

AGENDA ITEM 5(e) – AB 2483

AB 2483 (VOEPEL), Indemnification of public officers and employees.



AB-2483 Indemnification of public officers and employees: antitrust awards. (2017-2018)

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AMENDED IN ASSEMBLY APRIL 09, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

No. 2483

Introduced by Assembly Member Voepel

February 14, 2018

An act to add Chapter 10 (commencing with Section 473) to Division 1 of the Business and Professions amend Section 825 of the Government Code, relating to professions: *liability*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2483, as amended, Voepel. ~~Department of Consumer Affairs; Office of Supervision of Occupational Boards. Indemnification of public officers and employees: antitrust awards.~~

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

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board. The bill would specify that treble damages awarded pursuant to a specified federal law for violation of another federal law are not punitive or exemplary damages within the act.

~~Under existing law, the Department of Consumer Affairs is composed of various boards, bureaus, commissions, committees, and similarly constituted agencies that license and regulate the practice of various professions and vocations for the purpose of protecting the people of California. With certain exceptions, decisions of these entities with respect to setting standards, conducting examinations, passing candidates, and revoking licenses, are final and are not subject to review by the Director of Consumer Affairs.~~

~~This bill would establish an Office of Supervision of Occupational Boards within the department to exercise active supervision over a "covered board," defined as specific licensing and regulatory agencies within the department, to ensure compliance with specific policies established in the bill regarding licensing and enforcement (established~~

~~policies). The bill would require the office, in the exercise of active supervision, to be involved in the development of a covered board's rules and policies, to disapprove the use of any board rule or policy and terminate any enforcement action that is not consistent with the established policies, and to review and affirmatively approve only rules, policies, and enforcement actions consistent with the established policies. The bill would require the office to review and approve or reject any rule, policy, enforcement action, or other occupational licensure action proposed by each covered board before adoption or implementation. The bill would establish procedures for complaints, investigation, remedial action, and appeal relating to a rule, policy, enforcement action, or other occupational licensure action of a covered board inconsistent with the established policies.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 825 of the Government Code is amended to read:*

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

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

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

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

- (1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity.
- (2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity.
- (3) Payment of the claim or judgment would be in the best interests of the public entity.

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

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

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

(c) Except as provided in subdivision (d), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, 4, the memorandum of understanding shall be controlling without further legislative action, except that if

those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

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

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

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

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

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

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

(g) Notwithstanding subdivision (a), a public entity shall pay for a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs for an act or omission occurring within the scope of the member's official capacity as a member of that regulatory board.

(h) For purposes of this section, treble damages awarded pursuant to the federal Clayton Act (Sections 12 to 27, inclusive, of Title 15 of, and Sections 52 and 53 of Title 29 of, the United States Code) for a violation of the federal Sherman Act (Sections 1 to 7, inclusive, of Title 15 of the United States Code) are not punitive or exemplary damages under this division.

~~SECTION 1. Chapter 10 (commencing with Section 473) is added to Division 1 of the Business and Professions Code, to read:~~

~~10. Office of Supervision of Occupational Boards~~

~~473. The following are policies of the state:~~

~~(a) Occupational licensing laws should be construed and applied to increase economic opportunity, promote competition, and encourage innovation.~~

~~(b) Regulators should displace competition through occupational licensing only where less restrictive regulation will not suffice to protect consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare.~~

~~(c) An occupational licensing restriction should be enforced against an individual only to the extent the individual sells goods and services that are included explicitly in the statute or regulation that defines the occupation's scope of practice.~~

~~473.1. As used in this chapter:~~

~~(a) "Covered board" means any entity listed in Section 101.~~

~~(b) "Office" means the Office of Supervision of Occupational Boards established in Section 473.2.~~

~~473.2.(a) There is hereby established an Office of Supervision of Occupational Boards within the department.~~

~~(b)(1) Notwithstanding Section 109, the office shall be responsible for exercising active supervision over each covered board to ensure compliance with the policies in Section 473.~~

~~(2) In exercising active supervision over covered boards under paragraph (1), the office shall independently do the following:~~

~~(A) Play a substantial role in the development of a covered board's rules and policies to ensure they benefit consumers and do not serve the private interests of providers of goods and services regulated by the covered board.~~

~~(B) Disapprove the use of any rule or policy of a covered board and terminate any enforcement action, including any action pending on January 1, 2019, that is not consistent with Section 473.~~

~~(C) Exercise control over each covered board by reviewing and affirmatively approving only rules, policies, and enforcement actions that are consistent with Section 473.~~

~~(D) Analyze existing and proposed rules and policies and conduct investigations to gain additional information to promote compliance with Section 473, including, but not limited to, less restrictive regulatory approaches.~~

~~(3) In exercising active supervision over covered boards under paragraph (1), the office shall be staffed by not fewer than one attorney who does not provide general counsel to any covered board.~~

~~(c)(1) Notwithstanding Section 109, the office shall review and approve or reject any rule, policy, enforcement action, or other occupational licensure action proposed by each covered board before the covered board may adopt or implement the rule, policy, enforcement action, or other occupational licensure action.~~

~~(2) For purposes of paragraph (1), approval by the office shall be express and silence or failure to act shall not constitute approval.~~

~~473.3.(a) Any person may file a complaint to the office about a rule, policy, enforcement action, or other occupational licensure action of a covered board that the person believes is not consistent with Section 473.~~

~~(b) Not later than 90 days after the date on which the office receives a complaint filed under paragraph (1), notwithstanding Section 109, the office shall investigate the complaint, identify remedies, and instruct the covered board to take action as the office determines to be appropriate, and respond in writing to the complainant.~~

~~(c)(1) There shall be no right to appeal a decision of the office under subdivision (b) unless the challenged rule, policy, enforcement action, or other occupational licensure action would prevent the complainant from engaging in a lawful occupation or employing or contracting others for the performance of a lawful occupation and the complainant has taken material steps in an attempt to engage in a lawful occupation or employ or contract others for the performance of a lawful occupation.~~

~~(2) Any appeal authorized under paragraph (1) shall be to the superior court.~~

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez Fletcher, Chair
AB 2483 (Voepel) – As Amended April 9, 2018

Policy Committee: Business and Professions Vote: 16 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill expands the Government Claims Act to require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board within the Department of Consumer Affairs (DCA) for an act or omission occurring within the scope of the member's official capacity as a member of the regulatory board. The bill also specifies that treble damages awarded pursuant to and for violation of specified federal laws are not punitive or exemplary damages for purposes of the act.

FISCAL EFFECT:

Negligible fiscal impact to DCA or boards within DCA. If a board member had to pay a judgment or settlement for antitrust related charges, DCA would incur a fiscal impact. However, DCA does not anticipate this will occur with any regularity or in any projectable fashion.

COMMENTS:

- 1) **Purpose.** This bill seeks to ensure that DCA board members are not personally liable in the event they are sued in an antitrust matter related to their board service.
- 2) **Background.** California provides for the licensure of regulated professionals through the Department of Consumer Affairs, which oversees 38 boards, bureaus, and other regulatory bodies.

In March of 2016, the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee (Committees) conducted multiple joint oversight hearings to review 11 regulatory boards within the DCA and one regulatory entity outside of the DCA. One of the specific issues raised in the Committees' 2016 Background Paper was the potential antitrust liability for boards under the DCA.

The concerns arose in the wake of a decision by the Supreme Court in "United States in North Carolina State Board of Dental Examiners v. Federal Trade Commission (NC Dental)." The case involved actions taken by North Carolina's dental board to stop shopping mall kiosks and other retail settings from offering teeth whitening services, which the board alleged constituted the unlicensed practice of dentistry. The Federal Trade Commission (FTC), noting in court filings that the majority of the state's dental board was comprised of active dentists with a financial incentive to reduce competition in a lucrative market, brought antitrust charges against the board.

Prior to “NC Dental,” the common presumption was that licensing board members were subordinate agency actors who needed only to further a state policy for their actions to be immunized from antitrust charges. However, in the Court’s decision, it was ruled that “a state board on which a controlling number of decision makers are active market participants in the occupation the board regulates” must meet the requirement for active state supervision to receive immunity. In effect, “NC Dental” called into question whether certain regulatory schemes were vulnerable to litigation alleging deliberate anticompetitive behavior.

Concerned that boards under the DCA may be at risk of antitrust litigation similar to the charges filed in “NC Dental,” Senator Jerry Hill requested an attorney general (AG) opinion regarding “what constitutes ‘active state supervision’ of a state licensing board for purposes of the state action immunity doctrine in antitrust actions, and what measures might be taken to guard against antitrust liability for board members.”

Included in the AG’s opinion were a small number of recommendations to improve California’s case for board member immunity under the state action doctrine. The opinion outlines how the Government Claims Act allows a public employee to request its agency to pay the amount of a judgment secured against official conduct. However, the Government Claims Act does not apply to punitive damages, and it is unclear whether treble damages authorized in antitrust litigation fit either category. The AG’s opinion stated that board members’ “uncertainty about the legal status of treble damage awards could be reduced significantly by amending state law to specify that treble damage antitrust awards are not punitive damages within the meaning of the Government Claims Act.” This bill seeks to enact the AG’s recommendation.

- 3) **Prior Legislation.** SB 1194 (Hill), of the 2015-16 Legislative Session, based on the AG’s opinion, would have substantially increased the powers and responsibilities of the Director of DCA to review nonministerial market-sensitive actions by regulatory boards to determine whether the action furthers a clearly articulated and affirmatively expressed state policy. The bill would have also clarified the applicability of treble damage antitrust awards against a regulatory board member for purposes of the Government Claims Act. The bill failed passage in the Assembly Business and Professions Committee. AB 2483 contains the noncontroversial provisions of SB 1194.

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TWENTY-EIGHTH ASSEMBLY DISTRICT

Assembly Bill 1659: Healing Arts Boards: Inactive Licenses

SUMMARY

This bill makes updating and clarifying changes to the authority for healing arts boards under the Department of Consumer Affairs (DCA) to issue inactive licenses, including authorizing the boards to charge a lower fee for inactive licenses than active licenses.

BACKGROUND

Currently, healing arts boards under the Department of Consumer Affairs are authorized to issue inactive licenses. Licensees may apply for an inactive license if they plan to stop practicing temporarily. An inactive license is a license that does not authorize the license holder to practice but can be converted to an active license for a fee and after continuing education requirements are met. Inactive license holders do not have to meet continuing education requirements while inactive but continue to pay the full renewal fee.

PROBLEM

Despite being unable to practice, inactive license holders still have to pay the same fee as active license holders. While inactive license holders do not have to meet continuing education requirements, it may be unfair for them to have to pay the full active license fee if they do not have the benefits of an active license. Current law limits the boards' ability to lower the fees.

Further, the law prohibits inactive license holders from practicing but does not mention representing the ability to practice. To be clear, the statute should also include this clarification.

SOLUTION

To resolve these issues, this bill:

1. Authorizes the healing arts boards to charge a lower fee for renewal of inactive licenses than the active renewal fee.
2. Clarifies you cannot represent that you can do things you need an active license for if you have an inactive license.
3. Makes other clarifying and updating changes.

AGENDA ITEM 5(f) – AB 1659

AB 1659 (LOW), Healing arts boards: inactive licenses.


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AB-1659 Healing arts boards: inactive licenses. (2017-2018)

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AMENDED IN ASSEMBLY JANUARY 03, 2018

AMENDED IN ASSEMBLY APRIL 04, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

No. 1659

Introduced by Assembly Member Low

February 17, 2017

~~An act to add Sections 43020.2 and 43020.3 to, and to add Chapter 6 (commencing with Section 42370) to Part 3 of Division 30 of, the Public Resources Code, relating to recycling. An act to amend Sections 701, 702, and 703 of the Business and Professions Code, relating to healing arts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1659, as amended, Low. ~~Food-Service-Plastic-Packaging-Recovery-and-Recycling-Stewardship-Act.~~ *Healing arts boards: inactive licenses.*

~~Existing law establishes healing arts boards in the Department of Consumer Affairs to ensure private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. Existing law requires each healing arts board to issue inactive licenses to holders of active licenses whose license is not punitively restricted by that board. Existing law prohibits the holder of an inactive license from engaging in any activity for which an active license is required. Existing law requires the renewal fee for an active license to apply to an inactive license.~~

~~This bill would prohibit the holder of an inactive license from representing that he or she has an active license. The bill would also authorize a healing arts board to establish a lower inactive license renewal fee.~~

~~(1)The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste.~~

~~Existing law requires a manufacturer of carpets sold in the state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the Department of Resources Recycling and Recovery for approval that would, among other things, increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products. Existing law requires the carpet stewardship plan to include a funding mechanism that provides sufficient funding to carry out the plan and requires a manufacturer or carpet stewardship organization to pay the department an annual administrative fee. Existing law requires the department to identify the direct development or regulatory costs incurred by the department prior to the submittal of the carpet stewardship plans, and to establish a fee in an amount adequate to cover these costs, that is paid by a carpet~~

~~stewardship organization. Existing law imposes administrative civil penalties on a person who violates these provisions.~~

~~This bill, the Food Service Plastic Packaging Recovery and Recycling Stewardship Act, would authorize a city, county, or city and county to establish and implement a residential curbside collection program for the collection and recycling of a particular type of plastic packaging, defined to mean a container or single-use food service packaging product labeled with the same resin code. The bill would require a residential curbside collection program to impose certain requirements on the transportation of plastic packaging collected as a part of the program and on material recovery facilities to which waste that includes that plastic packaging is delivered.~~

~~The bill would require, by June 30, 2018, a manufacturer of plastic packaging sold in this state, individually or through a plastic packaging stewardship organization, to submit to the department one or more plastic packaging stewardship plans, similar to the carpet stewardship plans described above, collectively covering each particular type of plastic packaging distributed, sold, or used in the state by that manufacturer. The bill would require the plan to include a funding mechanism similar to that required in the carpet stewardship law. The bill would require the manufacturer or organization to, among other things, establish a plastic packaging stewardship fee that would be imposed on members of the organization and to determine the appropriate projects and programs to be funded by the stewardship fee that would further the efforts to recycle the particular type of plastic packaging. The bill would require each plastic packaging stewardship organization to make reasonable efforts to achieve specified rate of community access to residential curbside collection programs for each type of plastic packaging covered by the organization's plan, with an overall goal of a 75% rate of community access for each type of plastic packaging on or before January 1, 2043.~~

~~Similar to the carpet stewardship organization, a manufacturer or plastic packaging stewardship organization would be required to pay the department an annual administrative fee, as determined by the department. The bill would require the department to identify the direct development or regulatory costs incurred by the department prior to the submittal of plastic packaging stewardship plans and to establish a fee in an amount adequate in aggregate to cover those costs, to be paid by each plastic packaging stewardship organization that submits a plastic packaging stewardship plan. The bill would provide for the imposition of administrative civil penalties upon a person who violates the bill. The bill would establish the Plastic Packaging Stewardship Account in the Integrated Waste Management Fund and would require the fees collected by the department to be deposited in that account, for expenditure by the department, upon appropriation by the Legislature, to cover the department's cost to implement the bill's provisions. The bill would also establish the Plastic Packaging Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require that the civil penalties collected by the department pursuant to the bill's provisions be deposited in that subaccount, for expenditure by the department, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.~~

~~(2) Existing law requires the department to adopt regulations relating to waste management, including standards for the design, operation, maintenance, and ultimate reuse of solid waste facilities, and for solid waste handling, transfer, composting, transformation, and disposal.~~

~~This bill would authorize a material recovery facility to send residual materials containing plastic packaging to a secondary sorting facility with the capacity of sorting or separating plastic packaging material from the residual material for recycling. The bill would encourage a solid waste landfill that receives solid waste that contains plastic packaging to send the plastic packaging to a material recovery facility, secondary sorting facility, or to a recycling facility that has the capability to sort, separate, or recycle plastic packaging material.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 701 of the Business and Professions Code is amended to read:*

~~701. Each healing arts board referred to in this division shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.~~

701. (a) As used in this article, "board" refers to any healing arts board, division, or examining committee which licenses or certifies health professionals.

(b) Each healing arts board referred to in this division shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.

SEC. 2. *Section 702 of the Business and Professions Code is amended to read:*

702. The holder of an inactive healing arts license or certificate issued pursuant to this article shall not engage *do any of the following:*

- (a) Engage in any activity for which an active license or certificate is required.
- (b) Represent that he or she has an active license.

SEC. 3. *Section 703 of the Business and Professions Code is amended to read:*

703. (a) An inactive healing arts license or certificate issued pursuant to this article shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew a license or certificate issued pursuant to this article, the holder thereof need not comply with any continuing education requirement for renewal of an active license or certificate.

The

(b) The renewal fee for a license or certificate in an active status shall apply also for renewal of a license or certificate in an inactive ~~status,~~ *status, unless a lower fee has been established by the issuing board.*

~~SECTION 1. This act shall be known, and may be cited, as the Food Service Plastic Packaging Recovery and Recycling Stewardship Act.~~

~~SEC. 2. Chapter 6 (commencing with Section 42370) is added to Part 3 of Division 30 of the Public Resources Code, to read:~~

~~6. Food Service Plastic Packaging Stewardship Program~~

~~1. General Provisions~~

~~42370. The Legislature finds and declares the following:~~

~~(a) It is the intent of the Legislature, in adopting this chapter, to reduce the amount of food service packaging that is littered and improperly disposed of, to reduce the amount of food service plastic packaging that is disposed of in landfills, to increase opportunities for businesses or multifamily complexes to save money, to create jobs in California by providing materials for recycling manufacturing facilities, to reduce greenhouse gas emissions, to keep valuable materials out of landfills, and to create a healthy environment for the community and future generations by recovering natural resources by increasing the recycling rate of food service plastic packaging.~~

~~(b) California is home to a number of food service packaging manufacturers that produce a variety of products. These facilities employ thousands of Californians and are important components of the state's economy.~~

~~(c) All food service packaging, regardless of the material from which it is made, has environmental impacts, including, but not limited to, raw material acquisition, energy use, greenhouse gas emissions and other emissions associated with its manufacture, transportation, and disposal, consumption of increasingly scarce landfill capacity, and unsightly and environmentally damaging consequences of littering and other improper disposal.~~

~~(d) Manufacturers, distributors, and users of food service packaging have a shared responsibility to identify, finance, and implement food service packaging materials life-cycle management solutions that are both environmentally responsible and economically sustainable. These solutions include, but are not limited to, reduction of food service packaging, reuse of food service packaging materials, enhanced material collection, sorting and recycling programs, antilitter, pollution prevention, and other public education programs, and developing and supporting emerging material recycling and conversion technologies to facilitate greater reuse and recycling of food service packaging materials.~~

~~(e) Manufacturers of each type of food service packaging material, transporters, solid waste haulers, recyclers, the State of California, local governments, and other stakeholders should work together to develop and implement programs to ensure all food service packaging materials are managed in an environmentally sound and economically sustainable manner.~~

~~(f) With the enactment of this chapter, the Legislature intends to encourage the development of recycling technologies for food service plastic packaging materials without favoring one type of food service packaging material, whether plastic or otherwise, over another. It is anticipated that the methods and programs that will be developed pursuant to this chapter will serve as models for similar programs addressing other types of food service packaging materials.~~

~~42370.1. The purpose of this chapter is to increase the amount of food service plastic packaging waste that is diverted from landfills and recycled into new products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to Section 40051.~~

~~42370.2.(a) For purposes of this chapter, and unless the context otherwise requires, the following definitions shall apply:~~

~~(1) "Community recycling access rate," for a particular type of plastic packaging, means the number of residents that have access to a residential curbside collection program that accepts that type of plastic packaging for recycling divided by the total number of residents in the State of California.~~

~~(2) "Department" means the Department of Resources Recycling and Recovery.~~

~~(3) "Manufacturer" means either of the following:~~

~~(A) The person or entity in the state that manufactures plastic packaging that is sold, offered for sale, or distributed for use in the state.~~

~~(B) If there is no person or entity that is a manufacturer of plastic packaging for purposes of subparagraph (A), the person or entity that imports the plastic packaging into the state for sale, distribution, or use in the state.~~

~~(4) "Material recovery facility" means a facility that sorts residential solid waste that includes recyclable materials for the purpose of separating recyclable materials from materials destined for disposal at a landfill.~~

~~(5) "Particular type of plastic packaging" or "type of plastic packaging" means all plastic packaging labeled with the same resin code pursuant to Section 18015.~~

~~(6) "Plastic packaging" means a container or other single-use food service packaging product labeled with a resin code pursuant to Section 18015 that is used by a food service provider to carry or contain food or beverages that are prepared onsite so that a customer may consume the food offsite if the customer wishes to do so.~~

~~(7) "Plastic packaging stewardship organization" or "organization" means either of the following:~~

~~(A) An organization appointed by one or more manufacturers of a particular type of plastic packaging to act as an agent on behalf of the manufacturer to design, submit, and administer a plastic packaging stewardship plan pursuant to this chapter.~~

~~(B) A plastic packaging manufacturer that complies with this chapter as an individual manufacturer.~~

~~(8) "Recycle" means to take a product or material that has been used and discarded and divert it from disposal in a landfill for the purpose of being transformed, regenerated, or reused in the production of a useful product.~~

~~(b) A term not specifically defined in this chapter shall be interpreted consistent with its meaning in this division.~~

~~2. Food Service Plastic Packaging Stewardship Organization~~

~~42371. On or before June 30, 2018, a manufacturer of plastic packaging distributed, sold, or used in this state shall, individually or through a plastic packaging stewardship organization formed pursuant to Section 42371.2, submit to the department one or more plastic packaging stewardship plans, collectively covering each particular type of plastic packaging distributed, sold, or used in this state by that manufacturer, that will do all of the following:~~

~~(a) Achieve the purposes of this chapter, as described in Section 42370.1, and meet the requirements of Section 42372.4.~~

~~(b) Establish goals that, to the extent feasible based on available technology and information, increase the recycling of plastic packaging, increase the diversion of plastic packaging from landfills, increase the recyclability of plastic packaging, and provide incentives for the market growth of secondary products made from recycled plastic packaging.~~

~~(c) Describe proposed measures that will be implemented by the organization that reduce the disposal of plastic packaging manufactured by the organization's members in a manner consistent with the state's solid waste management hierarchy, including, but not limited to, source reduction, source separation and processing to segregate and recover recyclable materials, and environmentally sound management of materials that cannot feasibly be recycled.~~

~~(d) Include a funding mechanism consistent with subdivision (b) of Section 42371.2.~~

~~(c) Include a process by which the financial activities of the plastic packaging stewardship organization that are related to implementation of the plastic packaging stewardship plan will be subject to an independent audit.~~

~~42371.2. Manufacturers of one or more than one particular type of plastic packaging may form an organization known as a plastic packaging stewardship organization. A plastic packaging stewardship organization may address a stewardship plan to more than one type of plastic packaging only if all of the manufacturers of that organization manufacture all of the types of plastic packaging to be covered by the plan. A plastic packaging stewardship organization shall do all of the following:~~

~~(a) Prepare a plastic packaging stewardship plan that meets the requirements of Section 42371.~~

~~(b) Establish a funding mechanism, consistent with Article 4 (commencing with Section 42374), that provides sufficient funding to carry out the plastic packaging stewardship plan, including the administrative, operational, and capital costs of the plan, payment of fees pursuant to Section 42374.6, and incentive payments that will advance the purposes of this chapter.~~

~~(c) Set the plastic packaging stewardship fee in accordance with Article 4 (commencing with Section 42374).~~

~~(d) Determine the projects and programs to be funded by the plastic packaging stewardship fee collected pursuant to Section 42374.4.~~

~~3. Food Service Plastic Packaging Recycling Program~~

~~42372.(a) A city, county, or city and county may establish and implement a residential curbside collection program pursuant to this article for the collection and recycling of a particular type of plastic packaging. If a city, county, or city and county establishes and implements a residential curbside collection program, the city, county, or city and county shall notify the department for purposes of tracking community access rates to residential curbside collection programs for each particular type of plastic packaging.~~

~~(b) To help ensure statewide consistency, the department may collaborate with any city, county, or city and county on the establishment and implementation of a residential curbside collection program for a particular type of plastic packaging, and may develop a list that identifies by resin code the particular types of plastic packaging materials accepted for recycling by each program.~~

~~42372.2.(a) A residential curbside collection program established pursuant to this article shall include the following requirements:~~

~~(1) Postconsumer untreated plastic packaging that is collected as part of a residential curbside collection program for a particular type of plastic packaging shall be transported only to a facility where it is feasible to recycle that type of plastic packaging or to a material recovery facility for the purpose of sorting that particular type of plastic packaging before recycling.~~

~~(2) A material recovery facility that receives material from a residential curbside collection program for a particular type of plastic packaging that is unable to separate at least 75 percent of that particular type of plastic packaging from the mixture of solid waste and recyclable materials collected in the residential curbside collection program shall send its residual material to a secondary sorting facility if the secondary sorting facility is reasonably available and willing to accept the residual material.~~

~~(b) For purposes of this section, the following definitions apply:~~

~~(1) "Reasonably available" means available at a cost, including the cost of transporting the residual material and any fee charged by the secondary sorting facility receiving the material, that does not exceed the cost of transporting the residual material to a landfill and disposing of the material at that landfill.~~

~~(2) "Residual material" means any material collected through a residential curbside collection program by, or material delivered through a drop-off program to, a material recovery facility that remains after processing by the material recovery facility. "Processing" means the removal of recyclable material from other material to the extent a material recovery facility is equipped to do so.~~

~~(3) "Secondary sorting facility" means a facility equipped to sort a particular type of plastic packaging from other recyclable material and solid waste in residual material.~~

~~(c) The department shall adopt regulations establishing a mechanism by which the department will resolve disputes regarding whether a secondary sorting facility is reasonably available and under what circumstances the department may direct a residential curbside collection program, a recycling facility, or a solid waste facility to transfer residual material containing plastic packaging to a secondary sorting facility in order to further the purposes of this act.~~

~~42372.4.(a) On and before January 1, 2023, each plastic packaging stewardship organization shall make reasonable efforts to achieve a 15 percent rate of community access to residential curbside collection programs for each type of plastic packaging covered by the organization.~~

~~(b) On and before January 1, 2028, each plastic packaging stewardship organization shall make reasonable efforts to achieve a 30 percent rate of community access to residential curbside collection programs for each type of plastic packaging covered by the organization.~~

~~(c) On and before January 1, 2033, each plastic packaging stewardship organization shall make reasonable efforts to achieve a 45 percent rate of community access to residential curbside collection programs for each type of plastic packaging covered by the organization.~~

~~(d) On and before January 1, 2038, each plastic packaging stewardship organization shall make reasonable efforts to achieve a 60 percent rate of community access to residential curbside collection programs for each type of plastic packaging covered by the organization.~~

~~(e) On and before January 1, 2043, each plastic packaging stewardship organization shall make reasonable efforts to achieve a 75 percent rate of community access to residential curbside collection programs for each type of plastic packaging covered by the organization.~~

~~4. Plastic Packaging Stewardship Fees and Administrative Fees~~

~~42374. Each plastic packaging stewardship organization shall establish a plastic packaging stewardship fee for each particular type of plastic packaging covered by the organization, to be paid by members of the organization based on the amount of that particular type of plastic packaging of each member that is covered. The plastic packaging stewardship fee shall be calculated on a per pound basis by type of plastic packaging as follows:~~

~~(a) For each type of plastic packaging, if manufactured in the state, the organization member shall pay the applicable amount for its plastic packaging to be sold or used in the state.~~

~~(b) For each type plastic packaging, if manufactured out of state, the organization member shall pay the applicable amount for plastic packaging introduced into the state by the organization member.~~

~~42374.2. Each plastic packaging stewardship organization shall determine the rules and procedures that are necessary and proper to implement the collection of the charge in a fair, efficient, and lawful manner.~~

~~42374.4. The plastic packaging stewardship fee for each particular type of plastic packaging shall be collected by a plastic packaging stewardship organization and deposited in accounts, segregated by the type of plastic packaging, that are maintained and disbursed by the organization. Moneys collected pursuant to this article shall be used by a plastic packaging stewardship organization only for purposes of carrying out its duties under this chapter and for appropriate projects and programs that would further the efforts to recycle the particular type of plastic packaging for which the moneys were collected, pursuant to the plastic packaging stewardship plan. Those projects or programs may include, but are not limited to, investments in infrastructure that promote the recycling of the particular type of plastic packaging for which the moneys were collected, pursuant to the plastic packaging stewardship plan.~~

~~42374.6.(a) A plastic packaging stewardship organization submitting a plastic packaging stewardship plan shall pay the department a quarterly administrative fee. The department shall set the fee at an amount that, when paid by every plastic packaging stewardship organization that submits a plastic packaging stewardship plan, is adequate to cover the department's full costs of administering and enforcing this chapter, including any program development costs or regulatory costs incurred by the department prior to plastic packaging stewardship plans being submitted. The department may establish a variable fee based on relevant factors, including, but not limited to, the portion of a particular type of plastic packaging sold in the state by members of the organization compared to the total amount of the same type of plastic packaging sold in the state by all organizations submitting a plastic packaging stewardship plan.~~

~~(b) The total amount of fees collected annually pursuant to this section shall not exceed the amount necessary to recover costs incurred by the department in connection with the administration and enforcement of the requirements of this chapter.~~

~~(c) The department shall identify the direct development or regulatory costs it incurs pursuant to this chapter prior to the submittal of a plastic packaging stewardship plan and shall establish a fee in an amount adequate to cover those costs, which shall be paid by a plastic packaging stewardship organization that submits a plastic packaging stewardship plan. The fee established pursuant to this subdivision shall be paid pursuant to the schedule specified in subdivision (d).~~

~~(d) A plastic packaging stewardship organization subject to this section shall pay a quarterly fee to the department to cover the administrative and enforcement costs of the requirements of this chapter pursuant to subdivision (a) on or before July 1, 2019, and every three months thereafter. The plastic packaging stewardship organization shall pay the applicable portion of the fee pursuant to subdivision (c) on July 1, 2019, and every three months thereafter through July 1, 2043. After the initial year of payment, the total amount of the administrative fees paid for a calendar year shall not exceed 5 percent of the total amount of stewardship fees collected for the preceding calendar year.~~

~~(e) The department shall deposit the fees collected pursuant to this section into the Plastic Packaging Stewardship Account created pursuant to Section 42377.~~

5. Member Reporting

~~42375. (a) Each plastic packaging stewardship organization shall submit annual reports on their efforts to recycle plastic packaging to the department. A plastic packaging stewardship organization submitting an annual report on behalf of its members shall identify the individual members of the organization but is not required to distinguish the individual recycling efforts of its members.~~

~~(b) A member of a plastic packaging stewardship organization shall be considered in compliance with this section with regards to the types of plastic packaging covered by the organization if the plastic packaging stewardship organization of which it is a member submits a report.~~

6. Enforcement

~~42376. (a) A civil penalty up to one thousand dollars (\$1,000) per day may be administratively imposed by the department on any person who is in violation of any provision of this chapter, or up to ten thousand dollars (\$10,000) per day if the violation is intentional, knowing, or negligent.~~

~~(b) In assessing or reviewing the amount of a civil penalty imposed pursuant to subdivision (a) for a violation of this chapter, the department or the court shall consider all of the following:~~

~~(1) The nature and extent of the violation.~~

~~(2) The number and severity of the violation or violations.~~

~~(3) The economic effect of the penalty on the violator.~~

~~(4) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.~~

~~(5) The willfulness of the violator's misconduct.~~

~~(6) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.~~

~~(7) Any other factor that justice may require.~~

7. Financial Provisions

~~42377. (a) The Plastic Packaging Stewardship Account and the Plastic Packaging Stewardship Penalty Subaccount are hereby established in the Integrated Waste Management Fund.~~

~~(b) All fees collected by the department pursuant to this article shall be deposited in the Plastic Packaging Stewardship Account and may be expended by the department, upon appropriation by the Legislature, to cover the department's costs to implement this chapter.~~

~~(c) All civil penalties collected pursuant to this article shall be deposited in the Plastic Packaging Stewardship Penalty Subaccount and may be expended by the department, upon appropriation by the Legislature, to cover the department's costs to implement this chapter.~~

8. Antitrust Immunity

~~42378. (a) Except as provided in subdivision (b), an action relating to the establishment, administration, collection, or disbursement of the funds associated with implementation of this chapter that is taken by the plastic packaging stewardship organization or its members is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code).~~

~~(b) Subdivision (a) shall not apply to an agreement that does any of the following:~~

~~(1) Fixes a price of or for plastic packaging.~~

~~(2) Fixes the output or production of plastic packaging.~~

~~(3) Restricts the geographic area in which, or customers to whom, plastic packaging will be sold.~~

~~SEC. 3. Section 43020.2 is added to the Public Resources Code, to read:~~

~~43020.2.(a) A solid waste landfill that receives solid waste that contains plastic packaging material may landfill the plastic packaging material, but is encouraged to send solid waste containing plastic packaging material received to a material recovery facility, a secondary sorting facility, or a recycling facility that has the capability to sort, separate, or recycle plastic packaging material.~~

~~(b) For purposes of this section, the definitions of Chapter 6 (commencing with Section 42370) of Part 3 shall apply.~~

~~SEC. 4. Section 43020.3 is added to the Public Resources Code, to read:~~

~~43020.3.(a) A material recovery facility may send residual materials containing plastic packaging to a secondary sorting facility with the capability of sorting or separating plastic packaging material from the residual material for recycling.~~

~~(b) For purposes of this section, the definitions of Chapter 6 (commencing with Section 42370) of Part 3 shall apply.~~

Date of Hearing: January 9, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1659 (Low) – As Amended January 3, 2018

SUBJECT: Healing arts boards; inactive licenses.

SUMMARY: Prohibits the holder of a healing arts inactive license from representing that he or she has an active license in the healing arts; authorizes a healing arts board in the Department of Consumer Affairs (DCA) to establish a lower inactive license renewal fee; and makes other technical changes.

EXISTING LAW:

- 1) Establishes the inactive category of health professionals' licensure. An inactive license or certificate allows a person who has a license or certificate in the healing arts, but is not active in the practice of his or her profession, to maintain his or her license or certificate. (Business and Professions Code (BPC) § 700)
- 2) Requires a healing arts board to issue an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board. (BPC § 701)
- 3) Prohibits the holder of a healing arts inactive license or certificate from engaging in any activity for which an active license or certificate is required. (BPC § 702)
- 4) Requires the renewal fee for an active license or certificate in the healing arts to also apply to the renewal of an inactive license or certificate in the healing arts. (BPC § 703)

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

COMMENTS:

Purpose. This bill is sponsored by the author. Existing law generally requires healing arts boards to charge the same fee for active and inactive licenses, even in cases where a board may be able to afford a lower fee. This, however, is unfair, because inactive license holders do not receive the same benefits as active license holders. This bill remedies that issue by authorizing healing arts boards to charge a lower fee for inactive licenses where appropriate.

Background. In California, several professions require a license or certificate to legally practice, including the healing arts. Many of the professional licenses and certificates are administered by licensing boards, bureaus, and other entities within the DCA. The DCA licensing entities are established to protect the people of California through adequate regulation of businesses and professions that engage in activities that risk harm to the health, safety, and welfare of the public (BPC § 101.6). The DCA currently regulates the licensing requirements for 20 professions in the Division of Healing Arts.

Under current law, healing arts boards are authorized to issue inactive licenses. Inactive licenses allow a licensee to apply for an inactive license if he or she plans in discontinuing his or her practice temporarily. An inactive license does not allow the person to practice, but does allow

him or her to convert the inactive license into an active license after paying a fee and completing any outstanding continuing education requirements. Inactive license holders need not meet continuing education requirements while inactive, but must continue to pay the full renewal fee.

Inactive license holders must pay the same renewal fees as active license holders, and it may be unfair for them to have to pay the full active license fee if they do not receive the same benefits as an active license holder. Current law also limits the boards' ability to lower the fees for inactive license holders.

Further, the law prohibits any person from practicing, attempting to practice, advertising, or holding himself or herself out as practicing any of the healing arts, but does not currently prohibit inactive license holders from representing the ability to practice the healing arts only active license holders may practice. This bill clarifies that discrepancy.

REGISTERED SUPPORT:

None on file.

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Nicholas Scotti / B. & P. / (916) 319-3301



SB 1348 (Pan): Postsecondary education: Allied Health Professionals Professional Clinical Programs: Reporting

Bill Summary

Require for-profit and community colleges that train allied health professionals for certification and licensure to report annually on where they are placing students for clinical internships, and student success related to those internships.

Existing Law

Requires for-profit colleges to report annually to the Bureau of Postsecondary Education as part of a School Performance Fact Sheet, which is included as part of each business' annual report. The Fact Sheet is required to include, among other information: each institution's job placement rates, license examination passage rates, as well as graduate salary and wage information. (EDC 94910 and 94929.5)

Requires the California Community Colleges Chancellor to report annually on student demographics and success metrics at the college or district level. (EDC Section 84754.5)

Requires community colleges to plan their courses to meet regional workforce needs. (EDC 84906)

Background

More than half of all allied health professionals work in careers that require a license or certification, such as Respiratory Therapist, Licensed Vocational Nurse, Radiologic Technologist, Pharmacy Technologists, and Certified Nursing Assistant. Allied health professionals account for more than half California's healthcare workforce of 1.2 million, with employment expected to grow to a million

by 2030.¹ Currently, California has more than 600,000 allied healthcare professionals who typically obtain their education and required clinical training from for-profit education businesses or community colleges.²

Problem

Dramatic workforce shortages in the allied health professions are predicted. One study estimated that the state will face a gap of as many as 375,000 allied health workers by 2030.³

Moreover, there are already racial and ethnic disparities among who is entering these professions and such disparities result in a less culturally competent, and thus less patient-protective, workforce. For example, only 25% of these professionals are Latino, compared to 40% of California's population.⁴

The Senate Office of Research likewise found in 2012 that 81% of deans of allied health professions programs at community colleges believed that more partnerships with health care employers would lead to an expansion in their capacity to train and enroll more allied health professional students.⁵ And the California Hospital Association has also observed that the lack of clinical training

¹ Kemp, Help Wanted: Will California Miss Out on a Billion Dollar Industry, The California Wellness Foundation.

² Bohn, McConville, and Gibson, PPIC Career Technical Education In Health, 2016.

³ McConville, Bohn, Beck, PPIC, California's Health Workforce Needs, 2014.

⁴ Bohn, McConville, and Gibson, PPIC Career Technical Education In Health, 2016.

⁵ 2012 Senate Health Committee Background Paper.

opportunities creates a barrier to ensuring an adequate supply of allied health workers.⁶

Non-public institutions have roughly 70% of the market share for programs which are directly dependent on clinical placements with providers.⁷

The Legislature has previously studied the issue of the healthcare workforce on several occasions and recommended changes to: “Evaluate supply and demand of clinical training programs” as “[t]he inventory of clinical training spots compared to the number of trainees for many of these professions is generally unknown or not easily available.”⁸

Without adequate data to effectively align education programs, clinical training sites, and projected allied healthcare workforce demands and shortages, California’s system of higher education will be unable to meet the future healthcare workforce needs of the state.

Solution

The first step towards ensuring that the allied healthcare workforce supply pipeline can meet the state’s future demands rests upon knowing where students in certain career pathways are placed for clinical placements required by licensure or certification, and to what extent their programs help them achieve career success.

⁶ California Hospital Association. Allied Health: The Hidden Health Care Workforce Addressing the Long Term Need for Qualified, Culturally Competent Allied Health Professionals. July 2009. http://www.calhospital.org/sites/main/files/file-attachments/CHA_Allied_Health_Issue_Brief_FINAL_.pdf

⁷ Comparison of community college degree awards vs “other” educational institutes for allied health programs for the years 2012-16, Centers of Excellence. <http://coecc.net/Supply-and-Demand.aspx>

⁸A Review of California’s Health Care Workforce Shortages and Strategies to Address These Shortages – Senate Office of Research and Senate Health Committee 2012 <http://shea.senate.ca.gov/sites/shea.senate.ca.gov/files/Background%20Paper%20Scope.pdf>

“Meeting the state’s growing health workforce needs will require considerable planning and coordination across multiple state and regional actors involved with workforce development, health care services and planning, and education and training. It will also require accurate and up-to-date sources of information on health workforce supply and demand, training program capacity and success, and the ability to conduct timely analysis and share information across different segments.”⁹

In order for decision-makers to craft successful strategies to ensure that Californians are not denied culturally appropriate and necessary health care, and to ensure that California is successfully leveraging existing resources to promote pathways from low to middle income professions, the State requires additional information about how allied health care education programs operate.

Support

SEIU California (Sponsor)
Michelle Doty Cabrera, Healthcare Director
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Faculty Association of California Community Colleges (Co-Sponsor)

United Food and Commercial Workers
California Workforce Association
Young Invincibles
California Federation of Teachers
San Mateo Community College Board of Trustees

⁹ McConville, Bohn, Beck. California’s Health Workforce Needs Training Allied Workers. PPIC. September 2014.

AGENDA ITEM 5(g) – SB 1348

SB 1348 (PAN), Postsecondary education: allied health professional clinical programs.


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SB-1348 Postsecondary education: allied health professional clinical programs: reporting. (2017-2018)

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Date Published: 03/23/2018 04:00 AM

AMENDED IN SENATE MARCH 22, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 1348

Introduced by Senator Pan

February 16, 2018

An act to amend Sections 84754.5 and 94910 of, and to add Section 66026.5 to, 94910 of the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as amended, Pan. Postsecondary education: allied health professional clinical programs: reporting.

Existing law establishes the California State University, under the administration of the Trustees of the California State University; the University of California, under the administration of the Regents of the University of California; the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges; and independent institutions of higher education as the 4 segments of postsecondary education in this state.

Existing law requires the Chancellor of the California Community Colleges to submit an annual report to the Legislature, the Governor, the Department of Finance, and the Legislative Analyst for the purpose of evaluating the achievement of educational outcomes for each community college district. Existing law requires a private postsecondary institution to provide a prospective student, prior to enrollment, with a School Performance Fact Sheet containing specified information relating to the educational program.

This bill would require, beginning in 2019 and in each year thereafter, the chancellor to include in the annual report, for each community college program that offers certificates or degrees related to allied health professionals that require clinical training, specified information relating to clinical training for those certificates or degrees. The bill would require, beginning in 2019 and in each year thereafter, each private postsecondary institution with a program offering those certificates or degrees to include that same information in the School Performance Fact Sheet. ~~The bill would also require the California State University, and request the University of California, to report that same information to the Legislature, beginning in 2019 and in each year thereafter, for all programs offering those certificates or degrees.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Section 66026.5 is added to the Education Code, to read:~~

~~66026.5.(a) Beginning in 2019, and in each year thereafter, the California State University shall, and the University of California is requested to, report to the Legislature on all programs offering certificates or degrees related to allied health professionals that require clinical training. The report shall include information, delineated by program and occupation, on all of the following:~~

~~(1) The name and address of the clinical placement sites, including, but not limited to, the licensed hospital, clinic, or other medical facilities that contracts with the institution for each clinical rotation, as applicable.~~

~~(2) The length and types of clinical rotations, as applicable.~~

~~(3) Supervision ratios at each site.~~

~~(4) The numbers of students participating in clinical training, including demographic data related to race, ethnicity, gender, and proficiency in languages other than English.~~

~~(5) Employment retention at each clinical placement site, as applicable.~~

~~(b) A report submitted to the Legislature pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.~~

~~(c) For purposes of this section, "allied health professional" has the same meaning as in Section 295p of Title 42 of the United States Code.~~

SEC. 2. SECTION 1. Section 84754.5 of the Education Code is amended to read:

84754.5. Pursuant to provisions of Chapter 581 of the Statutes of 2004, the board of governors provided the Governor and the Legislature recommendations regarding the design of a workable structure for the annual evaluation of district-level performance in meeting statewide educational outcome priorities. The Legislature recognizes that these recommendations were based on a study process that included input from institutional representatives of community college districts, nationally regarded experts in community college accountability, the Department of Finance, the Office of the Legislative Analyst, community college organizations, and other interested parties. In enacting this section the Legislature hereby establishes a program for the annual reporting and evaluation of district-level performance in achieving priority educational outcomes consistent with the intent of Chapter 581 of the Statutes of 2004. The program includes the following components:

(a) As a condition of receiving specified funds in the annual Budget Act to encourage district-level accountability efforts, community college districts shall provide data, in a format and according to a schedule to be specified by the Office of the Chancellor of the California Community Colleges, for the purpose of the annual report to the Legislature specified in subdivision (b) and for purposes of providing the means for both internal and external assessment of the district's educational offerings in meeting the high-priority educational goals of the state. The chancellor shall withhold, delay, or reduce funds specified in the annual Budget Act to encourage district-level accountability efforts from a district that fails to provide needed data by specified deadlines. If a district's failure to report by specified deadlines results in the omission of required data from, or inclusion of erroneous data in, the annual report required by subdivision (b), the chancellor shall reduce that district's funding as specified in regulations for the implementation of this section.

(b) With data available through its management information system and other data provided pursuant to subdivision (a), and utilizing resources provided for this purpose in the annual Budget Act, the chancellor shall prepare an annual report to the Legislature, the Governor, the Department of Finance, and the Office of the Legislative Analyst evaluating the achievement of educational outcomes for each community college district and, as warranted, each college. This report shall be provided to the Legislature annually on or before March 31, beginning in 2007. Preliminary data reported from the districts shall be provided to the Department of Finance and the Office of the Legislative Analyst by January 31 of each year, beginning in 2007. For each district, and college as warranted, the report shall: (1) include performance data for the immediately preceding fiscal year, reflecting all measures specified in subdivision (c); (2) compare each district's and college's achievement with peer groups within the system as applicable to specific metrics; and (3) compare each district's and college's achievements with that of the system as a whole. The report shall further include a profile with summary background information on each district's or college's educational programs, missions, students, and service area demographics.

(c) (1) The report shall include, but not be limited to, district or college-level performance on outcome measures in the following categories:

- (A) Student progress and achievement: degrees, certificates, and transfers.
- (B) Student progress and achievement: vocational, occupational, and workforce development.
- (C) Pre-collegiate improvement, including basic skills and English-as-a-second language.

(2) The specific measures to be included in the report shall reflect the April 2005 board of governors recommendations as refined and amended in consultation with the Department of Finance and the Office of the Legislative Analyst, and shall be periodically reviewed, in consultation with the Department of Finance and the Office of the Legislative Analyst, and, if necessary, modified by the chancellor. It is the intent of the Legislature that specific performance metrics and annual reporting requirements may be specified in annual Budget Acts, if warranted, by changes in state needs, legislative priorities, or the availability of data.

(d) (1) Beginning in 2019, and in each year thereafter, for each community college program that offers certificates or degrees related to allied health professionals that require clinical training, the chancellor shall include in the annual report described in subdivision (b) information, delineated by program and occupation, on all of the following:

- (A) The name and address of the clinical placement sites, including, but not limited to, the licensed hospital, clinic, or other medical facilities that contracts with the community college for each clinical rotation, as applicable.
- (B) The length and types of clinical rotations, as applicable.
- (C) Supervision ratios at each site.
- (D) The numbers of students participating in clinical training, including demographic data related to race, ethnicity, gender, and proficiency in languages other than English.
- (E) Employment retention at each clinical placement site, as applicable.

(2) For purposes of this subdivision, "allied health professional" has the same meaning as in Section 295p of Title 42 of the United States Code.

(e) As a condition of receiving specified funds in the annual Budget Act, each community college district board of trustees shall annually review and adopt its contribution to the segmentwide annual report as part of a regularly scheduled and noticed public meeting at which public comment shall be invited.

(f) The board of governors shall adopt regulations that it deems necessary to carry out this section no sooner than 30 days after notification in writing by the chancellor to the Director of Finance and the Chairperson of the Joint Legislative Budget Committee.

SEC. 3. SEC. 2. Section 94910 of the Education Code is amended to read:

94910. Except as provided in subdivision (d) of Section 94909 and Section 94910.5, prior to enrollment, an institution shall provide a prospective student with a School Performance Fact Sheet containing, at a minimum, the following information, as it relates to the educational program:

- (a) Completion rates, as calculated pursuant to Article 16 (commencing with Section 94928).
- (b) Placement rates for each educational program, as calculated pursuant to Article 16 (commencing with Section 94928), if the educational program is designed to lead to, or the institution makes any express or implied claim related to preparing students for, a recognized career, occupation, vocation, job, or job title.
- (c) License examination passage rates for programs leading to employment for which passage of a state licensing examination is required, as calculated pursuant to Article 16 (commencing with Section 94928).
- (d) Salary or wage information, as calculated pursuant to Article 16 (commencing with Section 94928).
- (e) If a program is too new to provide data for any of the categories listed in this subdivision, the institution shall state on its fact sheet: "This program is new. Therefore, the number of students who graduate, the number of students who are placed, or the starting salary you can earn after finishing the educational program are unknown at this time. Information regarding general salary and placement statistics may be available from government sources or from the institution, but is not equivalent to actual performance data."

(f) All of the following:

(1) A description of the manner in which the figures described in subdivisions (a) to (d), inclusive, are calculated or a statement informing the reader of where he or she may obtain a description of the manner in which the figures described in subdivisions (a) to (d), inclusive, are calculated.

(2) A statement informing the reader of where he or she may obtain from the institution a list of the employment positions determined to be within the field for which a student received education and training for the calculation of job placement rates as required by subdivision (b).

(3) A statement informing the reader of where he or she may obtain from the institution a list of the objective sources of information used to substantiate the salary disclosure as required by subdivision (d).

(g) The following statements:

(1) "This fact sheet is filed with the Bureau for Private Postsecondary Education. Regardless of any information you may have relating to completion rates, placement rates, starting salaries, or license exam passage rates, this fact sheet contains the information as calculated pursuant to state law."

(2) "Any questions a student may have regarding this fact sheet that have not been satisfactorily answered by the Institution may be directed to the Bureau for Private Postsecondary Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and fax numbers)."

(h) If the institution participates in federal financial aid programs, the most recent three-year cohort default rate reported by the United States Department of Education for the institution and the percentage of enrolled students receiving federal student loans.

(i) (1) Beginning in 2019, and in each year thereafter, for each institution with a program that offers certificates or degrees related to allied health professionals that require clinical training, information, delineated by program and occupation, on all of the following:

(A) The name and address of the clinical placement sites, including, but not limited to, the licensed hospital, clinic, or other medical facilities that contracts with the institution for each clinical rotation, as applicable.

(B) The length and types of clinical rotations, as applicable.

(C) Supervision ratios at each site.

(D) The numbers of students participating in clinical training, including demographic data related to race, ethnicity, gender, and proficiency in languages other than English.

(E) Employment retention at each clinical placement site, as applicable.

(F) Whether any donation, money, compensation, or exchange of consideration was offered or provided to the business, nonprofit or other organization, clinic, hospital, or other location where the student was placed and, if so, the amount.

(2) For purposes of this subdivision, "allied health professional" has the same meaning as in Section 295p of Title 42 of the United States Code.

(j) Data and information disclosed pursuant to subdivisions (a) to (d), inclusive, is not required to include students who satisfy the qualifications specified in subdivision (d) of Section 94909, but an institution shall disclose whether the data, information, or both provided in its fact sheet excludes students pursuant to this subdivision. An institution shall not actively use data specific to the fact sheet in its recruitment materials or other recruitment efforts of students who are not California residents and do not reside in California at the time of their enrollment.

SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: SB 1348 **Hearing Date:** April 4, 2018
Author: Pan
Version: March 22, 2018
Urgency: No **Fiscal:** Yes
Consultant: Olgalilia Ramirez

Subject: Postsecondary education: allied health professional clinical programs: reporting

SUMMARY

This bill requires a private postsecondary institution to include in its School Performance Fact Sheet and the California Community College (CCC) Chancellor's Office to report in an existing annual report to the Legislature the specified information related to clinical training for certificates or degrees related to allied health professional.

BACKGROUND

Existing law:

- 1) Establishes the mission and function of the CCC as the offering of academic and vocational instruction at the lower division level and the CCC are authorized to grant the associate in arts and the associate in science degree. The community colleges are also required to offer remedial instruction, English as a Second Language instruction, and adult noncredit instruction, and support services which help students succeed at the postsecondary level. (Education Code § 66010.4)
- 2) Requires the Chancellor of the California Community Colleges to submit an annual report to the Legislature, the Governor the Department of Finance, and the Legislative Analyst for the purpose of evaluating the achievement of educational outcomes for each community college district. (Education Code § 84906)
- 3) Establishes the California Private Postsecondary Education Act of 2009 (Act) until January 1, 2021, and requires the Bureau for Private Postsecondary Education (Bureau) within the Department of Consumer Affairs to, among other things, review, investigate and approve private postsecondary institutions, programs and courses of instruction pursuant to the Act and authorizes the Bureau to take formal actions against an institution/school to ensure compliance with the Act and even seek closure of an institution/school if deemed necessary. (EC § 94800, et seq.)
- 4) Under the Act, requires a private postsecondary institution to provide a prospective student, prior to enrollment, with a School Performance Fact Sheet for each educational program containing information related to completion rates, job placement rates within the career fields for which the program was designed, license examination passage rates, salaries or wages, and the most recent three-

year cohort default rate. In order to remain in compliance, the California Private Postsecondary Education Act of 2009 (Act) requires an institution to submit an annual report to the Bureau for Private Postsecondary Education (Bureau) that includes, among other things, the School Performance Fact Sheet. The report and fact sheets are made available on the institution's as well as the bureau's Internet Web site. (EC § 94910, 9434, 94913 and 94878)

- 5) Under federal law, defines the term "allied health professionals" to mean a health professional (other than a registered nurse or physician assistant): 1) who has received a certificate, degree or training in a science relating to healthcare; 2) Who shares in the responsibility for the delivery of health care services or related services; and 3) who has not received a degree of doctor of medicine in the specified fields. (Title 42 United States Code § 295p. (5))

ANALYSIS

This bill:

- 1) Requires, beginning 2019, for each educational program that offers certificates or degrees related to allied health professionals that require clinical training:
 - a) The California Community College Chancellor's Office to include within its annual report of educational outcomes all of the following:
 - i) The name and address of the clinical placement sites, as applicable.
 - ii) The length and types of clinical rotations, as applicable.
 - iii) Supervision ratios at each site.
 - iv) The numbers of students participating in clinical training, including demographic data related to race, ethnicity, gender, and proficiency in languages other than English.
 - v) Employment retention at each clinical placement site, as applicable.
 - b) A private postsecondary institution in its School Performance Fact Sheet provided to students prior to enrollment, to include all the above in i) – v) inclusive, and disclosure of whether any financial compensation or exchange of consideration was offered or provided for clinical placement, as specified.
 - c) Defines for purposes of this bill, "allied health professionals," to mean a health professional (other than a registered nurse or physician assistant): 1) who has received a certificate, degree or training in a science relating to health care; 2) who shares in the responsibility for the delivery of healthcare services or related services; and 3) who has not received a degree of doctor of medicine, as specified under federal law.

STAFF COMMENTS

- 1) **Need for the bill.** According to the author, research indicates that California is predicted to face a significant shortage of allied health professionals. The author notes that, "the Senate Office of Research (SOR) found in 2012 that 81% of deans of allied health professions programs at community colleges believed that more partnerships with health care employers would lead to an expansion in their capacity to training and enroll more allied health professional students. And the California Hospital Association has also observed that the lack of clinical training opportunities creates a barrier to ensuring an adequate supply of allied health workers.

Healthcare programs have reported that it is becoming more difficult to find health care providers to place students into their clinical internships. In addition to fast pace with which programs are expanding, and the existing difficulty with finding capable clinical sites with qualified supervisors, educators have pointed to increased difficulty in finding placements due to the growth of the for-profit education institutions whom they accuse of payment-for-placement tactics which place students from for-profit schools ahead of public school students. A recent study of the Respiratory Care workforce found that there is a limited number of available clinical internships and that many programs are being shut out of bigger hospitals which mean some students are not exposed to the full range of clinical practice.

The Legislature (SOR) has previously studied the issue of the healthcare workforce on several occasions and recommended changes to: Evaluate supply and demand of clinical training programs as the inventory of clinical training spots compared to the number of trainees for many of these professions is generally unknown or not easily available.

Without adequate data to effectively align education programs, clinical training sites, and projected allied healthcare workforce demands and shortages, California's system of higher education will be unable to plan to meet the future healthcare workforce needs of the state."

- 2) **Public and private institutions competing for limited slots.** To graduate from certain programs students are required to have clinical education/training. Programs are responsible for securing clinical facilities that meet requirements needed to adequately prepare its students. Concerns have been raised about some private for-profit institutions obtaining clinical placement based on financial incentives, which many argue places public programs at a particular disadvantage. This is an issue as the number of available placements is limited. This bill seeks to shed light on this problem by requiring disclosure of any financial compensation offered in exchange for clinical placement.
- 3) **California Community College Student Success Scorecard.** This bill requires the California Community College Chancellor's Office to include the specified information within its annual report of educational outcomes. This report is known as the, "Student Success Scorecard," which is submitted to the Legislature and maintained on the Chancellor's Office website. This scorecard provides a level of

transparency and accountability on student progress and success metrics. The data available in this scorecard tells how well colleges are doing in remedial instruction, job training programs, retention of students and graduation and completion rates. Data are reported by gender, age and ethnicity and colleges. In addition to those metrics, this bill requires reporting of data related to clinical placement sites, employment retention at each site, clinical rotations, supervisor to student ratios and the number of clinical training participants for each of the specified education programs within a college.

- 4) **Use of School Performance Fact Sheet.** As mentioned in the background of this analysis, current law requires a private postsecondary institution to provide a prospective student with a School Performance Fact Sheet prior to signing an enrollment agreement with the institution. The fact sheet includes, among other things, information on degree completion and the rate at which program graduates are gainfully employed within their field of study. It is designed to help individuals make informed decisions about the institution and its educational programs.

Similar to the reporting requirements for the community college system, this measure proposes for each education program offering certificates or degrees related to allied health professions requiring clinical training, to include additional information about clinical placement sites, employment retention at each site, clinical rotations, supervisor to student ratios and the number of clinical training participants. These provisions appear to align with the general goal of fact sheet—to equip students with information to successfully assess programs as well as promote institutional accountability and transparency.

- 5) **Efforts to update School Performance Fact Sheet.** SB 1247 (Lieu, Chapter 840, Statutes of 2014) directed the Bureau for Private Postsecondary Education (Bureau) to evaluate and make recommendations to the Legislature on how reporting requirements should be altered to ensure accurate, useful and consistent reporting by private postsecondary institutions to the bureau and students. The report was released in December 2016. To promote the use and usefulness of the fact sheet the report recommends making information simpler and more compelling. Staff notes that the Bureau recently updated the School Performance Fact Sheet through the regulatory process. The revised regulations took effect on January 1, 2017. According to the Department of Consumer Affairs (DCA), any changes to the Fact Sheet would require the Bureau to revisit and potentially revise its corresponding regulations. DCA also notes that expanded reporting requirements would substantially increase the Bureau's data validation workload.

SUPPORT

California Federation of Teachers
Faculty Association of California Community Colleges
SEIU California

OPPOSITION

American Career College
California Association of Private Postsecondary Schools
West Coast University

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