to the transfer of title. A violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250) in addition to the requirement that the buyer be refunded, upon demand, the amount paid for any item that is the subject of the violation.

(l) Within two working days after an auction sale, return the blank check or deposit of each buyer who purchased no goods at the sale. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(m) Within 30 working days of any auction sale, refund that portion of the deposit of each buyer that exceeds the cost of the goods purchased, unless delay is compelled by legal proceedings or the inability of the auctioneer or auction company, through no fault of his or her own, to transfer title to the goods or to comply with any provision of this chapter, the Commercial Code, or the Code of Civil Procedure, or with other applicable provisions of law, or unless the buyer violated the terms of a written agreement that he or she take possession of purchased goods within a specified period of time. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

**SEC. 131.** *Section 1812.608 of the Civil Code is amended to read:*

**1812.608.** In addition to other requirements and prohibitions of this title, it is a violation of this title for any person to do any of the following:

(a) Fail to comply with any provision of this code, or with any provision of the Vehicle Code, the Commercial Code, any regulation of the Secretary of State, the Code of Civil Procedure, the Penal Code, or any law administered by the State Board of Equalization, relating to the auctioneering business, including, but not limited to, sales and the transfer of title of goods.



(b) Aid or abet the activity of any other person that violates any provision of this title. A violation of this subdivision is a misdemeanor subject to a fine of one thousand dollars (\$1,000).

(c) Place or use any misleading or untruthful advertising or statements or make any substantial misrepresentation in conducting auctioneering business. A first violation of this subdivision is a misdemeanor subject to a fine of five hundred dollars (\$500); and a second or subsequent violation is subject to a fine of one thousand dollars (\$1,000).

(d) Sell goods at auction before the auctioneer or auction company involved has first entered into a written contract with the owner or consignor of the goods, which contract sets forth the terms and conditions upon which the auctioneer or auction company accepts the goods for sale. The written contract shall include all of the following:

(1) The auctioneer's or auction company's name, trade or business name, business address, and business telephone number.

(2) An inventory of the item or items to be sold at auction.

(3) A description of the services to be provided and the agreed consideration for the services, which description shall explicitly state which party shall be responsible for advertising and other expenses.

(4) The approximate date or dates when the item or items will be sold at auction.

(5) A statement as to which party shall be responsible for insuring the item or items against loss by theft, fire, or other means.

~~(6) A disclosure that the auctioneer or auction company has a bond on file with the Secretary of State. A first violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250); a second violation is subject to a fine of five hundred dollars (\$500); and a third or subsequent violation is subject to a fine of one thousand dollars (\$1,000).~~

(e) Sell goods at auction before the auctioneer or auction company involved has first entered into a written contract with the auctioneer who is to conduct the auction. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(f) Fail to reduce to writing all amendments or addenda to any written contract with an owner or consignor or an auctioneer. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(g) Fail to abide by the terms of any written contract required by this section. A first violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100); and a second or subsequent violation is subject to a fine of two hundred fifty dollars (\$250).

(h) Cause or allow any person to bid at a sale for the sole purpose of increasing the bid on any item or items being sold by the auctioneer, except as authorized by Section 2328 of the Commercial Code or by this title. A violation of this subdivision includes, but is not limited to, either of the following:

(1) Stating any increased bid greater than that offered by the last highest bidder when, in fact, no person has made such a bid.

(2) Allowing the owner, consignor, or agent thereof, of any item or items to bid on the item or items, without disclosing to the audience that the owner, consignor, or agent thereof has reserved the right to so bid.

A violation of this subdivision is an infraction subject to a fine of one hundred dollars (\$100).

(i) Knowingly misrepresent the nature of any item or items to be sold at auction, including, but not limited to, age, authenticity, value, condition, or origin. A violation of this subdivision is an infraction subject to a fine of two hundred fifty dollars (\$250). In addition, it shall be required that the buyer of the misrepresented item be refunded the purchase price of the item or items within 24 hours of return to the auctioneer or auction company of the item by the buyer, provided that the item is returned within five days after the date of the auction sale.

(j) Misrepresent the terms, conditions, restrictions, or procedures under which goods will be sold at auction. A violation of this subdivision is an infraction subject to a fine of seventy-five dollars (\$75).



(k) Sell any item subject to sales tax without possessing a valid and unrevoked seller's permit from the State Board of Equalization. A violation of this subdivision is an infraction subject to a fine of five hundred dollars (\$500).





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## BOARD OF BARBERING & COSMETOLOGY

### BILL ANALYSIS

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**Author:** Senate Member Nguyen

**Subject:** Nail Care Scope of Practice

**Bill Number:** SB 296

**Version:** April 17, 2017

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#### Existing Law:

Provides the licensure and regulation of the practices of Barbering, Cosmetology and Electrology by the California Board of Barbering and Cosmetology (Board) (BP&C\* §7312).

Defines the scope of practice for nail care (BP&C §7316 (c) (2)).

Requires the Board to determine by regulation the required subjects of instruction to be completed in all approved cosmetology and nail care courses (BP&C §§ 7362, 7362.1, 7362.5, 7365, 7389).

Requires the Board to admit to a licensing examination an applicant who meets certain qualifications, including course training as specified by the Board in a Board approved school (BP&C §§ 7321, 7326, 7362).

#### This Bill:

Expands the scope of practice for nail care to include superfluous hair removal by tweezing or waxing of the lip, eyebrows, area from the elbow to the fingertip, or knees to the toes of any person.

Requires the Board determine by regulation the number of training hours to be added to the manicuring curriculum for training in superfluous hair removal.

Clarifies that a licensed manicurist shall only be authorized to remove superfluous hair if the individual has met the educational requirements required by the Board in regulation.

Requires any person who has a manicurist license that has not obtained the required number of hours of training for superfluous hair removal, to obtain the required amount of training as defined by the Board in regulation and submit proof of training and take and pass a licensing examination.

Requires Board approved schools to add the required number of training hours determined by the Board to the school's curriculum for any course of manicuring.

## **Analysis:**

This bill expands the manicurist scope of practice to include waxing and the use of tweezers on specified areas of the body. As of January 1, 2017 the Board has 129,196 licensed manicurists, 312,727 cosmetologists and 81,091 estheticians. Currently, only cosmetologists and estheticians can perform waxing procedures. The chart below summarizes the number of citations issued per licensee between the cosmetologists, estheticians and manicurists. In 2016, the percentage of citations to licensee is: Manicurist 2.35%, Cosmetologist 1.42% and Esthetician .56%.

License Type	2012	2013	2014	2015	2016
Barbers	654	543	1041	993	1205
Cosmetologists	3955	2738	4245	4273	4462
Electrologists	1	2	1	5	4
Estheticians	231	173	283	340	459
Manicurists	2452	1785	2490	2501	3037
Establishments	10031	7347	10297	10220	11271
Mobile Units	1	1	3	3	2
Schools	0	7	121	88	112

The Board has compiled the number of complaints within a five year period that have been submitted with allegation types that may be considered within the manicuring/pedicuring and waxing scope of practice.

2012*	
Allegation Types	Number of Complaints
Infection	103
Cut	43
Wax Burn	32
Skin Cut	16
Facial Burn	9
Allergic Reaction	8
Wax Infection	8
Wax Cut	6

2013*	
Allegation Types	Number of Complaints
Infection	65
Cut	33
Wax Burn	22
Skin Cut	16
Facial Burn	14
Wax Infection	6
Wax Cut	5

2014	
Allegation Types	Number of Complaints
Manicure Infection	40
Pedicure Infection	39
Manicure Burn	23
Cut	16
Manicure Allergic Reaction	16
Wax Infection	16
Facial Burn	12
Facial Infection	12

2015	
Allegation Types	Number of Complaints
Pedicure Infection	84
Manicure Infection	32
Manicure Cut	26
Pedicure Cut	21
Skin Allergic Reaction	17
Facial Burn	10
Facial Allergic Reaction	7
Wax Cut	7

2016	
Allegation Types	Number of Complaints
Pedicure Infection	87
Manicure Infection	39
Manicure Cut	26
Pedicure Cut	24
Facial Burn	8
Wax Burn	6
Skin Cut	5

\*Broader allegation categories were used as the data was collected pre-BreEZe.

In 2013, the Board underwent its scheduled sunset review and appeared before the Senate and Assembly Business and Professions Committees. One of the issues raised from the committee was regarding appropriate licensing categories. In the final recommendations of the Board's sunset review, the legislative staff's recommendation stated:

"Staff Recommendation: The Board should review the issue of recognizing specialized service providers like eyelash extension appliers, makeup artists and waxers. The Board should work with national groups, professional associations, colleagues at NIC, school owners and licensees to determine if steps are necessary to create easier paths to Board recognition for individuals performing limited services. The Board should provide the Committee with statutory recommendations by January 1, 2014."

The Board complied with this request and below is an excerpt from the final report issued to the California Legislature regarding the cosmetology scope of practice:

"The Board is confident that the existing scope of practice is sufficient and necessary to carry out the Board's priority (consumer protection). Individuals may choose to perform only one skill within the scope of practice, however, the knowledge that is learned through the curriculum and the examinations should remain intact."

In response from the report submittal the Board received the following response from the Legislature, regarding the implementation of sublicensing categories, such as waxing:

"Staff Recommendation: The Committees may wish to require the BBC to focus on numerous other areas including: adjusting its current regulatory authority to include recognition of a freelance certificate; improving its Inspection Program, improving its relationship with the BPPE, reviewing the curriculum standards of schools and hour requirement necessary for licensure; and addressing consumer safety issues instead of approving industry certificates which licensees are already permitted to receive, granted they are operating within the scope of their professional license."

The National Interstate Council of State Boards (NIC) currently provides a written and practical waxing examination.

### **Fiscal Impact:**

The fiscal impact to the Board is substantial. The complete financial impact of implementation of this bill is unknown at this time.

The current contract with NIC would need to be amended. NIC currently charges \$15.00 per examination. Given that it is assumed that at least 50 percent of the current manicurist licensee population, 64,598 manicurists is expected to want to expand their scope of services to offer waxing, the Board could expect to incur exam fees in the amount of \$1,937,940. This cost may be offset by exam and initial licensing fees imposed upon the applicants.

To accommodate the increased examination demand, it is assumed the Board would need to hire at least 2 waxing examiners, one for each exam site (Fairfield and Glendale, CA). It may be determined that additional space to hold the waxing examination at the Board's Glendale exam site may be required. This could result in amending the current building lease and securing an additional room in order to provide space for the examination. Additional costs associated with increasing the size of the Glendale exam site is unknown at this time. In addition, it is unknown at this time if additional space is available for lease. If space is not available, this could result in the Board defaulting on its current contract with the Glendale leasing agent and incurring expenses in the default of lease, legal costs and costs estimated in moving the examination site and entering into another building lease agreement.

There may be a need to hire 1 temporary headquarters office technician for cashiering and application processing. This would be a temporary assignment as once the initial influx of currently licensed manicurists taking the waxing exam is satisfied; the Board may be able to absorb the additional time spent on application processing.

The costs involved in promulgation regulations are estimated at \$1,000.00 per regulatory package. It is estimated the Board may need two regulatory packages.

It is assumed that the BreEZe database will need the following adjustments and costs involved in implementation are unknown at this time:

- Amendments to the current checklist.
- Possible new business rule or modifier.
- Possible on-demand letter(s).
- Possible new enforcement or compliance codes.

Since the assumed proposed regulations would impact IT work, IT requirements cannot be finalized until the regulations are implemented. It is presumed that regulations will require one year for completion. In addition, use of new contract resources will extend the development effort up to twelve months to allow for recruitment and hiring.

### **Board Position:**

On May 15, 2017, the Board took an opposed position to this bill.

### **Bill Status:**

Two year bill.

\*BP&C refers to the California Business and Professions Code.





# California

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### SB-296 Barbering and cosmetology: nail care: superfluous hair removal. (2017-2018)

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Date Published: 04/17/2017 02:46 PM

AMENDED IN SENATE APRIL 17, 2017

CALIFORNIA LEGISLATURE— 2017-2018 REGULAR SESSION

## SENATE BILL

**No. 296**

Introduced by Senator Nguyen

February 13, 2017

An act to amend Section ~~7401~~ 7316 of the Business and Professions Code, relating to barbering and cosmetology.

### LEGISLATIVE COUNSEL'S DIGEST

SB 296, as amended, Nguyen. Barbering and ~~cosmetology~~. *cosmetology: nail care: superfluous hair removal.*

The Barbering and Cosmetology Act provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology, which is within the Department of Consumer Affairs. Existing law ~~requires a licensee, at the time of license renewal, to report certain information to the board, including whether he or she is an employee, an independent contractor, a booth renter, or a salon owner.~~ *defines nail care as the practice of cutting, trimming, polishing, coloring, tinting, cleansing, manicuring, or pedicuring the nails of any person or massaging, cleaning, or beautifying from the elbow to the fingertips or the knee to the toes. Existing law requires an applicant for a license as a manicurist to meet certain criteria, including that he or she has completed a course in nail care from a school approved by the board.*

This bill would ~~make nonsubstantive changes to these provisions.~~ *additionally define nail care as removing superfluous hair from the lip, eyebrows, the elbow to fingertips, or knees to toes by the use of tweezers or waxing. The bill would authorize a licensee as a manicurist to remove superfluous hair only if he or she meets specified educational requirements. The bill would require the board to determine, by regulation, the required number of hours to be added to the existing manicuring curriculum that will allow sufficient training in the practice of superfluous hair removal and would require an approved school to add the required number of training hours to the school's curriculum for any course in manicuring by a specified date.*

Vote: majority Appropriation: no Fiscal Committee: ~~no~~yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *Section 7316 of the Business and Professions Code is amended to read:*

**7316.** (a) The practice of barbering is all or any combination of the following practices:

- (1) Shaving or trimming the beard or cutting the hair.
- (2) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.
- (3) Singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.
- (4) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.
- (5) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.

(b) The practice of cosmetology is all or any combination of the following practices:

- (1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.
- (2) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (3) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (4) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.
- (5) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.
- (6) Massaging, cleansing, treating, or beautifying the hands or feet of any person.

(c) Within the practice of cosmetology there exist the specialty branches of skin care and nail care.

(1) Skin care is any one or more of the following practices:

- (A) Giving facials, applying makeup, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, ~~tweezers~~ tweezers, or waxing, or applying eyelashes to any person.
- (B) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (C) Massaging, cleaning, or stimulating the face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(2) (A) ~~Nail care is the~~ is both of the following:

- (i) The practice of cutting, trimming, polishing, coloring, tinting, cleansing, manicuring, or pedicuring the nails of any person or massaging, cleansing, or beautifying from the elbow to the fingertips or the knee to the toes of any person.
- (ii) The removing of superfluous hair from the lip, eyebrows, the elbow to the fingertips, or knees to the toes of any person. An individual who is licensed by the board as a manicurist shall only be authorized to remove superfluous hair if he or she has met the educational requirements required by the board pursuant to subparagraph (C).
- (B) An individual who is licensed by the board as a manicurist who desires to perform the removal of superfluous hair, as described in clause (ii) of subparagraph (A), and who has not obtained the required

number of hours of education on the removal of superfluous hair required by the board, pursuant to subparagraph (C), shall obtain the required additional education prior to performing the removal of superfluous hair, as described in clause (ii) of subparagraph (A), and shall submit proof of the completion of the required education to the board. Upon completion of the required education, the licensee shall be required to take and pass an examination.

(C) The board shall determine, by regulation, the required number of hours to be added to the existing manicuring curriculum that will allow for sufficient training in the practice of superfluous hair removal, which shall include removing superfluous hair from the lip, eyebrows, the elbows to the fingertips, and knees to toes by the use of tweezers or waxing. A licensee described in subparagraph (B) shall be required to complete the required hours of training under this subparagraph consistent with the requirements of subparagraph (B).

(D) On and after \_\_\_\_\_, an approved school shall add the required number of hours in subparagraph (C) to the school's curriculum for any course in manicuring.

(d) The practice of barbering and the practice of cosmetology do not include any of the following:

(1) The mere sale, fitting, or styling of wigs or hairpieces.

(2) Natural hair braiding. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include haircutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

(3) Threading. Threading is a technique that results in removing hair by twisting thread around unwanted hair and pulling it from the skin and the incidental trimming of eyebrow hair.

(e) Notwithstanding paragraph (2) of subdivision (d), a person who engages in natural hairstyling, which is defined as the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practices of barbering or cosmetology, is subject to regulation pursuant to this chapter and shall obtain and maintain a barbering or cosmetology license as applicable to the services respectively offered or performed.

(f) Electrolysis is the practice of removing hair from, or destroying hair on, the human body by the use of an electric needle only.

"Electrolysis" as used in this chapter includes electrolysis or thermolysis.

~~SECTION 1. Section 7401 of the Business and Professions Code is amended to read:~~

~~7401. (a) An individual licensed pursuant to Section 7396 shall, at the time of license renewal, report to the board his or her practice status, designated as one of the following:~~

~~(1) Full-time practice in California;~~

~~(2) Full-time practice outside of California;~~

~~(3) Part-time practice in California;~~

~~(4) Not working in the industry;~~

~~(5) Retired;~~

~~(6) Other practice status, as may be further defined by the board.~~

~~(b) An individual licensed pursuant to Section 7396 shall, at the time of license renewal, identify himself or herself on the application as one of the following:~~

~~(1) Employee;~~

~~(2) Independent contractor or booth renter;~~

~~(3) Salon owner;~~

~~(c) An individual licensed pursuant to Section 7347 shall, at the time of license renewal, report to the board whether either of the following is applicable to him or her:~~

~~(1) He or she has a booth renter operating in the establishment;~~

~~(2) He or she has an independent contractor operating in the establishment.~~





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## BOARD OF BARBERING & COSMETOLOGY

### BILL ANALYSIS

**Author:** Senate Member Bradford

**Subject:** Commission Wages

**Bill Number:** SB 490

**Version:** March 20, 2017

#### Existing Law:

Provides the licensure and regulation of the practices of barbering, cosmetology, esthetics, manicuring and electrology by the California Board of Barbering and Cosmetology. (Board)(BP&C\* §7312)

Defines "commission wages" as compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value of the property or services, and requires that commission wages are due and payable once during each calendar month on a day designated in advance by the employer as the regular payday. (Labor Code§ 204.4)

Requires that, when an employee is compensated on a "piece rate" basis, the employer must include the employee's wage stub and the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis. (Labor Code§ 226 (e))

Requires that nonproductive time, rest breaks, and recovery breaks are separately compensated and set requirements for how they should be compensated. (Labor Code § 226.2)

#### This Bill:

Allows BBC licensees to be paid a commission wage if the salon pays twice the minimum wage base hourly rate and then adds a commission percentage on top of that payment. Requires commission wages paid to any BBC licensee to be due and payable at least twice during each calendar month on a day designated in advance by the employer as the regular payday.

If adopted, this bill would take effect on January 1, 2018.

#### Analysis:

Within the barbering and beauty industry employers usually utilize either an hourly rate of pay structure, a piece rate (unit) pay structure or a commission based pay structure.

Making the distinction between piece rate (units) wages and commission wages is very difficult. Piece rate payment is generally used as a payment for items such as a basket of strawberries or a sewn piece of clothing. On the other hand, a commission payment is usually a percentage of the value of a sale, such as a percentage of hair care products that a stylist may sell. Under current law, a base rate



of minimum wage is only necessary if a salon pays for all rest periods and pays a flat "piece" of the service on top of the minimum wage.

Concern develops in using the piece rate method in the salon environment because a stylist can sell a bottle of shampoo, a monthly lash extension service, all while providing a haircut, which creates extreme difficulty in appropriately breaking down how the work hours and payment should be made to the stylist under the piece rate pay structure.

This bill allows licensees to have a 'ground floor' rate of pay (twice the states minimum wage) and negotiate a commission percentage on products or services sold while performing actual services.

This bill does not require establishments to adopt this pay model but offers it as an alternate rate of wage structure. Salons are still able to pay licensees on an hourly basis, or by the piece rate rules or by the twice the minimum wage/commission method.

#### **Fiscal Impact:**

The fiscal impact to the Board is considered minor and absorbable by the Board. The Board does not enforce the California labor law therefore there are no fiscal enforcement impacts.

Any fiscal impact results from the changes to the labor law requiring the statutorily mandated Health and Safety Course (BP& C § 7389) to be revised. This will require the Board to send out the training course to all Board approved schools and apprentice sponsors.

#### **Estimated Fiscal Impact**

Production costs of a CD copy of the Training course for 246 schools and 35 apprentice sponsorst= \$562.00

Shipping costs: \$674.40

**Total Estimated Fiscal Impact: \$1,236.40**

#### **Board Position:**

Non Declared.

\*BP&C refers to the California Business and Professions Code.



# California

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### SB-490 Wages: Barbering and Cosmetology Act: licensees. (2017-2018)

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Date Published: 03/21/2017 04:00 AM

AMENDED IN SENATE MARCH 20, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

## SENATE BILL

**No. 490**

Introduced by Senator Bradford

February 16, 2017

An act to ~~amend~~ add Section ~~51 of 204.11~~ to the Labor Code, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

SB 490, as amended, Bradford. ~~Director of Industrial Relations. Wages: Barbering and Cosmetology Act: licensees.~~

Existing law ~~establishes the Department of Industrial Relations, which is responsible for the administration of the Department of Industrial Relations, and provides for its administration by the Director of Industrial Relations.~~ requires, with certain exceptions, that all wages be paid twice during each calendar month on days designated in advance by the employer as the regular paydays and requires the minimum wage for all industries to be \$10. Existing law makes it a crime for any person to willfully refuse to pay wages due and payable after demand has been made. The Barbering and Cosmetology Act provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology, which is within the Department of Consumer Affairs.

This bill would ~~make a nonsubstantive change to that administration provision.~~ require commission wages paid to any employee who is licensed under the Barbering and Cosmetology Act to be due and payable at least twice during each calendar month on a day designated in advance by the employer as the regular payday and authorizes the employee and employer to agree to a commission in addition to the base hourly rate. The bill would provide that commission wages are wages paid to an employee who is licensed under that act for providing services for which a license is required when paid as a percentage or a flat sum portion of the sums paid to the employee by the client receiving the service, provided that the employee is paid a regular hourly

*rate of at least 2 times the state minimum wage rate in addition to commissions paid. By expanding the scope of an existing crime, this bill would result in a state-mandated local program.*

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

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

Vote: majority Appropriation: no Fiscal Committee: ~~no~~yes Local Program: ~~no~~yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *Section 204.11 is added to the Labor Code, to read:*

**204.11.** *Commission wages paid to any employee who is licensed pursuant to the Barbering and Cosmetology Act (Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code) are due and payable at least twice during each calendar month on a day designated in advance by the employer as the regular payday. For any employee who is licensed pursuant to the Barbering and Cosmetology Act (Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code), wages that are paid to that employee for providing services for which such a license is required, when paid as a percentage or a flat sum portion of the sums paid to the employer by the client recipient of such service, constitute commissions, provided that the employee who is paid, in every pay period in which hours are worked, a regular hourly rate of at least two times the state minimum wage rate in addition to commissions paid. The employee and employer may agree to a commission in addition to the base hourly rate. Nothing in this section shall be interpreted to limit any rights or remedies otherwise available under state or federal law, including the right to overtime compensation.*

**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.*

~~SECTION 1. Section 51 of the Labor Code is amended to read:~~

~~51. The department shall be conducted under the control of an executive officer known as the Director of Industrial Relations. The Director of Industrial Relations shall be appointed by the Governor with the advice and consent of the Senate and hold office at the pleasure of the Governor and shall receive an annual salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.~~





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## **BOARD OF BARBERING & COSMETOLOGY**

### **BILL ANALYSIS**

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**Author:** Senate Member Hill

**Subject:** Apprentice Supervision

**Bill Number:** SB 547

**Version:** July 5, 2017

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#### **Existing Law:**

Defines the term "Apprentice". (BP&C\* §7332)

Provides that it is unlawful for anyone practicing barbering, cosmetology, esthetics, manicuring or electrology for compensation without a valid, unexpired license. A violation of the section is subject to administrative fines and maybe subject to a misdemeanor. (BP&C §7317)

Provides the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists and apprentices by the California Board of Barbering and Cosmetology. (Board) (BP&C §§ 7312, 7334)

Authorizes an apprentice, to perform services under the supervision of a licensee approved by the Board and establishes the conditions under which an apprentice may practice. (BP&C §7336)

#### **This Bill:**

Defines the term, "under the supervision of a licensee". This term would mean a person supervised at all times by a licensee while performing services in a licensed establishment and would consider an apprentice who is not being supervised by a licensee to be practicing under the act without a license.

#### **Analysis:**

The Board currently cites an apprentice for unlicensed activity (BC&P 7317) if an apprentice is performing services on a client for compensation without the supervision of a Board approved trainer. This bill adds clarity to that action and provides the Board substantiation for the action.

#### **Fiscal Impact:**

No fiscal impact to the Board.

#### **Board Position:**

On May 15, 2017, the Board took a support position to this bill.

\*BP&C refers to the California Business and Professions Code.



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## SB-547 Professions and vocations: weights and measures. (2017-2018)

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Date Published: 07/05/2017 09:00 PM

AMENDED IN ASSEMBLY JULY 05, 2017

AMENDED IN SENATE APRIL 17, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

### SENATE BILL

**No. 547**

Introduced by Senator Hill

February 16, 2017

An act to amend Sections [156](#), [2499.5](#), [2715](#), [2760.1](#), [2987](#), [4008](#), [4887](#), 5063.3, 5096.9, 5810, 7332, [7635](#), 11302, [11320.5](#), 11321, 11323, 11324, 11345, [11345.2](#), 11345.6, 11422, 12241, 12304, 12305, 12310, and 12500 of, to add Sections 11345.5 and 11345.8 to, [to repeal Section 303 of](#), and to repeal and add Section 11345.3 of, the Business and Professions Code, relating to professions and vocations.

### LEGISLATIVE COUNSEL'S DIGEST

SB 547, as amended, Hill. Professions and vocations: weights and measures.

(1) Existing law ~~provides~~ [establishes the Department of Consumer Affairs within the Business, Consumer Services, and Housing Agency and provides that the department is under the control of the Director of Consumer Affairs. Existing law establishes within the department a Division of Consumer Services under the supervision and control of a chief who is appointed by the Governor. Existing law authorizes the Department of Consumer Affairs to enter into a contract with a vendor for the licensing and enforcement of the BreEze system, which is a specified integrated, enterprisewide enforcement case management and licensing system, no sooner than 30 days after written notification to certain committees of the Legislature.](#)

[This bill would repeal the provision establishing the Division of Consumer services. The bill would require the director to report progress on release 3 entities' transition to the new licensing technology platform to the appropriate committees of the Legislature, as specified.](#)



*(2) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.*

*(A) Existing law provides for the certification and regulation of podiatrists by the California Board of Podiatric Medicine within the jurisdiction of the Medical Board of California and requires certain fees to be paid to the board, including a fee for the application and issuance of a certificate to practice podiatric medicine.*

*This bill would revise the fees, as specified.*

*(B) Existing law, the Nursing Practice Act, establishes the Board of Registered Nursing within the Department of Consumer Affairs and sets forth its powers and duties regarding the licensure and regulation of registered nurses. That act authorizes a registered nurse whose license has been revoked or suspended or who has been placed on probation to petition the board for reinstatement or modification of penalty.*

*This bill would authorize the board to hear the petition or to assign the petition to an administrative law judge, as specified.*

*(C) Existing law, the Psychology Licensing Law, establishes the Board of Psychology to license and regulate the practice of psychology and authorizes the board to collect specified fees, including a delinquency fee of \$25.*

*This bill would instead make the delinquency fee 50 percent of the renewal fee for each license type, not to exceed \$150.*

*(D) Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists by the California State Board of Pharmacy and authorizes the board to employ inspectors of pharmacy.*

*This bill would also authorize the board to employ legal counsel.*

*(E) Existing law, the Veterinary Medicine Practice Act, provides for the licensure and regulation of veterinarians and the practice of veterinary medicine by the Veterinary Medical Board and authorizes a person whose license or registration has been revoked or placed on probation to petition the board for reinstatement or modification of penalty after a period of not less than one year.*

*This bill would instead provide that a person may petition the board for reinstatement or modification of penalty after at least 3 years for reinstatement of a surrendered or revoked license, at least 2 years for early termination or modification of probation of 3 years or more, or at least one year for modification of a condition or termination of probation of less than 3 years. The bill would authorize the board, upon a showing of good cause, to specify in an order imposing probation of more than 3 years that the person may petition for reissuement, modification, or termination of probation after one year.*

*(A)*

*(F) Existing law provides for the licensure and regulation of accountants by the California Board of Accountancy, which is within the Department of Consumer Affairs. Existing law prohibits confidential information obtained by a licensee concerning a client from being disclosed by the licensee without the written permission of the client, except when the disclosure is made by a licensee or a licensee's duly authorized representative to another licensee in connection with a proposed sale or merger of the licensee's professional practice.*

*This bill would additionally authorize that disclosure in that same connection to another person, provided the parties enter into a written nondisclosure agreement.*

*Existing law, until January 1, 2019, authorizes an individual otherwise meeting a condition for a practice privilege to perform certain audit and financial statement review services only through a firm of certified public accountants that is required to be registered with the board and authorizes such an individual qualified for the practice privilege to practice public accountancy in this state without the imposition of a notice, fee, or any other requirements. Existing law authorizes the board to adopt regulations to carry out the practice privilege provisions and regulations have been adopted, which become inoperative on January 1, 2019.*

*To ensure uninterrupted implementation of the practice privilege provisions, this bill would authorize the board to adopt or amend regulations to remove or extend the inoperative date of these regulations. The bill would require the Office of Administrative Law to consider the board's action to remove or extend the inoperative dates of these regulations as a change without regulatory effect and would exempt the board from complying with the Administrative Procedure Act with respect to that removal or extension.*

*(B)*

(G) Existing law authorizes a certified interior designer, as defined, to obtain a stamp from an interior design organization, as defined, that uniquely identifies the designer and certifies that he or she meets certain qualifications and requires the use of that stamp on all drawings and documents submitted to any governmental agency by the designer. Existing law provides that these provisions are repealed on January 1, 2018.

This bill would instead repeal those provisions on January 1, 2022.

(H)

(H) Existing law, the Barbering and Cosmetology Act, provides for the licensing and regulation of persons engaging in the practice of barbering, cosmetology, or electrolysis, as specified. Existing law authorizes an apprentice, as defined, to perform services under the supervision of a licensee approved by the State Board of Barbering and Cosmetology, as specified. Practicing barbering, cosmetology, or electrolysis without being properly licensed is a crime.

This bill would define the term "under the supervision of a licensee" for these provisions to mean a person supervised at all times by a licensee while performing services in a licensed establishment. The bill would also prohibit an apprentice from being the only person working in an establishment and would deem an apprentice who is not being supervised by a licensee to be practicing under the act without a license. Because this bill would expand the scope of a crime, it would impose a state-mandated local program.

*(I) The Cemetery and Funeral Act provides for the licensure and regulation of cemeteries, crematories, funeral establishments, and their personnel by the Cemetery and Funeral Bureau, and requires any person employed by, or an agent of, a licensed funeral establishment who consults with the family or representatives of the family of a deceased person for the purpose of arranging certain services to receive documented training, as specified.*

*This bill would require that training to be completed at least once every 3 years.*

(J)

(J) Existing state law, the Real Estate Appraisers' Licensing and Certification Law, provides for the licensure, certification, and regulation of real estate appraisers and appraisal management companies by the Bureau of Real Estate Appraisers within the Department of Consumer Affairs, which is headed by the Chief of the Bureau of Real Estate Appraisers. Existing state law prohibits a person from engaging in federally related real estate appraisal activity without an active license. Existing state law defines "federally related transaction" as any real estate-related financial transaction which a federal financial institutions regulatory agency engages in, contracts for, or regulates, and which requires the services of a state licensed real estate appraiser.

Existing state law prohibits a person or entity from acting in the capacity of an appraisal management company without first obtaining a certificate of registration from the bureau. Existing state law defines an "appraisal management company" as a person or entity that maintains an approved list or lists, containing 11 or more independent contractor licensed or certified appraisers, or employs 11 or more licensed or certified appraisers, receives requests for appraisals from one or more clients, and for a fee paid by one or more of its clients, delegates appraisal assignments for completion by its independent contractor or employee appraisers.

Existing federal law, the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection to jointly, by rule, establish minimum requirements to be applied by a state in the registration of appraisal management companies. These minimum requirements include a requirement that an appraisal management company (1) register with and be subject to supervision by a state appraiser certifying and licensing agency in each state in which that company operates, (2) verify that only licensed or certified appraisers are used for federally related transactions, (3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice, and (4) require that appraisals are conducted independently and free from inappropriate influence and coercion, as provided. Existing federal law does not prohibit states from establishing additional requirements.

Existing federal law prohibits an appraisal management company from being registered by a state or included on the national registry if the company is owned by any person whose appraiser license or certificate was refused, denied, canceled, surrendered in lieu of revocation, or revoked in any state.

This bill would conform to federal law by, among other things, redefining an "appraisal management company" as a person that (1) provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates, (2) provides those services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations, and (3) within a given 12-month period, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States. The bill would define "appraiser panel" and prescribe the method for determining whether an appraiser is a part of the appraisal management company's appraiser panel. *The bill would additionally prohibit a person or entity from representing itself to the public as an appraisal management company, either in advertising or through its business name, without a certificate of registration.*

Existing state law prohibits a person other than a licensee from signing an appraisal and authorizes a specified trainee to sign an appraisal if it is also signed by the licensee. Existing law authorizes an individual who is not a licensee to assist in the preparation of an appraisal under certain conditions.

This bill would prohibit a person other than a licensee from signing an appraisal in a federally related transaction. The bill would authorize a trainee to sign an appraisal in such a transaction if it is also signed by a licensee. The bill would authorize an individual who is not a licensee to assist in the preparation of an appraisal in a federally related transaction under certain conditions.

Existing state law prohibits the chief from issuing a certificate of registration to an appraisal management company unless the appraisal management company confirms in its application for registration that all of its contracts with clients include specified standard business practices.

This bill would delete that provision and require all appraisal management companies to, among other things, direct the appraiser to perform the assignment in accordance with the Uniform Standards of Professional Appraisal Activity and engage appraisal panel members with an engagement letter that shall include terms of payment.

Existing federal law requires a federally regulated appraisal management company to report to the State or States in which it operates the information required to be submitted by the State pursuant to the policies of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council regarding the determination of the fee imposed by the AMC National Registry, which is the registry of State-registered appraisal management companies and federally regulated appraisal management companies maintained by the Appraisal Subcommittee.

This bill would require a federally regulated appraisal management company operating in California to report to the bureau the information required to be submitted by the bureau to the Appraisal Subcommittee. The bill would authorize the bureau to charge the federally regulated appraisal management company a fee in an amount not exceed the reasonable regulatory cost to the board for processing the information.

This bill would also define various other terms for purposes of carrying out these provisions.

This bill would make various other nonsubstantive and technical changes.

~~(2)~~

(3) (A) Existing law provides for the regulation of commercial weighing and measuring devices by the Department of Food and Agriculture, and provides for the enforcement of those provisions by the State Sealer and by county sealers of weights and measures in each county. Existing law requires the department to keep the standards of the state for weights and measures in a suitable laboratory location or, if transportable, to maintain the standards under appropriate environmental conditions and requires the department to have the standards directly certified by the National Institute of Standards and Technology or by any measurement assurance procedures approved by that institute. Existing law requires the department to use the standards of the state to certify similar standards and any dissimilar standards which are dependent on the values represented by the state standards. Existing law requires the department, or a certified laboratory designated by the department, to certify standards of the county sealers at specified intervals.

Existing law, until January 1, 2019, requires the Secretary of Food and Agriculture to establish by regulation an annual administrative fee to recover reasonable administrative and enforcement costs incurred by the Department of Food and Agriculture for exercising supervision over and performing investigations in connection with specified activities performed by sealers, and requires the administrative fee to be collected for every device registered with each county office of weights and measures and paid annually to the Department of Food and Agriculture Fund.



This bill would additionally require the annual administrative fee to be used to recover reasonable costs incurred by the department for the safekeeping and certification of the state standards, for using the state standards to certify other standards, and for certifying the standards of county sealers.

(8) Existing law defines various terms for purposes of regulating weighing and measuring devices, including the term "commercial purposes."

This bill would provide that commercial purposes does not include the determination of the weight of any animal or human by a ~~healing-arts-licensee~~ *qualified health provider, licensed doctor of veterinary medicine, licensed physician and surgeon, or staff members within the business operations of and under the supervision of a licensed doctor of veterinary medicine or licensed physician and surgeon* for the purposes of determining the appropriate dosage of any medication or *medical* treatment ~~of or~~ the volume, duration, or application of any medical procedure.

~~(3)~~

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

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

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1. Section 156 of the Business and Professions Code is amended to read:**

156. (a) The director may, for the department and at the request and with the consent of a board within the department on whose behalf the contract is to be made, enter into contracts pursuant to Chapter 3 (commencing with Section 11250) of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code for and on behalf of any board within the department.

(b) In accordance with subdivision (a), the director may, in his or her discretion, negotiate and execute contracts for examination ~~purposes~~ *purposes*, which include provisions ~~which that~~ hold harmless a contractor where liability resulting from a contract between a board in the department and the contractor is traceable to the state or its officers, agents, or employees.

(c) *The director shall report progress on release 3 entities' transition to a new licensing technology platform to all the appropriate committees of the Legislature by December 31 of each year. Progress reports shall include updated plans and timelines for completing all of the following:*

*(1) Business process documentation.*

*(2) Cost benefit analyses of IT options.*

*(3) IT system development and implementation.*

*(4) Any other relevant steps needed to meet the IT needs of release 3 entities.*

*(5) Any other information as the Legislature may request.*

**SEC. 2. Section 303 of the Business and Professions Code is repealed.**

~~303. There is in the department a Division of Consumer Services under the supervision and control of a chief. The chief shall be appointed by the Governor and shall serve at his pleasure. His compensation shall be fixed by the director in accordance with law.~~

**SEC. 3. Section 2499.5 of the Business and Professions Code is amended to read:**

2499.5. The following fees apply to certificates to practice podiatric medicine. The amount of fees prescribed for doctors of podiatric medicine shall be ~~those set forth in this section unless a lower fee is established by the board in accordance with Section 2499.6.~~ *determined by the board and shall be as described below.* Fees collected pursuant to this section shall be fixed by the board in amounts not to exceed the actual costs of providing the service for which the fee is collected.

(a) Each applicant for a certificate to practice podiatric medicine shall pay an application fee of ~~twenty dollars (\$20)~~ **no more than one hundred dollars (\$100)** at the time the application is filed. If the applicant qualifies for a certificate, he or she shall pay a fee ~~which shall be fixed by the board at an amount~~ not to exceed one hundred dollars (\$100) nor less than five dollars (\$5) for the issuance of the certificate.

(b) The oral examination fee shall be seven hundred dollars (\$700), or the actual cost, whichever is lower, and shall be paid by each applicant. If the applicant's credentials are insufficient or if the applicant does not desire to take the examination, and has so notified the board 30 days prior to the examination date, only the examination fee is returnable to the applicant. The board may charge an examination fee for any subsequent reexamination of the applicant.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required by this section, shall pay an initial license fee. The initial license fee shall be eight hundred dollars (\$800). The initial license shall expire the second year after its issuance on the last day of the month of birth of the licensee. The board may reduce the initial license fee by up to 50 percent of the amount of the fee for any applicant who is enrolled in a postgraduate training program approved by the board or who has completed a postgraduate training program approved by the board within six months prior to the payment of the initial license fee.

(d) The biennial renewal fee shall be nine hundred dollars (\$900). Any licensee enrolled in an approved residency program shall be required to pay only 50 percent of the biennial renewal fee at the time of his or her first renewal.

(e) The delinquency fee ~~is~~ **shall be** one hundred fifty dollars (\$150).

(f) The duplicate wall certificate fee ~~is forty dollars (\$40)~~ **shall be no more than one hundred dollars (\$100)**.

(g) The duplicate renewal receipt fee ~~is forty dollars (\$40)~~ **shall be no more than fifty dollars (\$50)**.

(h) The endorsement fee ~~is~~ **shall be** thirty dollars (\$30).

(i) The letter of good standing fee or for loan deferment ~~is thirty dollars (\$30)~~ **shall be no more than one hundred dollars (\$100)**.

(j) There shall be a fee of ~~sixty dollars (\$60)~~ **no more than one hundred dollars (\$100)** for the issuance of a resident's license under Section 2475.

~~(k) The application fee for ankle certification under Section 2472 for persons licensed prior to January 1, 1984, shall be fifty dollars (\$50). The examination and reexamination fee for this certification shall be seven hundred dollars (\$700).~~

~~(l)~~

~~(k)~~ The filing fee to appeal the failure of an oral examination shall be ~~twenty-five dollars (\$25)~~ **no more than one hundred dollars (\$100)**.

~~(m)~~

~~(l)~~ The fee for approval of a continuing education course or program shall be ~~one hundred dollars (\$100)~~ **no more than two hundred fifty dollars (\$250)**.

**SEC. 4. Section 2715 of the Business and Professions Code is amended to read:**

2715. (a) The board shall prosecute all persons guilty of violating this chapter.

(b) Except as provided by Section 159.5, the board, in accordance with the Civil Service Law, may employ ~~the personnel~~ **personnel, including legal counsel, as** it deems necessary to carry into effect this chapter.

(c) The board shall have and use a seal bearing the name "Board of Registered Nursing." The board may adopt, amend, or repeal, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the rules and regulations that may be reasonably necessary to enable it to carry into effect this chapter.

**SEC. 5. Section 2760.1 of the Business and Professions Code is amended to read:**

2760.1. (a) A registered nurse whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including reduction or

termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action, or if the order of the board or any portion of it is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety, or for a registered nurse whose initial license application is subject to a disciplinary decision, from the date the initial license was issued:

(1) Except as otherwise provided in this section, at least three years for reinstatement of a license that was revoked, except that the board may, in its sole discretion, specify in its order a lesser period of time provided that the period shall be not less than one year.

(2) At least two years for early termination of a probation period of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The hearing may be continued from time to time as the board deems appropriate.

(d) ~~(1) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.~~ *petition may be heard by the board or the board may assign the petition to an administrative law judge, as specified in Section 11371 of the Government Code.*

*(2) If the board assigns the petition to an administrative law judge, the administrative law judge shall submit a proposed decision to the board for its consideration, which shall include reasons supporting the proposed decision.*

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

*(f) In considering a petition for reinstatement or modification of a penalty, the board or the administrative law judge shall evaluate and consider evidence of rehabilitation submitted by the petitioner using criteria specified in regulations promulgated by the board.*

*(g) The board may impose, or the administrative law judge may recommend, terms and conditions on the petitioner in reinstating a license, certificate, or permit or in modifying a penalty.*

~~(f)~~

*(h)* The petitioner shall provide a current set of fingerprints accompanied by the necessary fingerprinting fee.

~~(g)~~

*(i)* No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

~~(h)~~

*(j)* Except in those cases where the petitioner has been disciplined pursuant to Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

**SEC. 6. Section 2987 of the Business and Professions Code is amended to read:**

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

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



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

(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued.

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

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

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

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

(h) The delinquency fee is ~~twenty-five dollars (\$25)~~ *50 percent of the renewal fee for each license type, not to exceed one hundred fifty dollars (\$150).*

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

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

***SEC. 7. Section 4008 of the Business and Professions Code is amended to read:***

**4008.** (a) Except as provided by Section 159.5, the board may employ *legal counsel and* inspectors of pharmacy. The inspectors, whether the inspectors are employed by the board or the department's Division of Investigation, may inspect during business hours all pharmacies, wholesalers, dispensaries, stores, or places where drugs or devices are compounded, prepared, furnished, dispensed, or stored.

(b) Notwithstanding subdivision (a), a pharmacy inspector may inspect or examine a physician's office or clinic that does not have a permit under Section 4180 or 4190 only to the extent necessary to determine compliance with and to enforce either Section 4080 or 4081.

(c) (1) (A) A pharmacy inspector employed by the board or in the department's Division of Investigation shall have the authority, as a public officer, to arrest, without warrant, any person whenever the officer has reasonable cause to believe that the person to be arrested has, in his or her presence, violated a provision of this chapter or of Division 10 (commencing with Section 11000) of the Health and Safety Code.

(B) If the violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated any provision that is declared to be a felony, although no felony has in fact been committed, he or she may make an arrest although the violation or suspected violation did not occur in his or her presence.

(2) In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting inspector may, instead of taking the person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. That chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, a person, acting pursuant to subdivision (a) within the scope of his or her authority, for false arrest or false imprisonment arising out of an arrest that is lawful, or that the arresting officer, at the time of the arrest, had reasonable cause to believe was lawful. An inspector shall not be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(e) Any inspector may serve all processes and notices throughout the state.

(f) A pharmacy inspector employed by the board may enter a facility licensed pursuant to subdivision (c) or (d) of Section 1250 of the Health and Safety Code to inspect an automated drug delivery system operated pursuant to Section 4119 or 4119.1.

***SEC. 8. Section 4887 of the Business and Professions Code is amended to read:***

4887. (a) (1) A person whose license or registration has been revoked or who has been placed on probation may petition the board for reinstatement or modification of penalty including modification or termination of probation after ~~a the period of not less than one year as described below in subparagraphs (A) to (C), inclusive,~~ has elapsed from the effective date of the decision ordering the disciplinary action. The petition shall state ~~such~~ facts as ~~may be~~ required by the board. *The period shall be as follows:*

*(A) At least three years for reinstatement of a surrendered or revoked license.*

*(B) At least two years for early termination or modification of probation of three years or more.*

*(C) At least one year for modification of a condition or termination of probation of less than three years.*

*(2) Notwithstanding paragraph (1), the board may, upon a showing of good cause, specify in a revocation order, a surrender order, or an order imposing probation of more than three years that the person may petition the board for reinstatement or modification or termination of probation after one year.*

(b) The petition shall be accompanied by at least two verified recommendations from veterinarians licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed. The petition shall be heard by the board. The board may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities since the license or registration was in good standing, and the petitioner's rehabilitation efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the board finds necessary.

(c) The board reinstating the license or registration or modifying a penalty may impose terms and conditions as it determines necessary. To reinstate a revoked license or registration or to otherwise reduce a penalty or modify probation shall require a vote of five of the members of the board.

(d) The petition shall not be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

**SECTION 4. SEC. 9.** Section 5063.3 of the Business and Professions Code is amended to read:

**5063.3.** (a) No confidential information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the licensee without the written permission of the client or prospective client, except the following:

(1) Disclosures made by a licensee in compliance with a subpoena or a summons enforceable by order of a court.

(2) Disclosures made by a licensee regarding a client or prospective client to the extent the licensee reasonably believes it is necessary to maintain or defend himself or herself in a legal proceeding initiated by the client or prospective client.

(3) Disclosures made by a licensee in response to an official inquiry from a federal or state government regulatory agency.

(4) Disclosures made by a licensee or a licensee's duly authorized representative to another licensee or person in connection with a proposed sale or merger of the licensee's professional practice, provided the parties enter into a written nondisclosure agreement with regard to all client information shared between the parties.

(5) Disclosures made by a licensee to either of the following:

(A) Another licensee to the extent necessary for purposes of professional consultation.

(B) Organizations that provide professional standards review and ethics or quality control peer review.

(6) Disclosures made when specifically required by law.

(7) Disclosures specified by the board in regulation.

(b) In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the licensee shall inform the client in writing and obtain the client's written permission for the disclosure.

**SEC. 2. SEC. 10.** Section 5096.9 of the Business and Professions Code is amended to read:

**5096.9.** (a) The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

(b) The board shall adopt emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) to establish policies, guidelines, and procedures to initially implement this article as it goes into effect on July 1, 2013. The adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. The emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State in accordance with the Administrative Procedure Act.

(c) (1) Notwithstanding any other law, to ensure uninterrupted implementation of this article, the board may adopt or amend regulations consistent with Section 100 of Title 1 of the California Code of Regulations to remove or extend the inoperative date of its regulations in Article 3 (commencing with Section 18) of Division 1 of Title 16 of the California Code of Regulations, or to remove the inoperative dates for the regulations in Article 4 (commencing with Section 26) of Division 1 of Title 16 of the California Code of Regulations.

(2) Notwithstanding any other law, the Office of Administrative Law shall consider the board's action to remove or extend the inoperative dates of these regulations as a change without regulatory effect as described in Section 100 of Title 1 of the California Code of Regulations that exempts the board from complying with the rulemaking procedure specified in the Administrative Procedure Act (Article 5 (commencing with Section 11346) of Chapter 3.5 Part 1 of Division 3 of Title 2 of the Government Code).

**SEC. 3. SEC. 11.** Section 5810 of the Business and Professions Code is amended to read:

**5810.** (a) This chapter shall be subject to review by the appropriate policy committees of the Legislature.

(b) This chapter shall remain in effect only until January 1, 2022, and as of that date is repealed.

**SEC. 4. SEC. 12.** Section 7332 of the Business and Professions Code is amended to read:

**7332.** (a) An apprentice is any person who is licensed by the board to engage in learning or acquiring a knowledge of barbering, cosmetology, skin care, nail care, or electrology, in a licensed establishment under the supervision of a licensee approved by the board.

(b) For purposes of this section, "under the supervision of a licensee" means that the apprentice shall be supervised at all times by a licensee approved by the board while performing services in a licensed establishment. At no time shall an apprentice be the only individual working in the establishment. An apprentice that is not being supervised by a licensee, that has been approved by the board to supervise an apprentice, shall be deemed to be practicing unlicensed under this chapter.

**SEC. 13.** Section 7635 of the Business and Professions Code is amended to read:

**7635.** (a) Any person employed by, or an agent of, a licensed funeral establishment, who consults with the family or representatives of a family of a deceased person for the purpose of arranging for services as set forth in subdivision (a) of Section 7615, shall receive documented training and ~~instruction which~~ **instruction, at least once every three years, that** results in a demonstrated knowledge of all applicable federal and state laws, rules, and regulations including those provisions dealing with vital statistics, the coroner, anatomical gifts, and other laws, rules, and regulations pertaining to the duties of a funeral director. A written outline of the training program, including documented evidence of the training time, place, and participants, shall be maintained in the funeral establishment and shall be available for inspection and comment by an inspector of the bureau.

(b) This section shall not apply to anyone who has successfully passed the funeral director's examination pursuant to Section 7622.

**SEC. 5. SEC. 14.** Section 11302 of the Business and Professions Code is amended to read:

**11302.** For the purpose of applying this part, the following terms, unless otherwise expressly indicated, shall mean and have the following definitions:

(a) "Affiliate" means any entity that controls, is controlled by, or is under common control with another entity.

(b) "Appraisal" means the act or process of developing an opinion of value for real property.

The term "appraisal" does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which a license is required under Chapter 7 (commencing with Section 6700) or Chapter 15 (commencing with Section 8700) of Division 3, or Chapter 3 (commencing with Section 10130) or Chapter 7 (commencing with Section 10500) and the opinion shall not be referred to as an appraisal. This part does not apply to a probate referee acting pursuant to Sections 400 to 408, inclusive, of the Probate Code unless the appraised transaction is federally related.

(c) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(d) (1) "Appraisal management company" means any person or entity that satisfies all of the following conditions:

(A) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates.

(B) Provides those services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations.

(C) Within a given 12 calendar month period oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a state or 25 or more State-certified or State-licensed appraisers in two or more States, as described in Section 11345.5.

(2) An appraisal management company does not include a department or division of an entity that provides appraisal management services only to that entity.

(3) An appraisal management company that is a subsidiary of an insured depository institution and regulated by a federal financial institution is not required to register with the bureau.

(e) "Appraisal management services" means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers.

(2) Contracting with state-certified or state-licensed appraisers to perform appraisal assignments.

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed.

(4) Reviewing and verifying the work of appraisers.

(f) "Appraiser panel" means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. Appraisers on an appraisal management company's "appraiser panel" under this part include both appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions, and appraisers engaged by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this part if the appraiser is treated as an independent contractor by the appraisal management company for purposes of federal income taxation.

(g) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(h) "Consumer credit" means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(i) "Controlling person" means one or more of the following:

(1) An officer or director of an appraisal management company, or an individual who holds a 10 percent or greater ownership interest in an appraisal management company.

(2) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal services and that has the authority to enter into agreements with independent appraisers for the completion of appraisals.



(3) An individual who possesses the power to direct or cause the direction of the management or policies of an appraisal management company.

(j) "Course provider" means a person or entity that provides educational courses related to professional appraisal practice.

(k) "Covered transaction" means any consumer credit transaction secured by the consumer's principal dwelling.

(l) "Creditor" means:

(1) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a down payment, and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(2) A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension for transactions secured by a dwelling.

(m) "Department" means the Department of Consumer Affairs.

(n) "Director" or "chief" means the Chief of the Bureau of Real Estate Appraisers.

(o) "Dwelling" means:

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one "principal" dwelling at a time. Thus, a vacation or other second home is not a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this section.

(p) "Federal financial institutions regulatory agency" means the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Federal Home Loan Bank System, National Credit Union Administration, and any other agency determined by the director to have jurisdiction over transactions subject to this part.

(q) "Federally regulated appraisal management company" means an appraisal management company that is owned and controlled by an insured depository institution, as defined in Section 1813 of Title 12 of the United States Code and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(r) "Federally related real estate appraisal activity" means the act or process of making or performing an appraisal on real estate or real property in a federally related transaction and preparing an appraisal as a result of that activity.

(s) "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency engages in, contracts for or regulates and which requires the services of a state licensed real estate appraiser regulated by this part. This term also includes any transaction identified as such by a federal financial institutions regulatory agency.

(t) "License" means any license, certificate, permit, registration, or other means issued by the bureau authorizing the person to whom it is issued to act pursuant to this part within this state.

(u) "Licensure" means the procedures and requirements a person shall comply with in order to qualify for issuance of a license and includes the issuance of the license.

(v) "Office" or "bureau" means the Bureau of Real Estate Appraisers.

(w) "Registration" means the procedures and requirements with which a person or entity shall comply in order to qualify to conduct business as an appraisal management company.

(x) "Secondary mortgage participant" means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.



(y) "State licensed real estate appraiser" is a person who is issued and holds a current valid license under this part.

(z) "Uniform Standards of Professional Appraisal Practice" are the standards of professional appraisal practice established by the Appraisal Foundation.

**SEC. 15.** *Section 11320.5 of the Business and Professions Code is amended to read:*

**11320.5.** No person or entity shall act in the capacity of an appraisal management company *or represent itself to the public as an appraisal management company, either in its advertising or through its business name,* without ~~first obtaining~~ a certificate of registration from the office.

~~SEC. 6.~~ **SEC. 16.** Section 11321 of the Business and Professions Code is amended to read:

**11321.** (a) No person other than a state licensed real estate appraiser may assume or use that title or any title, designation, or abbreviation likely to create the impression of state licensure as a real estate appraiser in this state.

(b) No person other than a licensee may sign an appraisal in a federally related transaction. A trainee licensed pursuant to Section 11327 may sign an appraisal in a federally related transaction if it is also signed by a licensee.

(c) No person other than a licensee holding a current valid license at the residential level issued under this part to perform, make, or approve and sign an appraisal may use the abbreviation SLREA in his or her real property appraisal business.

(d) No person other than a licensee holding a current valid license at a certified level issued under this part to perform, make, or approve and sign an appraisal may use the term "state certified real estate appraiser" or the abbreviation SCREA in his or her real property appraisal business.

~~SEC. 7.~~ **SEC. 17.** Section 11323 of the Business and Professions Code is amended to read:

**11323.** No licensee shall engage in any appraisal activity if his or her compensation is dependent on or affected by the value conclusion generated by the appraisal.

~~SEC. 8.~~ **SEC. 18.** Section 11324 of the Business and Professions Code is amended to read:

**11324.** An individual who is not a licensee may assist in the preparation of an appraisal in a federally related transaction under the following conditions:

(a) The assistance is under the direct supervision of an individual who is a licensed appraiser and the final conclusion as to value is made by a licensed appraiser.

(b) The final appraisal document in a federally related transaction is approved and signed, with acceptance of full responsibility, by the supervising individual who is licensed by the state pursuant to this part, identifies the assisting individual, and identifies the scope of work performed by the individual who assisted in preparation of the appraisal in a federally related transaction.

~~SEC. 9.~~ **SEC. 19.** Section 11345 of the Business and Professions Code is amended to read:

**11345.** The director shall adopt regulations governing the process and procedure of applying for registration as an appraisal management company. Applications for a certificate of registration shall require, at a minimum, all of the following:

(a) The name of the person or entity seeking registration.

(b) The business address and telephone number of the person or entity seeking registration.

(c) If the applicant is not a person or entity domiciled in this state, the name and contact number of a person or entity acting as agent for service of process in this state, along with an irrevocable consent to service of process in favor of the office.

(d) The name, address, and contact information for each controlling person ~~associated with~~ of the applicant who has operational authority to direct the management of, and establish policies for, the applicant. ~~If the applicant employs more than 10 individuals meeting the criteria of this subdivision, the applicant may list the~~

~~names, addresses, and contact information for the 10 individuals meeting the criteria who hold the greatest level of management responsibility within its organization.~~

**SEC. 20.** Section 11345.2 of the Business and Professions Code is amended to read:

**11345.2.** (a) ~~No individual may.~~ *An individual shall not* act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. *Notwithstanding subdivision (c) of Section 480, if the individual's felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.*

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

~~SEC. 10.~~ **SEC. 21.** Section 11345.3 of the Business and Professions Code is repealed.

~~SEC. 11.~~ **SEC. 22.** Section 11345.3 is added to the Business and Professions Code, to read:

**11345.3.** All appraisal management companies shall do all of the following:

(a) Ensure that all contracted appraisal panel members possess all required licenses and certificates from the office.

(b) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite license, education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type.

(c) Direct the appraiser to perform the assignment in accordance with the Uniform Standards of Professional Appraisal Activity.

(d) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company conducts its appraisal management services in accordance with the requirements of Section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder.

(e) Engage appraisal panel members with an engagement letter that shall include terms of payment.

*(f) Appraisal management companies shall maintain all of the following records for each service request:*

*(1) Date of receipt of the request.*

*(2) Name of the person from whom the request was received.*

*(3) Name of the client for whom the request was made, if different from the name of the person from whom the request was received.*

*(4) The appraiser or appraisers assigned to perform the requested service.*

*(5) Date of delivery of the appraisal product to the client.*

*(6) Client contract.*

*(7) Engagement letter.*

*(8) The appraisal report.*

~~SEC. 12.~~ **SEC. 23.** Section 11345.5 is added to the Business and Professions Code, to read:

**11345.5.** For purposes of subdivision (d) of Section 11302 and determining whether, within a 12-month period, an appraisal management company oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State certified or State licensed appraisers in two or more States:

(a) An appraiser is deemed part of the appraisal management company's appraiser panel as of the earliest date on which the appraisal management company does either of the following:

(1) Accepts the appraiser for the appraisal management company's consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions.

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with covered transactions.

(b) An appraiser who is deemed part of the appraisal management company's appraiser panel pursuant to subdivision (a) is deemed to remain on the panel until the date on which the appraisal management company does either of the following:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action.

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an appraisal management company's appraiser panel pursuant to subdivision (b), but the appraisal management company subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the 12 months after the appraisal management company's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the appraisal management company's appraiser panel without interruption.

**SEC. 13. SEC. 24.** Section 11345.6 of the Business and Professions Code is amended to read:

**11345.6.** (a) No appraisal management company may alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

(b) No appraisal management company may require an appraiser to provide it with the appraiser's digital signature or seal. However, nothing in this subdivision shall be deemed to prohibit an appraiser from voluntarily providing his or her digital signature or seal to another person, to the extent permissible under the Uniform Standards of Professional Appraisal Practice.

**SEC. 14. SEC. 25.** Section 11345.8 is added to the Business and Professions Code, to read:

**11345.8.** A federally regulated appraisal management company operating in California shall report to the bureau the information the bureau is required to submit to the Appraisal Subcommittee, pursuant to the Appraisal Subcommittee's policies regarding the determination of the Appraisal Management Company Registry fee. The bureau may charge the federally regulated appraisal management company a state fee in an amount not exceed the reasonable regulatory cost to the board for processing and submitting the information. This fee shall be deposited in the Real Estate Appraisers Regulation Fund.

**SEC. 15. SEC. 26.** Section 11422 of the Business and Professions Code is amended to read:

**11422.** The office shall, on or before February 1, 1994, and at least annually thereafter, transmit to the appraisal subcommittee specified in subdivision (g) of Section 11302 a roster of persons licensed pursuant to this part.

**SEC. 16. SEC. 27.** Section 12241 of the Business and Professions Code is amended to read:

**12241.** The secretary shall establish by regulation an annual administrative fee to recover reasonable administrative and enforcement costs incurred by the department for exercising supervision over and performing investigations in connection with the activities performed pursuant to Sections 12210 and 12211 and to recover reasonable costs incurred by the department for the safekeeping and certification of the state standards pursuant to Section 12304 and for certification services provided pursuant to Sections 12305 and 12310. This administrative fee shall be collected for every device registered with each county office of weights and measures, and paid to the Department of Food and Agriculture Fund.

**SEC. 47. SEC. 28.** Section 12304 of the Business and Professions Code is amended to read:

**12304.** The department shall keep the standards of the state in a suitable laboratory location or, if transportable, shall maintain the standards under environmental conditions appropriate for maintaining the integrity of the unit of measure represented by the standard. The department shall have the standards directly certified by the National Institute of Standards and Technology or by any measurement assurance procedures approved by the National Institute of Standards and Technology.

**SEC. 48. SEC. 29.** Section 12305 of the Business and Professions Code is amended to read:

**12305.** The department shall use the standards of the state to certify similar standards and any dissimilar standards that are dependent on the values represented by the state standards. Copies of the standards that have been compared and certified against the state standards shall become working standards that shall be used in the certification, calibration, and sealing of county field standards, and in the certification, calibration, and sealing of measurement devices submitted by state and local government agencies or by industry.

**SEC. 49. SEC. 30.** Section 12310 of the Business and Professions Code is amended to read:

**12310.** The department, or a laboratory designated by the department that has been certified pursuant to Section 12314, shall certify the standards of the county sealers as often as may be deemed by the secretary to be necessary, based upon a review of statistical data resulting from previous certifications, but in no event shall the period of time between certifications exceed 10 years. In the absence of statistical data, standards shall be certified at least every two years. Sealers shall, upon the request of the department, deliver for testing those standards in their possession that are used in the discharge of their duties. Direct expenses incurred in the certification process shall be borne by the state or recovered pursuant to Section 12241, while any incidental expense, such as the cost of transportation, shall be borne by the county whose standards have been certified.

**SEC. 20. SEC. 31.** Section 12500 of the Business and Professions Code is amended to read:

**12500.** As used in this chapter the following terms mean:

- (a) "Weighing instrument" means any device, contrivance, apparatus, or instrument used, or designed to be used, for ascertaining weight and includes any tool, appliance, or accessory used or connected therewith.
- (b) "Measuring instrument" means any device, contrivance, apparatus, or instrument used, or designed to be used, for ascertaining measure and includes any tool, appliance, or accessory used or connected therewith.
- (c) "Correct" means any weight or measure or weighing, measuring, or counting instrument which meet all of the tolerance and specification requirements established by the director pursuant to Section 12107.
- (d) "Incorrect" means any instrument which fails to meet all of the requirements of Section 12107.
- (e) "Commercial purposes" include the determination of the weight, measure, or count of any commodity or thing which is sold on the basis of weight, measure, or count; or the determination of the weight, measure, or count of any commodity or thing upon which determination a charge for service is based. Devices used in a determination upon which a charge for service is based include, but are not limited to, taximeters, odometers, timing devices, parcel scales, shipping scales, and scales used in the payment of agricultural workers.

"Commercial purposes" do not include the determination of the weight, measure, or count of any commodity or thing which is performed within a plant or business as a part of the manufacturing, processing, or preparing for market of that commodity or thing, or the determination of charges for the transmission of letters or parcels of less than 150 pounds, except when that determination is made in the presence of the customer charged for the service, or the determination of the weight of any animal or human by a ~~healing arts licensee~~ *qualified health provider, licensed doctor of veterinary medicine, licensed physician and surgeon, or staff members within the business operations of, and under the supervision of, a licensed doctor of veterinary medicine or licensed physician and surgeon* for the purposes of determining the appropriate dosage of any medication or *medical treatment* ~~of~~ or the volume, duration, or application of any medical procedure.

**SEC. 24. SEC. 32.** 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.









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

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## **BOARD OF BARBERING & COSMETOLOGY**

### **BILL ANALYSIS**

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**Author:** Senate Member Newman

**Subject:** Removal of Board Members

**Bill Number:** SB 715

**Version:** April 25, 2017

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#### **Existing Law:**

Authorizes the Governor to remove any member of any board under the Department of Consumer Affairs (DCA) that the Governor has appointed for continued neglect of duties required by law or for incompetence or unprofessional or dishonorable conduct. (BP&C\* §106)

Authorizes the Governor to remove a board member if it is shown that the member has knowledge of the specific questions to be asked on the licensing entity's next examination and directly or indirectly discloses any such question(s) in advance of or during the examination to any applicant. (BP&C\* §106.5)

Requires newly appointed board members to complete a training and orientation program offered by the DCA within one year of appointment. This training includes an explanation of the board member's functions, responsibilities and obligations as a member of the board. (BP&C § 453)

Defines "meeting", for the purpose of the Bagley-Keene Open Meeting Act which sets forth perimeters for public meetings of all state boards, as any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains. (Government Code § 11122.5)

#### **This Bill:**

Adds the failure to attend board meetings to the justification for removal of an appointed board member by the Governor.

#### **Analysis:**

The California Board of Barbering and Cosmetology (BBC) currently has nine board members serving in appointed positions (four Industry members and five public members). Seven of the members are Governor appointed, one member is appointed by the Senate Rules Committee and the final member is appointed by the Speaker of the Assembly. BBC is subject to the Bagley-Keene Open Meetings Act which requires a quorum for the Board to meet and conduct official business or take official actions such as voting on an agenda item. Repeated failure to attend board meetings negatively impacts the Board and may be a detriment to the member's ability to successfully serve.

The bill author states, "discretion for the removal of board members for instances of absences is a good government approach to ensuring the effectiveness and efficiency of the important regulatory boards

within the DCA. Member absences can impact the professionals and public alike, as key decisions are made and votes taken at board meeting directly related to oversight of licensees. The Governor should have authority to remove board members from their position when their absences impact their ability to successfully serve."

**Fiscal Impact:**

None.

**Board Position:**

Non declared.

\*BP&C refers to the California Business and Professions Code.



# California

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### SB-715 Department of Consumer Affairs: regulatory boards: removal of board members. (2017-2018)

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Date Published: 04/26/2017 04:00 AM

AMENDED IN SENATE APRIL 25, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

**SENATE BILL****No. 715**

Introduced by Senator Newman

February 17, 2017

~~An act to amend Section 5503 of the Public Resources Code, relating to park districts.~~ *An act to amend Section 106 of the Business and Professions Code, relating to consumer affairs.*

**LEGISLATIVE COUNSEL'S DIGEST**

SB 715, as amended, Newman. ~~Park and open space districts.~~ *Department of Consumer Affairs: regulatory boards: removal of board members.*

*Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes the Governor to remove from office any member of any board within the department appointed by him or her, on specific grounds, including continued neglect of duties required by law.*

*This bill would specifically include the failure to attend meetings of the board as one example of continued neglect of duties required by law that the Governor can use as a reason to remove a member from a board.*

~~Existing law provides a procedure for the formation of a regional park district, regional park and open space district, or a regional open space district.~~

~~This bill would make nonsubstantive changes to one of these provisions.~~

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *Section 106 of the Business and Professions Code is amended to read:*

106. The Governor has power to remove from office at any time, any member of any board appointed by him *or her* for continued neglect of duties required by law, *which may include the failure to attend board meetings*, or for incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the Governor, conferred on him *or her* by any other ~~provision of~~ law, to remove any member of any board.

~~SECTION 1. Section 5503 of the Public Resources Code is amended to read:~~~~5503. Whenever it is desired to form a district under this article, a petition requesting the creation and maintenance of a district, and describing the exterior boundaries of the proposed district shall be signed by at least 5,000 electors residing within the territory proposed to be included in the district. The petition shall be presented to the board of supervisors of the county containing the largest area within the proposed district.~~



## MEMORANDUM

DATE	July 17, 2017
TO	Members, Board of Barbering and Cosmetology
FROM	Kristy Underwood, Executive Officer
SUBJECT	<b>Regulations Update</b>

- **Title 16, CCR Sections 904 and 905; (Health and Safety Poster)**

No comments were received during the 15-day public comment period on the second modified text. The final rulemaking file is now under final review by the Department of Consumer Affairs (DCA) before filing with the Office of Administrative Law (OAL).

- **Title 16, CCR Section 950.10; (Transfer of Credit or Training)**
- **Title 16, CCR Section 961; (National Interstate Council (NIC) Translation Guides)**
- **Title 16, CCR Section 974; (Administrative Fine Schedule)**
- **Title 16, CCR Section 974.3; (Citation of Establishments, Individuals for Same violation)**
- **Title 16, CCR Section 974.4; (Installment Payment Plan for Fines)**
- **Title 16, CCR Sections 978, 979, 980, 980.4, 981, 982, 984 and 989; (Health and Safety Regulations)**

These regulations packages are under DCA's preliminary review. Once those reviews are complete, the documents necessary to notice these rulemakings and set them for hearings will be submitted to OAL.

*No Attachment*