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ADVISORY COUNCIL MEETING
NOTICE & AGENDA
March 12, 2020 | Thursday | 9:00 am
Until the Completion of Business

Meeting Location:
Department of Consumer Affairs – DCA HQ2
1747 North Market Blvd, Room 186, Sacramento, CA 95834

Teleconference Participation Option:
Phone Number: (866) 842-2981
Participant Passcode #: 4598662

Webcast Option:
The Bureau plans to webcast this meeting at https://thedcapage.blog/webcasts/.
Webcast availability cannot, however, be guaranteed due to limited resources or technical difficulties. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location.

Advisory Council Members:
Council member applications are currently under review.

The time and order of agenda items are subject to change at the discretion of the Advisory Council and may be taken out of order. The Bureau welcomes and encourages public participation in its meetings. The public may take appropriate opportunities to comment on any issue before the Bureau at the time the item is heard. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment, either in person, written or via the conference calling system provided.

This designated meeting facility is accessible to the physically disabled. A person who needs a disability-related accommodation to participate in the meeting may make a request by contacting Brittany Bell via email Brittany.Bell@dca.ca.gov or for the hearing impaired: TDD (800) 326-2297; or by sending a written request to the address indicated above. Please provide at least five working days’ notice before the meeting to help ensure accommodations.
AGENDA

1. Welcome and Introductions
   a. Facility Safety and Courtesy Items
   b. Roll Call of the Council/Audience/Teleconference Participants Noticed

2. Operations Update
   a. Budget
   b. Personnel

3. Statistical Overview
   a. Laboratory Testing
   b. Licensing
   c. Consumer Complaints
   d. Enforcement
   e. Field Investigations

4. Electronic Appliance and Repair Update
   a. Service Contracts

5. Division of Household Moves Update
   a. Exam Updates
   b. Unlicensed Activity Sweeps
   c. Tariff Fee Study Update for 2020
   d. Household Mover Regulations – Licensing Rulemaking Proposal Workshop

6. Home Furnishings and Thermal Insulation Update
   a. AB 2998: Survey of FR Fibers and Materials Used by Mattress Producers to Meet Federal Flammability Standards
   b. Law Label Requirements and FAQ

7. Regulations Update
   a. Section 100 – Repeal of Sections Inoperative as of December 2014
   b. Home Furnishings and Thermal Insulation Substantial Relationship Criteria and Rehabilitation Criteria – Amendments to Title 4, California Code of Regulations (CCR) §§1380 and 1381
   c. Electronic and Appliance Repair Substantial Relationship Criteria and Rehabilitation Criteria – Amendments to Title 16, CCR §§2767 and 2768
   d. Household Mover Regulations – Initial Rulemaking Proposal: Definitions, Enforcement, Substantial Relationship and Rehabilitation Criteria, and Advertising
8. Legislative Update
   a. AB 1616 (Low) – Department of Consumer Affairs: boards: expunged convictions
   b. AB 1925 (Obernolte) – Worker status: independent contractors: small businesses
   c. AB 2185 (Patterson) – Professions and vocations: applicants licensed in other states: reciprocity
   d. SB 878 (Jones) – Department of Consumer Affairs Licensing: applications: wait times
   e. S. 3551 (Wicker) – Safer Occupancy Furniture Flammability Act (SOFFA)

9. Public Comment on Items Not on The Agenda

10. Future Agenda Items/Confirmation of Next Meeting Date

11. Adjournment
Agenda Item 2a: Budget Update
## Analysis of Fund Condition

(Dollars in Thousands)

### 2020-21 Governor's Budget

<table>
<thead>
<tr>
<th>2018-19</th>
<th>2019-20</th>
<th>2020-21</th>
<th>2021-22</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BEGINNING BALANCE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$2,962</td>
<td>$4,064</td>
<td>$4,076</td>
<td>$4,132</td>
</tr>
<tr>
<td>Prior Year Adjustment</td>
<td>$799</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Adjusted Beginning Balance</td>
<td>$3,761</td>
<td>$4,064</td>
<td>$4,076</td>
</tr>
</tbody>
</table>

### REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS

**Revenues:**
- 4121200 Delinquent fees: $107, $112, $113, $113
- 4127400 Renewal fees: $2,582, $2,702, $2,739, $2,739
- 4129200 Other regulatory fees: $24, $26, $27, $27
- 4129400 Other regulatory licenses and permits: $258, $273, $275, $275
- 4163000 Income from surplus money investments: $60, $62, $63, $65
- 4171400 Escheat of unclaimed checks and warrants: $18, $10, $10, $10

**Total Revenues, Transfers, and Other Adjustments:** $3,049, $3,185, $3,227, $3,229

**Total Resources:** $6,810, $7,249, $7,303, $7,361

### EXPENDITURE AND EXPENDITURE ADJUSTMENTS

**Expenditures:**
- 1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations): $2,590, $2,978, $2,995, $2,783
- 9892 Supplemental Pension Payments (State Operations): $21, $46, $46, $46
- 9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations): $135, $149, $130, $130

**Total Expenditures and Expenditure Adjustments:** $2,746, $3,173, $3,171, $2,959

### FUND BALANCE

- Reserve for economic uncertainties: $4,064, $4,076, $4,132, $4,402

**Months in Reserve:** 15.4, 15.4, 16.8, 17.4
# 0752 - Home Furnishings and Thermal Insulation
## Analysis of Fund Condition
(Dollars in Thousands)

### 2020-21 Governor's Budget

<table>
<thead>
<tr>
<th>PY 2018-19</th>
<th>CY 2019-20</th>
<th>BY 2020-21</th>
<th>BY+1 2021-22</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEGINNING BALANCE</td>
<td>$2,837</td>
<td>$4,338</td>
<td>$3,529</td>
</tr>
<tr>
<td>Prior Year Adjustment</td>
<td>$918</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Adjusted Beginning Balance</td>
<td>$3,755</td>
<td>$4,338</td>
<td>$3,529</td>
</tr>
</tbody>
</table>

### REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS

- **4121200** Delinquent fees: $124, $106, $111, $111
- **4127400** Renewal fees: $3,833, $3,872, $3,910, $3,910
- **4129200** Other regulatory fees: $121, $117, $112, $112
- **4129400** Other regulatory licenses and permits: $1,028, $949, $956, $975
- **4163000** Investment Income - Surplus Money Investments: $71, $51, $40, $28
- **4170400** Sale of fixed assets: $- $- $- $-
- **4171400** Escheat - Unclaimed Checks, Warrants, Bonds, and Coupons: $16, $10, $10, $10
- **4171500** Escheat - Unclaimed Property: $- $7 $7 $7
- **4172500** Miscellaneous revenues: $1 $1 - -

**Total Revenues, Transfers, and Other Adjustments:** $5,194 $5,113 $5,146 $5,153

**Total Resources:** $8,949 $9,451 $8,675 $7,931

### EXPENDITURE AND EXPENDITURE ADJUSTMENTS

- **1111** Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations): $4,359 $5,521 $5,527 $5,527
- **8880** Financial Information System for California (State Operations): $1 $-1 $- $-
- **9892** Supplemental Pension Payments (State Operations): $50 $111 $111 $111
- **9900** Statewide General Administrative Expenditures (Pro Rata) (State Operations): $201 $291 $259 $259

**Total Expenditures and Expenditure Adjustments:** $4,611 $5,922 $5,897 $5,897

### FUND BALANCE

- Reserve for economic uncertainties: $4,338 $3,529 $2,778 $2,034

**Months in Reserve:** 8.8 7.2 5.7 4.0
# 3315 - Household Movers Fund
## Analysis of Fund Condition
(Dollars in Thousands)

### 2020-21 Governor's Budget

<table>
<thead>
<tr>
<th></th>
<th>PY 2018-19</th>
<th>CY 2019-20</th>
<th>BY 2020-21</th>
<th>BY+1 2021-22</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beginning Balance</strong></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Prior Year Adjustment</td>
<td>$ -</td>
<td></td>
<td>$ 2,186</td>
<td>$ 1,176</td>
</tr>
<tr>
<td>Adjusted Beginning Balance</td>
<td>$ -</td>
<td>$ 2,336</td>
<td>$ 2,186</td>
<td>$ 1,176</td>
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</tbody>
</table>

### REV #

#### Revenues:

<table>
<thead>
<tr>
<th></th>
<th>PY 2018-19</th>
<th>CY 2019-20</th>
<th>BY 2020-21</th>
<th>BY+1 2021-22</th>
</tr>
</thead>
<tbody>
<tr>
<td>4121200 Delinquency Fees</td>
<td></td>
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</tr>
<tr>
<td>4127400 Renewal fees</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>4129200 Other Regulatory Fees</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4129400 Other Regulatory Licenses and Permits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4163000 Investment Income - Surplus Money Investments</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4173000 Penalty Assessments - Other</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Totals, Revenues</strong></td>
<td>$ 41,166</td>
<td>$ 2,244</td>
<td>$ 2,264</td>
<td>$ 2,264</td>
</tr>
</tbody>
</table>

#### Transfers and Other Adjustments

- Revenue Transfer from Household Mover's Fund (3315) to Motor Carriers Safety Improvement Fund (0293) per Public Utilities Code Section 5003.1: $ -
- Revenue Transfer from the Transpertation Rate Fund (0412) to the Household Mover's Fund (3315) per 8660-011-0412 and 8660-401, Budget Act of 2018: $ 750
- Revenue Transfer from the Transpertation Rate Fund (0412) to Household Movers Fund (3315) per 8660-401, Budget Act of 2018: $ 558

**Total Revenues, Transfers, and Other Adjustments:** $ 3,474

### EXPENDITURE AND EXPENDITURE ADJUSTMENTS

#### Expenditures:

- Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations): $ 1,138
- Statewide General Administrative Expenditures (Pro Rata) (State Operations): $ -

**Total Expenditures and Expenditure Adjustments:** $ 1,138

### FUND BALANCE

- Reserve for economic uncertainties: $ 2,336

### MONTHS IN RESERVE

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2018-19</td>
<td>2019-20</td>
<td>BY 2020-21</td>
<td>BY+1 2021-22</td>
</tr>
<tr>
<td>Reserve for economic uncertainties</td>
<td>11.8</td>
<td>8.1</td>
<td>6.3</td>
<td>6.2</td>
</tr>
</tbody>
</table>
Agenda Item 3a: Laboratory Statistical Overview
# LAB STATISTICS

Data for FYTD 07/01/2019 – 02/20/2020

<table>
<thead>
<tr>
<th>Type Test</th>
<th>Received 07/01/19-02/20/2020</th>
<th>Completed Samples 07/01/19-02/20/2020</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Pass</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fail</td>
</tr>
<tr>
<td>TB117-2013</td>
<td>60</td>
<td>61 (95%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 (5%)</td>
</tr>
<tr>
<td>16 CFR 1633</td>
<td>15</td>
<td>8 (80%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2 (20%)</td>
</tr>
<tr>
<td>Thermal Insulation</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Bedding (No flammability tests)</td>
<td>21</td>
<td>30 (100%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0</td>
</tr>
<tr>
<td><strong>Labeling</strong></td>
<td>N/A</td>
<td>Pass 15 (13%), Minor Violation 48 (42%), Moderate Violation 49 (42%), Failure 4 (3%)</td>
</tr>
<tr>
<td>Total</td>
<td>96</td>
<td>---</td>
</tr>
</tbody>
</table>

**This category includes labeling results for all products except for Thermal Insulation. From 07/01/2019-02/20/2020.**

<table>
<thead>
<tr>
<th>Type Test</th>
<th>Completed 7/01/19-2/20/2020</th>
<th>Manufacturing Locations 07/01/19-02/20/2020</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>USA-CA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>USA-other states</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Overseas</td>
</tr>
<tr>
<td>TB117-2013</td>
<td>64</td>
<td>20 (31%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 (6%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>40 (63%)</td>
</tr>
<tr>
<td>16 CFR 1633</td>
<td>10</td>
<td>10 (100%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>

## FR Chemical Labeling and Analysis

Samples Received with the Flame Retardant Chemical Statement (TB117-2013) 07/01/19-02/20/2020

<table>
<thead>
<tr>
<th>“NO” Chemicals Checked</th>
<th>Contains Chemicals</th>
<th>No Box Checked</th>
<th>FR Doc Request Sent</th>
<th>DTSC Analysis Requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>58</td>
<td>4</td>
<td>2</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>90%</td>
<td>7%</td>
<td>3%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Samples Analyzed with the “NO” Flame Retardant Chemical Statement 07/01/19-02/20/2020

<table>
<thead>
<tr>
<th>Type Test</th>
<th>Pass</th>
<th>Fail</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>DTSC Analysis (8)*</td>
<td>3</td>
<td>38</td>
</tr>
<tr>
<td>FR Doc Review (8)**</td>
<td>3</td>
<td>38</td>
</tr>
</tbody>
</table>

*Review in progress for five components
**Three samples are still In progress
Agenda Item 3b: Licensing Statistical Overview
### Electronic and Appliance Repair Registrations

<table>
<thead>
<tr>
<th></th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appliance Service Dealers</td>
<td>2,621</td>
<td>2,632</td>
<td>2,634</td>
<td>2,593</td>
</tr>
<tr>
<td>Electronic Service Dealer</td>
<td>5,013</td>
<td>4,914</td>
<td>4,849</td>
<td>4,407</td>
</tr>
<tr>
<td>Combination Electronic/Appliance Service Dealer</td>
<td>624</td>
<td>583</td>
<td>557</td>
<td>504</td>
</tr>
<tr>
<td>Service Contract Administrator</td>
<td>44</td>
<td>47</td>
<td>50</td>
<td>58</td>
</tr>
<tr>
<td>Service Contract Seller</td>
<td>11,575</td>
<td>12,633</td>
<td>12,026</td>
<td>11,530</td>
</tr>
<tr>
<td><strong>Total Active EAR Registrations</strong></td>
<td>19,877</td>
<td>20,809</td>
<td>20,152</td>
<td>20,788</td>
</tr>
</tbody>
</table>

### Household Furnishings and Thermal Insulation Licenses

<table>
<thead>
<tr>
<th></th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furniture Retailers</td>
<td>2,282</td>
<td>2,057</td>
<td>2,121</td>
<td>2,050</td>
</tr>
<tr>
<td>Bedding Retailers</td>
<td>1,625</td>
<td>2,033</td>
<td>2,172</td>
<td>2,203</td>
</tr>
<tr>
<td>Furniture &amp; Bedding Retailers</td>
<td>11,782</td>
<td>11,872</td>
<td>11,554</td>
<td>11,075</td>
</tr>
<tr>
<td>Custom Upholsterers</td>
<td>506</td>
<td>497</td>
<td>483</td>
<td>447</td>
</tr>
<tr>
<td>Supply Dealers</td>
<td>130</td>
<td>110</td>
<td>100</td>
<td>90</td>
</tr>
<tr>
<td>Importers (includes overseas Manufacturers)</td>
<td>4,779</td>
<td>5,096</td>
<td>5,339</td>
<td>5,577</td>
</tr>
<tr>
<td>Manufacturers</td>
<td>1,508</td>
<td>1,530</td>
<td>1,522</td>
<td>1,424</td>
</tr>
<tr>
<td>Sanitizers</td>
<td>12</td>
<td>12</td>
<td>14</td>
<td>25</td>
</tr>
<tr>
<td>Wholesalers</td>
<td>172</td>
<td>196</td>
<td>188</td>
<td>180</td>
</tr>
<tr>
<td>Thermal Insulation Manufacturers</td>
<td>116</td>
<td>109</td>
<td>107</td>
<td>116</td>
</tr>
<tr>
<td><strong>Total Active HFTI Licenses</strong></td>
<td>22,912</td>
<td>23,512</td>
<td>23,600</td>
<td>23,187</td>
</tr>
</tbody>
</table>

### Geographic Breakdown of Importers/Manufacturers/Wholesalers as of 3/2/2020

<table>
<thead>
<tr>
<th>Category</th>
<th>California</th>
<th>Other States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Importer – California</td>
<td>607</td>
<td></td>
</tr>
<tr>
<td>Importer – Other States</td>
<td>911</td>
<td></td>
</tr>
<tr>
<td>Importer/Manufacturer – Overseas</td>
<td>6,905</td>
<td></td>
</tr>
<tr>
<td>Manufacturer – California</td>
<td>764</td>
<td></td>
</tr>
<tr>
<td>Manufacturer – Other States</td>
<td>956</td>
<td></td>
</tr>
<tr>
<td>Wholesalers - California</td>
<td>164</td>
<td></td>
</tr>
<tr>
<td>Wholesalers – Other States</td>
<td>55</td>
<td></td>
</tr>
<tr>
<td>Wholesalers – Overseas</td>
<td>2</td>
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</tr>
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</table>

### Household Movers Permits

<table>
<thead>
<tr>
<th>Category</th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permits Issued</td>
<td></td>
<td>36</td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>Exams Administered</td>
<td></td>
<td>36</td>
<td>107</td>
<td></td>
</tr>
<tr>
<td>Exam Pass Rate</td>
<td></td>
<td>64%</td>
<td>89%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Active HHM Permits</strong></td>
<td></td>
<td>936</td>
<td>1004</td>
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</tbody>
</table>
Agenda Item 3c: Consumer Complaints Statistical Overview
## CONSUMER COMPLAINT STATISTICS
### Household Movers

<table>
<thead>
<tr>
<th>Year</th>
<th>OPENED</th>
<th>CLOSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016-17</td>
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</tr>
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<td>2017-18</td>
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<td></td>
</tr>
<tr>
<td>2018-19</td>
<td>203</td>
<td>181</td>
</tr>
<tr>
<td>2019-20*</td>
<td>116</td>
<td>98</td>
</tr>
</tbody>
</table>

### Complaints Received by Months (as of July 1, 2019)

<table>
<thead>
<tr>
<th>Months</th>
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<th>UNLICENSED</th>
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<td>JUL' 19</td>
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<tr>
<td>AUG' 19</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>SEP' 19</td>
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<tr>
<td>OCT' 19</td>
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<td>NOV' 19</td>
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<tr>
<td>DEC' 19</td>
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<tr>
<td>FEB' 20</td>
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### TOTAL COMPLAINTS BY CATEGORY *(as of July 1, 2019)*

<table>
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<tr>
<th>Category</th>
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<td>Unlicensed Tip</td>
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<tr>
<td>Loss and/or...</td>
<td>41</td>
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<tr>
<td>Hold Hostage</td>
<td>10</td>
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<tr>
<td>Overcharges</td>
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<tr>
<td>Damages</td>
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<td>Miscellaneous</td>
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<tr>
<td>Year</td>
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<tr>
<td>----------</td>
<td>--------</td>
</tr>
<tr>
<td>2015-16</td>
<td>678</td>
</tr>
<tr>
<td>2016-17</td>
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<td>2018-19</td>
<td>528</td>
</tr>
<tr>
<td>2019-20*</td>
<td>325</td>
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<table>
<thead>
<tr>
<th>Year</th>
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<th>CLOSED</th>
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<tbody>
<tr>
<td>2015-16</td>
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<td>2016-17</td>
<td>237</td>
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<td>2017-18</td>
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<td>281</td>
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<tr>
<td>2018-19</td>
<td>158</td>
<td>157</td>
</tr>
<tr>
<td>2019-20*</td>
<td>186</td>
<td>128</td>
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</table>
Agenda Items 3d: Enforcement
Statistical Overview
# BEAR/BHFTI Enforcement Statistics

## Telephone Disconnects Ordered

<table>
<thead>
<tr>
<th>Year</th>
<th>EAR</th>
<th>HFTI</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>78</td>
<td>19</td>
<td>97</td>
</tr>
<tr>
<td>2016-17</td>
<td>42</td>
<td>16</td>
<td>58</td>
</tr>
<tr>
<td>2017-18</td>
<td>48</td>
<td>17</td>
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<td>24</td>
</tr>
<tr>
<td>2019-20*</td>
<td>5</td>
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## Internal Cases (Investigations)

### OPENED

<table>
<thead>
<tr>
<th>Year</th>
<th>EAR</th>
<th>HFTI</th>
<th>Total</th>
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<tr>
<td>2015-16</td>
<td>1,048</td>
<td>584</td>
<td>1,632</td>
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<tr>
<td>2016-17</td>
<td>730</td>
<td>451</td>
<td>1,181</td>
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<tr>
<td>2017-18</td>
<td>624</td>
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<td>979</td>
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<tr>
<td>2018-19</td>
<td>400</td>
<td>215</td>
<td>615</td>
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<tr>
<td>2019-20*</td>
<td>547</td>
<td>275</td>
<td>822</td>
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### CLOSED

<table>
<thead>
<tr>
<th>Year</th>
<th>EAR</th>
<th>HFTI</th>
<th>Total</th>
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</thead>
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<tr>
<td></td>
<td>1,109</td>
<td>607</td>
<td>1,716</td>
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<tr>
<td>2016-17</td>
<td>790</td>
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<td>2017-18</td>
<td>705</td>
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<td>1,093</td>
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<tr>
<td>2018-19</td>
<td>434</td>
<td>216</td>
<td>650</td>
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<tr>
<td>2019-20*</td>
<td>434</td>
<td>205</td>
<td>639</td>
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## Citations Issued

<table>
<thead>
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<th>EAR</th>
<th>HFTI</th>
<th>Total</th>
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<tr>
<td>2015-16</td>
<td>985</td>
<td>537</td>
<td>1,522</td>
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<tr>
<td>2016-17</td>
<td>684</td>
<td>402</td>
<td>1,086</td>
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<tr>
<td>2017-18</td>
<td>550</td>
<td>305</td>
<td>855</td>
</tr>
<tr>
<td>2018-19</td>
<td>384</td>
<td>230</td>
<td>614</td>
</tr>
<tr>
<td>2019-20*</td>
<td>46</td>
<td>16</td>
<td>62</td>
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Agenda Items 3e: Field Investigations
Statistical Overview
## HOUSEHOLD MOVERS INVESTIGATIONS STATISTICS

November 1, 2019 – February 29, 2020

### Household Mover Cases Under Investigation

<table>
<thead>
<tr>
<th>Category</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hold Hostage</td>
<td>18*</td>
</tr>
<tr>
<td>Unlicensed Activity</td>
<td>63</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>69</td>
</tr>
</tbody>
</table>

*of the Hold Hostage cases opened all but two (2) are Unlicensed movers

### Hold Hostage Situations

<table>
<thead>
<tr>
<th>Status</th>
<th>Cases</th>
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<tbody>
<tr>
<td>Resolved</td>
<td>11</td>
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<tr>
<td>Pending</td>
<td>7</td>
</tr>
<tr>
<td>Forwarded to Other Agencies</td>
<td>4**</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>18</td>
</tr>
</tbody>
</table>

**cases that have been Forwarded to Other Agencies may be in Pending/Resolved status

### Cease and Desist Letters Issued

<table>
<thead>
<tr>
<th>Description</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Failure of Movers to Cease and Desist will result in Administrative Citations)</td>
<td>36</td>
</tr>
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### Citations Issued

<table>
<thead>
<tr>
<th>Period</th>
<th>Cases</th>
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<tbody>
<tr>
<td>November 2019 – February 2020</td>
<td>6</td>
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</table>
Agenda Item 5d: Household Mover Regulations – Licensing Rulemaking Proposal Workshop
HOUSEHOLD MOVER PERMIT REQUIREMENTS REGULATION WORKSHOP
Teleconference Meeting
Wednesday, March 25, 2020, 1:00 p.m. – 4:00 p.m.

Meeting Location:
Bureau of Automotive Repair Field Office
16735 Von Karman Ave, Suite 100
Irvine, CA 92606

Teleconference Phone Number: (866) 842-2981
Participant Passcode #: 4598662

The Bureau of Household Goods and Services invites you to participate in a public workshop to discuss potential regulations regarding household mover permit requirements of the Division of Household Movers.

**Agenda**

1. Welcome and Introductions
2. Regulations Process Overview
3. Bureau Enforcement Activity/Role of Bureau Special Investigators
4. Specific Business Model Permit Challenges
   a. Restoration Companies
   b. Brokers
   c. Inter-State Movers
   d. Storage Container Delivery
5. Permit Fees
6. Surety and Performance Bonds
7. Fictitious Names
8. Responsible Managing Employees and Responsible Managing Officers
9. Household Mover Permit Examination
10. Public Comment
11. Adjournment

The meeting facilities are accessible to individuals with physical disabilities. The hearing impaired may access the meeting by calling TDD (800) 326-2297. A person who needs a disability-related accommodation or modifications to participate in the meeting may make a request by contacting Melissa Del Duca at (916) 999-2082 or by sending an email to: Melissa.Del-Duca@dca.ca.gov. Providing at least five working days’ notice before the meeting will help ensure the availability of accommodations or modifications.
Agenda Item 7b: Home Furnishings and Thermal Insulation Substantial Relationship Criteria and Rehabilitation Criteria – Amendments to Title 4, California Code of Regulations §§1380 and 1381
California Code of Regulations
Title 4. Professional and Vocational Regulations
Division 3. Bureau of Home Furnishings

PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in single underline for new text and single strikethrough for deleted text.

Article 15

§1380. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension, or revocation of a license pursuant to section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a licensee under Division 8, Chapter 3 (commencing with Section 19000) of the Business and Professions Code, if to a substantial degree it evidences present or potential unfitness of such licensee to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes shall include but not be limited to:

(a) Those violations specifically enumerated in Articles 3 through 7, inclusive, and Article 9 of Chapter 3 of Division 8 of the Business and Professions Code. (Chapter 3 of Division 8 of the Business and Professions Code is commonly called the Home Furnishings Act.)

(b) Those violations specifically enumerated in Article 1 of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code. (Article 1 of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code is that portion of the Code which concerns general false and misleading advertising practices.)

(b) In making the substantial relationship determination required under subsection (a) for a crime, the bureau shall consider the following criteria:

(1) The nature and gravity of the offense;
(2) The number of years elapsed since the date of the offense; and
(3) The nature and duties of the licensee.

(c) For the purposes of subsection (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 3 of Division 8 of the Business and Professions Code.
(2) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to benefit oneself or another or to harm another.
(3) Violating or attempting to violate Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to false or misleading advertising.
(d) If an applicant or licensee wishes to contest a license denial, suspension, or revocation based on a conviction, the applicant or licensee may request a hearing pursuant to Business and Professions Code section 19209 to determine if the license should be denied, suspended, or revoked.


§1381. Criteria for Rehabilitation.

When considering the denial, suspension or revocation of a license on the ground of conviction of a crime the Bureau will consider the following criteria:

(a) The nature and severity of the offense(s).
(b) Total criminal record.
(c) Extent of time that has elapsed since commission of the offense(s).
(d) Whether the licensee has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
(e) Evidence, if any, of rehabilitation submitted by the licensee.
(1) Include (if applicable) evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(a) When considering the denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code on the ground that the applicant or licensee was convicted of a crime, the Bureau shall consider whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. In making the determination, the Bureau shall consider the following criteria:

(1) The nature and gravity of the crime(s).
(2) The length(s) of the applicable parole or probation period(s).
(3) The extent to which the applicable parole or probation period was shortened or lengthened and the reason(s) the period was modified.
(4) The terms or conditions of parole or probation and the extent to which they bear on the applicant’s or licensee’s rehabilitation.
(5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for modification.

(b) If subdivision (a) is inapplicable or the Bureau determines the applicant or licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the Bureau shall apply the following criteria in evaluating an applicant’s or licensee’s rehabilitation.
The Bureau shall find that the applicant or licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the Bureau finds the applicant or licensee is rehabilitated:

(1) The nature and severity of the crime(s) or act(s) that are under consideration as the grounds for denial, suspension, or revocation.
(2) The total criminal record, including evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, suspension, or revocation under Division 1.5 (commencing with Section 475) of the Business and Professions Code.
(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
(4) Whether the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.
(5) The criteria in subsections (a)(1)–(a)(5), as applicable.
(6) Evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
(7) The applicant or licensee has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.
(8) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

Agenda Item 7c: Electronic and Appliance Repair Substantial Relationship Criteria and Rehabilitation Criteria – Amendments to Title 16, CCR §§2767 and 2768
California Code of Regulations  
Title 16. Professional and Vocational Regulations  
Division 27. Bureau of Electronic and Appliance Repair

PROPOSED LANGUAGE

Proposed amendments to the regulatory language are shown in single underline for new text and single strikethrough for deleted text.

Article 7

§ 2767. Substantial Relationship Criteria

(a) For the purposes of denial, suspension, or revocation of the registration of a repair service dealer or service contractor pursuant to section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a service dealer registrant if to a substantial degree it evidences present or potential unfitness of a service dealer registrant to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(b) In making the substantial relationship determination required under subsection (a) for a crime, the Bureau shall consider the following criteria:
   (1) The nature and gravity of the offense;
   (2) The number of years elapsed since the date of the offense; and
   (3) The nature and duties of a service dealer or service contractor.

(c) For the purposes of subsection (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:
   (a)(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 20, Division 3 of the Business and Professions Code.
   (b) Conviction of a crime involving fiscal dishonesty.
   (2) Crimes or acts involving dishonesty, fraud, deceit or theft with the intent to benefit oneself or another or to harm another. This includes, but is not limited to:
      (A) Making or authorizing any statement or advertisement that is untrue or misleading, and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.
      (B) Making any false promises of a character likely to influence, persuade, or
induce a customer to authorize the repair, installation, service, or maintenance
of the equipment.
(C) Conduct constituting incompetence or negligence.
(D) Any willful departure from or disregard of accepted trade standards for
good and workmanlike installation or repair.
(3) Crimes involving physical violence against others.

(d) If an applicant or registrant wishes to contest a registration denial, suspension, or
revocation based on a conviction, the applicant or registrant may request a hearing
pursuant to Business and Professions Code section 9848 to determine if the
registration should be denied, suspended, or revoked.

NOTE: Authority cited: Sections 481, 493, 9814 and 9814.5, Business and
Professions Code. Reference: Sections 141, 475, 480, 481, 485, 488, 490, 493,
9841, and 9848, Business and Professions Code.

§ 2768. Criteria for Rehabilitation

(a) The bureau shall evaluate the rehabilitation of the applicant, registrant, or
petitioner and his or her present eligibility for a registration:

(1) When considering the denial, suspension, or revocation of a registration under
the provisions of Section 480 of the Code; pursuant to Division 1.5 (commencing with
Section 475) of the Business and Professions Code on the grounds that the applicant
or registrant was convicted of a crime, the Bureau shall consider whether the applicant
or registrant made a showing of rehabilitation and is presently eligible for a registration,
if the applicant or registrant completed the criminal sentence at issue without a
violation of parole or probation. In making this determination, the Bureau shall consider
the following criteria:

(2) When considering the suspension or revocation of a registration on the grounds
that a service dealer has been convicted of a crime;

(3) When considering a petition for reinstatement of a registration under the
provisions of Section 11522 of the Government Code.

(b) In evaluating the rehabilitation of the applicant, registrant, or petitioner, the
bureau shall consider the following criteria:

(1) The nature and gravity of the crime(s).

(2) The length(s) of the applicable parole or probation period(s).

(3) The extent to which the applicable parole or probation period was shortened
or lengthened and the reason(s) the period was modified.

(4) The terms or conditions of parole or probation and the extent to which they bear
on the applicant’s or registrant’s rehabilitation.

(5) The extent to which the terms or conditions of parole or probation were
modified and the reason(s) for modification.

(b) If subdivision (a) is inapplicable or the Bureau determines the applicant or
registrant did not make the showing of rehabilitation based on the criteria in
subdivision (a), the Bureau shall apply the following criteria in evaluating an
applicant’s or registrant’s rehabilitation. The Bureau shall find that the applicant or
registrant made a showing of rehabilitation and is presently eligible for a registration
if, after considering the following criteria, the Bureau finds the applicant or registrant is rehabilitated:

(1) The nature and the severity of the act(s) or crime(s) under consideration.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code when considering an applicant pursuant to subsection (a)(1) of this section.

(3) Total criminal record when considering a person pursuant to subsections (a)(2) and (a)(3) of this section.

(2) The total criminal record, including evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, suspension, or revocation under Division 1.5 (commencing with Section 475) of the Business and Professions Code.

(4)(3) The time that has elapsed since commission of the act(s) or crime(s) under consideration.

(4) Whether the applicant or registrant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or registrant.

(5) The extent to which the applicant, registrant, or petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant, registrant, or petitioner.

(6) Evidence, if any, of rehabilitation submitted by the applicant, registrant, or petitioner. Such evidence may include, but is not limited to, proof of additional training or education, evidence of service to the community, and, if applicable, evidence of expungement proceedings, pursuant to Section 1203.4 of the Penal Code.

(5) The criteria in subsections (a)(1)–(a)(5), as applicable.

(6) Evidence of dismissal proceedings pursuant to Section 1203.4 of the Penal Code.

(7) The applicant or registrant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(8) Evidence, if any, of rehabilitation submitted by the applicant or registrant.

(c) When considering a petition for reinstatement of a registration under the provisions of section 11522 of the Government Code, the Bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in this section.

Agenda Item 8a: AB 1616
An act to amend Section 10295.6 of the Insurance Code, relating to insurance. Add Section 493.5 to the Business and Professions Code, relating to professions and vocations.

legislative counsel’s digest


Existing law establishes the Department of Consumer Affairs, which is composed of various boards, and authorizes a board to suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law, the Medical Practice Act, provides for the licensure and regulation of the practice of medicine by the Medical Board of California and requires the board to post certain historical information on current and former licensees, including felony and certain misdemeanor convictions. Existing law also requires the Medical Board of California, upon receipt of a certified copy of an expungement order from a current or former licensee, to post notification of the expungement order and the date thereof on its internet website.

This bill would require a board within the department that has posted on its internet website that a person’s license was revoked because the
person was convicted of a crime to, within 6 months of receiving the expungement order for the underlying offense from the person, post notification of the expungement order and the date thereof on the board’s internet website if the person applies for licensure or is reLicensed, or remove the initial posting on its internet website that the person’s license was revoked if the person is not currently licensed and does not reapply for licensure, as specified. The bill would require a person to pay a fee, to be determined by the department, to the board for the cost of administering the bill’s provisions. Existing law regulates classes of insurance, including life insurance, and prescribes certain requirements governing the payment of an accelerated death benefit under a life insurance policy. Existing law authorizes an accelerated death benefit to be added to a life insurance policy to provide for the advance payment of a part of the death proceeds if a qualifying event, including a terminal or chronic illness, occurs. Existing law prohibits an accelerated death benefit from being effective more than 30 days following the effective date of the policy provision, rider, endorsement, or certificate. This bill would authorize the effective period of an accelerated death benefit to be extended to not more than 60 days following the effective date of the policy provision, rider, endorsement, or certificate.


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

SECTION 1. Section 493.5 is added to the Business and Professions Code, to read:

493.5. (a) A board within the department that has posted on its internet website that a person’s license was revoked because the person was convicted of a crime, upon receiving from the person a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code for the underlying offense, shall, within six months of receiving the expungement order, unless it is otherwise prohibited by law, or by other terms or conditions, do either of the following:

(1) If the person reapplies for licensure or has been reLicensed, post notification of the expungement order and the date thereof on its internet website.
(2) If the person is not currently licensed and does not reapply for licensure, remove the initial posting on its internet website that the person’s license was revoked.

(b) A person described in subdivision (a) shall pay to the board a fee in an amount to be determined by the department that does not exceed the reasonable cost of administering this section. The fee shall be deposited by the board into the appropriate fund and shall be available only upon appropriation by the Legislature.

(c) For purposes of this section “board” means an entity listed in Section 101.

(d) If any provision in this section conflicts with Section 2027, Section 2027 shall prevail.

SECTION 1. Section 10295.6 of the Insurance Code is amended to read:

10295.6. (a) If a policyholder or certificate holder requests an acceleration of death benefits, the insurer shall send a statement to the policyholder or certificate holder and irrevocable beneficiary showing any effect that the payment of the accelerated death benefit would have on the policy’s cash value, accumulation account, death benefit, premium, policy loans, and policy liens. The statement shall disclose that receipt of accelerated death benefit payments may adversely affect the recipient’s eligibility for Medicaid or other government benefits or entitlements. In addition, receipt of an accelerated death benefit payment may be taxable and assistance should be sought from a personal tax adviser. If a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyholder or certificate holder and irrevocable beneficiary.

(b) The accelerated death benefit shall be effective not more than 60 days following the effective date of the policy provision, rider, endorsement, or certificate.

(c) If the insurer charges a separate premium for the accelerated death benefit, then the insurer may also offer a waiver of premium benefit as defined in subdivision (a) of Section 10271.1. At the time the waiver of the accelerated death benefit premium benefit is claimed, the insurer shall explain any continuing premium requirement to keep the underlying policy in force.

(d) An insurer shall not unfairly discriminate among insureds with different qualifying events covered under the policy or among
insureds with similar qualifying events covered under the policy. An insurer shall not apply further conditions on the payment of the accelerated death benefits other than those conditions specified in the accelerated death benefit.

(e) No later than one month after payment of an accelerated death benefit, the insurer shall provide the policyholder or certificate holder with a report of any accelerated death benefits paid out during the prior month, an explanation of any changes to the policy or certificate, death benefits, and cash values on account of the benefits being paid out, and the amount of the remaining benefits that may be accelerated at the end of the prior month. The insurer may use a calendar month or policy or certificate month.

(f) The conversion benefit available to group certificate holders on termination of employment pursuant to paragraph (2) of subdivision (a) of Section 10209 shall include a benefit comparable to the accelerated death benefit. This requirement may be satisfied by an individual policy or certificate. This requirement, subject to the approval of the commissioner, may be satisfied by arrangement with another insurer to provide the required coverage.

(g) If payment of an accelerated death benefit results in a pro rata reduction in cash value, the payment may be applied toward repaying a portion of the loan equal to a pro rata portion of any outstanding policy loans if disclosure of the effect of acceleration upon any remaining death benefit, cash value or accumulation account, policy loan, and premium payments, including a statement of the possibility of termination of any remaining death benefit, is provided to the policyholder or certificate holder. The policyholder or certificate holder shall provide written consent authorizing any other arrangement for the repayment of outstanding policy loans.
Agenda Item 8b: AB 1925
ASSEMBLY BILL No. 1925

Introduced by Assembly Member Obernolte

January 14, 2020

An act to amend Section 2750.3 of the Labor Code, relating to employment.

legislative counsel's digest

AB 1925, as introduced, Obernolte. Worker status: independent contractors: small businesses.

Existing law, as established in the case of Dynamex Operations W. Inc. v. Superior Court (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to determine if workers are employees or independent contractors for purposes of specified wage orders.

Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business. This test is commonly known as the “ABC” test. Existing
law charges the Labor Commissioner with the enforcement of labor laws, including worker classification. Existing law exempts specified occupations and business relationships from the application of Dynamex and these provisions. Existing law instead provides that these exempt relationships are governed by the test adopted in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341. This bill would expand the above-described exemptions to also include small businesses, as defined.


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

SECTION 1. Section 2750.3 of the Labor Code, as amended by Section 1 of Chapter 415 of the Statutes of 2019, is amended to read:

2750.3. (a) (1) For purposes of the provisions of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity’s business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(2) Notwithstanding paragraph (1), any exceptions to the terms “employee,” “employer,” “employ,” or “independent contractor,” and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of “employee” in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.
(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court’s decision in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 (Borello).

(b) Subdivision (a) and the holding in Dynamex Operations West, W. Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903. (Dynamex), (Dynamex) do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello.

(1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.

(2) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall apply to the employment settings currently or potentially governed by collective bargaining agreements for the licensees identified in this paragraph.

(3) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, engineer, private investigator, or accountant.

(4) A securities broker-dealer or investment adviser or their agents and representatives that are registered with are either of the following:

(A) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by Authority.
(B) Licensed by the State of California under Chapter 2
(commencing with Section 25210) or Chapter 3 (commencing with
Section 25230) of Division 1 of Part 3 of Title 4 of the
Corporations Code.
(5) A direct sales salesperson as described in Section 650 of the
Unemployment Insurance Code, so long as the conditions for
exclusion from employment under that section are met.
(6) A commercial fisherman working on an American vessel
as defined in subparagraph (A) below.
(A) For the purposes of this paragraph:
(i) “American vessel” has the same meaning as defined in
Section 125.5 of the Unemployment Insurance Code.
(ii) “Commercial fisherman” means a person who has a valid,
unrevoked commercial fishing license issued pursuant to Article
3 (commencing with Section 7850) of Chapter 1 of Part 3 of
Division 6 of the Fish and Game Code.
(iii) “Working on an American vessel” means the taking or the
attempt to take fish, shellfish, or other fishery resources of the state
by any means, and includes each individual aboard an American
vessel operated for fishing purposes who participates directly or
indirectly in the taking of these raw fishery products, including
maintaining the vessel or equipment used aboard the vessel.
However, “working on an American vessel” does not apply to
anyone aboard a licensed commercial fishing vessel as a visitor
or guest who does not directly or indirectly participate in the taking.
(B) For the purposes of this paragraph, a commercial fisherman
working on an American vessel is eligible for unemployment
insurance benefits if they meet the definition of “employment” in
Section 609 of the Unemployment Insurance Code and are
otherwise eligible for those benefits pursuant to the provisions of
the Unemployment Insurance Code.
(C) (i) On or before March 1, 2021, and each March 1
thereafter, the Employment Development Department shall issue
an annual report to the Legislature on the use of unemployment
insurance in the commercial fishing industry. This report shall
include, but not be limited to, reporting all of the following:
(I) Reporting the number of commercial fishermen who apply
for unemployment insurance benefits, the benefits.
(II) The number of commercial fishermen who have their claims
disputed, the number disputed.
(III) The number of commercial fishermen who have their claims denied, and the denied.

(IV) The number of commercial fishermen who receive unemployment insurance benefits.

(ii) The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(D) This paragraph shall become inoperative on January 1, 2023, unless extended by the Legislature.

(7) A newspaper distributor working under contract with a newspaper publisher, as defined in subparagraph (A), and a newspaper carrier working under contract either with a newspaper publisher or a newspaper distributor.

(A) For purposes of this paragraph:

(i) “Newspaper” means a newspaper of general circulation, as defined in Section 6000 of the Government Code, and any other publication circulated to the community in general as an extension of or substitute for that newspaper’s own publication, whether that publication be designated a “shoppers’ guide,” as a zoned edition, or otherwise.

(ii) “Publisher” means the natural or corporate person that manages the newspaper’s business operations, including circulation.

(iii) “Newspaper distributor” means a person or entity that contracts with a publisher to distribute newspapers to the community.

(iv) “Carrier” means a person who effects physical delivery of the newspaper to the customer or reader.

(B) This paragraph shall become inoperative on January 1, 2021, unless extended by the Legislature.

(8) (A) A small business.

(B) For purposes of this paragraph, “small business” means a business that meets all of the following:

(i) Is independently owned and operated.

(ii) Is not dominant in its field of operation.

(iii) Has fewer than 100 employees.

(iv) Has average gross receipts of fifteen million dollars ($15,000,000) or less over the previous three years.

(c) (1) Subdivision (a) and the holding in Dynamex do not apply to a contract for “professional services” as defined below, and instead the determination of whether the individual is an
employee or independent contractor shall be governed by Borello if the hiring entity demonstrates that all of the following factors are satisfied:

(A) The individual maintains a business location, which may include the individual’s residence, that is separate from the hiring entity. Nothing in this subdivision prohibits an individual from choosing to perform services at the location of the hiring entity.

(B) If work is performed more than six months after the effective date of this section, the individual has a business license, in addition to any required professional licenses or permits for the individual to practice in their profession.

(C) The individual has the ability to set or negotiate their own rates for the services performed.

(D) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual’s own hours.

(E) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.

(F) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

(2) For purposes of this subdivision:

(A) An “individual” includes an individual providing services through a sole proprietorship or other business entity.

(B) “Professional services” means services that meet any of the following:

(i) Marketing, provided that the contracted work is original and creative in character and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the contracted work.

(ii) Administrator of human resources, provided that the contracted work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iii) Travel agent services provided by either of the following:

1. (i)
(I) A person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, or (II) an individual who is a seller of travel within the meaning of subdivision (a) of Section 17550.1 of the Business and Professions Code and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.

(ii) An individual who is a seller of travel within the meaning of subdivision (a) of Section 17550.1 of the Business and Professions Code and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.

(iv) Graphic design.

(v) Grant writer.

(vi) Fine artist.

(vii) Services provided by an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service pursuant to Part 10 of Subtitle A of Title 31 of the Code of Federal Regulations.

(viii) Payment processing agent through an independent sales organization.

(ix) (I) Services provided by a still photographer or photojournalist who does not license content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. For purposes of this clause, a “submission” is one or more items or forms of content produced by a still photographer or photojournalist that pertains to a specific event or specific subject; (II) is provided for in a contract that defines the scope of the work; and (III) is work.

(ia) Pertains to a specific event or specific subject; (II) is provided for in a contract that defines the scope of the work; and (III) is work.

(ib) Is provided for in a contract that defines the scope of the work; and (III) is work.

(ic) Is accepted by and licensed to the publication or stock photography company and published or posted. Nothing

(III) Nothing in this section shall prevent a photographer or artist from displaying their work product for sale.

(x) (I) Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of
content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year.

(II) For purposes of this clause, a “submission” is one or more items or forms of content by a freelance journalist that meets all of the following:

(i) Pertains to a specific event or topic;
(ii) Is provided for in a contract that defines the scope of the work;
(iii) Is accepted by the publication or company and published or posted for sale.

(x) Services provided by a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual:

(I) Sets their own rates, processes their own payments, and is paid directly by clients.

(II) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.

(III) Has their own book of business and schedules their own appointments.

(IV) Maintains their own business license for the services offered to clients.

(V) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.

(VI) This subdivision shall become inoperative, with respect to licensed manicurists, on January 1, 2022.

(d) Subdivision (a) and the holding in Dynamex do not apply to the following, which are subject to the Business and Professions Code:

(I) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then this determination shall be governed as follows: (A) for purposes of unemployment insurance by Section 650 of the Unemployment Insurance Code; (B) for Code.
(B) For purposes of workers' compensation by Section 3200 et seq.; and (C) for all other purposes in the Labor Code by Borello. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors to be considered under the Borello test.

(2) A repossession agency licensed pursuant to Section 7500.2 of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by Section 7500.2 of the Business and Professions Code, if the repossession agency is free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(e) Subdivision (a) and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation (“business service provider”) contracts to provide services to another such business (“contracting business”), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

(A) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business.

(C) The contract with the business service provider is in writing.

(D) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(E) The business service provider maintains a business location that is separate from the business or work location of the contracting business.
(F) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(G) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.

(H) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(I) The business service provider provides its own tools, vehicles, and equipment to perform the services.

(J) The business service provider can negotiate its own rates.

(K) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(L) The business service provider is not performing the type of work for which a license from the Contractors’ State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(2) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs labor or services for a contracting business.

(3) The determination of whether an individual working for a business service provider is an employee or independent contractor of the business service provider is governed by paragraph (1) of subdivision (a).

(4) This subdivision does not alter or supersede any existing rights under Section 2810.3.

(f) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the individual is an employee of the contractor shall be governed by Section 2750.5 and by Borello, if the contractor demonstrates that all the following criteria are satisfied:

(1) The subcontract is in writing.

(2) The subcontractor is licensed by the Contractors’ State License Board and the work is within the scope of that license.
If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.

The subcontractor maintains a business location that is separate from the business or work location of the contractor.

The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.

The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.

The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor’s license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:

(i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

(ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.

(iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.

(iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(C) For purposes of this paragraph, “construction trucking services” mean hauling and trucking services provided in the
construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver’s license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(D) This paragraph shall only apply to work performed before January 1, 2022.

(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the employee-owned employee-owned truck.

(g) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a referral agency and a service provider, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietor, partnership, limited liability company, limited liability partnership, or corporation (“service provider”) provides services to clients through a referral agency, the determination of whether the service provider is an employee of the referral agency shall be governed by Borello, if the referral agency demonstrates that all of the following criteria are satisfied:

(A) The service provider is free from the control and direction of the referral agency in connection with the performance of the work for the client, both as a matter of contract and in fact.

(B) If the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.

(C) If the work for the client requires the service provider to hold a state contractor’s license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, the service provider has the required contractor’s license.

(D) The service provider delivers services to the client under the service provider’s name, rather than under the name of the referral agency.

(E) The service provider provides its own tools and supplies to perform the services.
(F) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed for the client.

(G) The service provider maintains a clientele without any restrictions from the referral agency and the service provider is free to seek work elsewhere, including through a competing agency.

(H) The service provider sets its own hours and terms of work and is free to accept or reject clients and contracts.

(I) The service provider sets its own rates for services performed, without deduction by the referral agency.

(J) The service provider is not penalized in any form for rejecting clients or contracts. This subparagraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.

(2) For purposes of this subdivision, the following definitions apply:

(A) “Animal services” means services related to daytime and nighttime pet care including pet boarding under Section 122380 of the Health and Safety Code.

(B) “Client” means a person or business that engages a service contractor through a referral agency.

(C) “Referral agency” is a business that connects clients with service providers that provide graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning, errands, furniture assembly, animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup.

(D) “Referral agency contract” is the agency’s contract with clients and service contractors governing the use of its intermediary services described in subparagraph (C).

(E) “Service provider” means a person or business who agrees to the referral agency’s contract and uses the referral agency to connect with clients.

(F) “Tutor” means a person who develops and teaches their own curriculum. A “tutor” does not include a person who teaches a curriculum created by a public school or who contracts with a public school through a referral company for purposes of teaching students of a public school.

(3) This subdivision does not apply to an individual worker, as opposed to a business entity, who performs services for a client.
through a referral agency. The determination of whether such an individual is an employee of a referral agency is governed by subdivision (a).

(h) Subdivision (a) and the holding in Dynamex do not apply to the relationship between a motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code and an individual performing services pursuant to a contract between the motor club and a third party to provide motor club services utilizing the employees and vehicles of the third party and, instead, the determination of whether such an individual is an employee of the motor club shall be governed by Borello, if the motor club demonstrates that the third party is a separate and independent business from the motor club.

(i) (1) The addition of subdivision (a) to this section of the Labor Code by this act subdivision (a) does not constitute a change in, but is declaratory of, existing law with regard to wage orders of the Industrial Welfare Commission and violations of the Labor Code this code relating to wage orders.

(2) Insofar as the application of subdivisions (b), (c), (d), (e), (f), (g), and (h) of this section would relieve an employer from liability, those subdivisions shall apply retroactively to existing claims and actions to the maximum extent permitted by law.

(3) Except as provided in paragraphs (1) and (2) of this subdivision, the provisions of (2), this section of the Labor Code shall apply to work performed on or after January 1, 2020.

(j) In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.
Agenda Item 8c: AB 2185
An act to add Section 117 to the Business and Professions Code, relating to professions and vocations.

legislative counsel's digest

AB 2185, as introduced, Patterson. Professions and vocations: applicants licensed in other states: reciprocity.

Existing law establishes the Department of Consumer Affairs, which is composed of boards that license and regulate various professions and vocations to ensure that certain businesses and professions that have potential impact upon the public health, safety, and welfare are adequately regulated. Existing law makes a violation of some of those licensure provisions a crime.

Existing law authorizes certain boards, for purposes of reciprocity, to waive examination or other requirements and issue a license to an applicant who holds a valid license in another state and meets specified other requirements, including, among others, a license to practice veterinary medicine.

This bill would require each board within the department to issue a license to an applicant in the discipline for which the applicant applies if the person currently holds a license in good standing in another state in the discipline and practice level for which the person applies and if the person meets specified requirements, including that the person has held the license and has practiced in the licensed field in the other state for at least 3 of the last 5 years and pays all applicable fees. By expanding the applicants who are authorized to be licensed and may be
prosecuted for a violation of those licensure provisions constituting a crime, the bill would impose a state-mandated program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.


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

SECTION 1. Section 117 is added to the Business and Professions Code, to read:

117. (a) Notwithstanding any law, each board within the department shall issue a license in the discipline for which the applicant applies if the applicant meets all of the following requirements:

(1) The person is a resident in this state or is married to, or is in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) The person currently holds a license in good standing in another state in the discipline and practice level for which the person is applying.

(3) The person has held the license and has practiced in the licensed field in the other state for at least three of the last five years.

(4) The person has not had any disciplinary actions imposed against their license and has not had a license in the discipline for which the person is applying revoked or suspended in any other state.

(5) The person submits verification that they have satisfied all education, work, examination, and other requirements for licensure in the other state in which the person holds a license in good standing.

(6) The person would not be denied licensure under any other provision of this code, including, but not limited to, disqualification for criminal history relating to the license sought.
(7) The person pays all applicable fees for licensure.

(8) If required by the board, the person has passed a California jurisprudence and ethics examination or other examination otherwise required for applicants by the board on the statutes and regulations relating to the license.

(b) This section shall not supersede any other reciprocity agreement, compact membership, or statute that provides reciprocity for a person who holds a valid license in another state.

(c) Notwithstanding any law, the fees, fines, penalties, or other money received by a board pursuant to this section shall not be continuously appropriated and shall be available only upon appropriation by the legislature.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
Agenda Item 8d: SB 878
An act to add Section 139.5 to the Business and Professions Code, relating to professions and vocations.

legislative counsel's digest

SB 878, as introduced, Jones. Department of Consumer Affairs Licensing: applications: wait times.
Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.
This bill would require each board within the department that issues licenses to prominently display the current timeframe for processing initial and renewal license applications on its internet website, as provided.
State-mandated local program: no.

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

SECTION 1. Section 139.5 is added to the Business and Professions Code, to read:
139.5. Each board, as defined in section 22, within the department that issues a license shall do both of the following:
(a) Prominently display the current timeframe for processing initial and renewal license applications on its internet website.
(b) With respect to the information displayed on the website, specify the average timeframe for each license category.
Agenda Item 8e: S. 3551
To adopt a certain California flammability standard as a Federal flammability standard to protect against the risk of upholstered furniture flammability, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

October 4, 2018

Mr. Wicker (for himself and Mr. Blumenthal) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

**A BILL**

To adopt a certain California flammability standard as a Federal flammability standard to protect against the risk of upholstered furniture flammability, and for other purposes.

1

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

3

SECTION 1. SHORT TITLE.

4

This Act may be cited as the “Safer Occupancy Fur-

5

niture Flammability Act” or “SOFFA”.

6

SEC. 2. ADOPTION OF CALIFORNIA FLAMMABILITY STAND-

7

ARD AS A FEDERAL STANDARD.

8

(a) Definitions.—In this section—
(1) the term “‘bedding product’” means—
(A) an item that is used for sleeping or
sleep-related purposes; or
(B) any component or accessory with re-
spect to an item described in subparagraph (A),
without regard to whether the component or ac-
cessory, as applicable, is used—
(i) alone; or
(ii) along with, or contained within,
that item;
(2) the term “‘California standard’” means the
standard set forth by the Bureau of Electronic and
Appliance Repair, Home Furnishings and Thermal
Insulation of the Department of Consumer Affairs of
the State of California in Technical Bulletin 117–
2013, entitled “‘Requirements, Test Procedure and
Apparatus for Testing the Smolder Resistance of
Materials Used in Upholstered Furniture’”, originally
published June 2013, as in effect on the date of en-
actment of this Act;
(3) the terms “‘foundation’” and “‘mattress’”
have the meanings given those terms in section
1633.2 of title 16, Code of Federal Regulations, as
in effect on the date of enactment of this Act; and
(4) the term “‘upholstered furniture’”—
(A) means an article of seating furniture that—

(i) is intended for indoor use;

(ii) is movable or stationary;

(iii) is constructed with a contiguous upholstered—

(I) seat; and

(II)(aa) back; or

(bb) arm;

(iv) is—

(I) made or sold with a cushion or pillow, without regard to whether that cushion or pillow, as applicable, is attached or detached with respect to the article of furniture; or

(II) stuffed or filled, or able to be stuffed or filled, in whole or in part, with any material, including a substance or material that is hidden or concealed by fabric or another covering, including a cushion or pillow belonging to, or forming a part of, the article of furniture; and

(v) together with the structural units of the article of furniture, any filling mate-
rial, and the container and covering with respect to those structural units and that filling material, can be used as a support for the body of an individual, or the limbs and feet of an individual, when the individual sits in an upright or reclining position;

(B) includes an article of furniture that is intended for use by a child; and

(C) does not include—

(i) a mattress;

(ii) a foundation;

(iii) any bedding product; or

(iv) furniture that is used exclusively for the purpose of physical fitness and exercise.

(b) ADOPTION OF STANDARD.—

(1) IN GENERAL.—Beginning on the date that is 180 days after the date of enactment of this Act, and except as provided in paragraph (2), the California standard shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).
(2) TESTING AND CERTIFICATION.—A fabric, related material, or product to which the California standard applies as a result of paragraph (1) shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)).

(c) PREEMPTION.—

(1) IN GENERAL.—Notwithstanding section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) and section 231 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2051 note), and except as provided in subparagraphs (B) and (C) of paragraph (2), no State or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

(2) PRESERVATION OF CERTAIN STATE LAW.—Nothing in this Act or the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) may be construed to preempt or otherwise affect—

(A) any State or local law, regulation, code, standard, or requirement that—
(i) concerns health risks associated
with upholstered furniture; and
(ii) is not designed to protect against
the risk of occurrence of fire, or to slow or
prevent the spread of fire, with respect to
upholstered furniture;

(B) sections 1374 through 1374.3 of title
4, California Code of Regulations (except for
subsections (b) and (c) of section 1374 of that
title), as in effect on the date of enactment of
this Act; or

(C) the California standard.