California State Board of Optometry
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • CALIFORNIA STATE BOARD OF OPTOMETRY
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ISSUE MEMORANDUM

DATE	May 5, 2023
TO	Board Members, California State Board of Optometry (CSBO)
FROM	Gregory Pruden, Executive Officer
SUBJECT	Agenda Item #7 – Legislation and Regulation Committee Report, and Consideration and Possible Action on Committee Recommendations

1. Background and Update

At the March 17, 2023, meeting, the Board referred several legislative bills to the Legislation and Regulation Committee (LRC) for further discussion and analysis.

At the April 21, 2023, LRC meeting, the Committee made recommendations on several bills, reported here.

2. Future Legislative Proposal for Diversity, Equity, Inclusion, Belonging (DEIB) Continuing Education

The LRC discussed pursuing a legislative proposal that would encourage optometrists to take continuing education in DEIB. The LRC requested that staff bring to the full Board a legislative proposal for consideration in 2024 to pursue a statutory change which would encourage optometrists to take continuing education courses in DEIB. Staff anticipates bringing this item to the August 2023 meeting.

3. Discussion on Federal Military Spouse Licensing Relief Act

The LRC discussed recent federal law changes which impact military members and their families. On January 5, 2023, President Biden signed into law the Military Spouse Licensing Relief Act (Licensing Relief Act). The Licensing Relief Act applies to both service members and their spouses, and is intended to make it easier to transfer professional licenses across state lines when making a military move.

The Licensing Relief Act permits a service member or a spouse of the service member to practice in a state where they reside because of military orders, which is not the state in which they are licensed to practice. To qualify for the federal practice privilege, the service member or spouse must have a license with a similar scope of practice that is in good standing with the state licensing entity that issued the license, and the licensee

must have actively used the license during the two years prior to their relocation. To take advantage of license portability, the service member or spouse must provide a copy of the military orders that require residency in California to the Board and submit to the authority of the Board for purposes of standards of practice, discipline, and fulfillment of continuing education requirements. The license of the service member or spouse must also remain in good standing with the state licensing entity that issued the license.

The only license type the Licensing Relief Act specifically excludes is the practice of law. The Licensing Relief Act should improve licensure portability for service members and their spouses, but questions remain regarding how states will implement the requirements.

How will this impact CSBO? Under several existing laws, CSBO is required to assist service member and military spouse applicants.

- Business and Professions Code section 114.3 waives all renewal fees, continuing education and other renewal requirements for licensees called to active duty.
- Business and Professions Code section 115.4 expedites the initial licensure process for honorably discharged service members.
- Business and Professions Code section 115.5 expedites and waives initial license fees for military spouse applicants with a current, active license issued by another state.

Historically, CSBO does not receive a high volume of service member or military spouse applicants, so it remains to be seen what type of impact the Licensing Relief Act will have on the Board and its staff. Staff is working with DCA Office of Legal Affairs on guidance for how to apply the provisions of the Licensing Relief Act to individuals who may avail themselves of the provisions of the statute in the future.

4. **Consideration and Possible Action on Committee Recommendations from April 21, 2023 LRC Meeting**

A. AB 1028 (McKinnor) Reporting of crimes: mandated reporters

Status: Introduced 2-15-2023 / Assembly 3rd reading.

AUTHOR REASON FOR THE BILL:
According to the Author: "AB 1028 will ensure survivors can access healthcare services by creating a survivor-centered,trauma-informed approach and limit non-consensual and potentially dangerous referrals to law enforcement. In addition, if a health provider knows or suspects a patient is experiencing any kind of domestic and sexual violence, not just physical, they will be required to offer a referral to a local domestic violence and sexual violence advocacy program or the National Domestic Violence hotline. This change will increase access to healthcare and ensure that survivors are provided the agency and information they need to be safe and healthy."

DESCRIPTION OF CURRENT LEGISLATION:
This bill would, on and after January 1, 2025, eliminate the requirement that a health practitioner report to law enforcement when they suspect a patient has suffered physical injury caused by assault or abuse. In its place, the bill would require health practitioners who suspect that a patient is experiencing any form of domestic or sexual violence to provide brief counseling, education, or other support, and a warm handoff or referral to a local or national domestic or sexual violence advocacy services. The bill would exempt health practitioners from civil or criminal liability for any report made in good faith and in compliance with applicable state and federal laws.

BACKGROUND:
This bill is a reintroduction of AB 2790 (Wicks), which was held in the Senate Appropriations Suspense File. Supporters argue existing mandating reporting law dissuades many victims from seeking medical care or sharing information with health practitioners to avoid law enforcement involvement. Opponents argue the bill would lead to more domestic violence and have serious consequences.

ANALYSIS:
Under existing law, health practitioners employed by health facilities and other settings are required to report certain information to law enforcement officers. These reports are mandatory if the practitioner suspects that a patient has suffered a physical injury that is either self-inflicted, caused by a firearm, or caused by assaultive or abusive conduct. This bill would maintain mandatory reporting requirements for self-inflected or firearm injuries, but beginning January 1, 2025, it would eliminate the reporting requirements for suspected assaultive or abusive conduct. In its place, health practitioners who know or reasonably suspect that a patient is the victim of domestic or sexual violence would instead be required to provide brief counseling, education, or other support to the degree that is medically possible for the patient. They must also offer a warm handoff or referral to domestic or sexual violence advocacy services. Practitioners could satisfy this requirement by connecting the patient with a survivor advocate, either in-person or via a call, or sharing information with the patient about how to get in touch with such organizations and letting patients know how they can help.

Practitioners would not need to personally provide a handoff or referral, as the requirements would be met if such services are offered by a member of the health care team at the facility. Although this bill would eliminate mandatory reporting in many instances, it would still allow health practitioners to make a report to law enforcement if they believe it is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or the public. They could also make a report if they have the patient's consent.

FISCAL:
None

SUPPORT:
Academy on Violence and Abuse
Alliance for Boys and Men of Color
American College of Obstetricians and Gynecologists District Ix
Asian Americans for Community Involvement
Bay Area Legal Aid
California Lgbtq Health and Human Services Network
California Pan - Ethnic Health Network
California Partnership to End Domestic Violence
Citizens for Choice
Communities United for Restorative Youth Justice (CURYJ)
Community Solutions for Children, Families, and Individuals
Culturally Responsive Domestic Violence Network (CRDVN)
Deafhope
Ella Baker Center for Human Rights
Family Violence Appellate Project
Family Violence Law Center
Freefrom
Futures Without Violence
Haven Women's Center of Stanislaus
Initiate Justice
Korean American Family Services, INC.
La Defensa
Los Angeles Dependency Lawyers, INC.
Los Angeles LGBT Center
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
Lumina Alliance
National Association of Social Workers, California Chapter
Ohio Domestic Violence Network
San Francisco Public Defender
Sheedy Consulting, LLC
The Collective Healing and Transformation Project
The Health Alliance for Violence Intervention
The W. Haywood Burns Institute
UC Irvine School of Law, Domestic Violence Clinic
Woman INC
Young Women's Freedom Center
Youth Leadership Institute

OPPOSITION:
Alliance for Hope International
California District Attorneys Association
California Sexual Assault Forensic Examiner Association
San Diegans Against Crime
San Diego County District Attorney's Office
San Diego Deputy District Attorneys Association
Yolo County District Attorney

LRC Committee Recommendation: Neutral.
Member Morodomi made the motion, recommending a neutral position on AB 1028 to the full Board, seconded by Member Yoo. The Committee voted 2-1 on this motion, with Member Garcia voting no. Member Linden was absent.

Date of Hearing: March 28, 2023
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1028 (McKinnor) – As Introduced February 15, 2023

SUMMARY: Eliminates the duty of a health care practitioner to report assaultive or abusive conduct to law enforcement when they suspect a patient has suffered physical injury caused by such conduct. Specifically, **this bill**:

1) Limits a health practitioner's duty to make a report of injuries to law enforcement to instances where a wound or injury is self-inflicted or caused by a firearm.

2) Requires a health care practitioner, who in their professional capacity or within the scope of their employment, knows or reasonably suspects that their patient is experiencing any form of domestic violence or sexual violence, to provide brief counseling, education, or other support, and offer a "warm handoff" or referral to domestic violence or sexual violence advocacy services before the end of treatment, to the extent that it is medically possible.

3) Provides that the health practitioner can satisfy the above requirement when the brief counseling, education, or other support is provided by, and warm hand off or referral is offered by, a member of the health care team.

4) Allows the health practitioner to offer a warm handoff and referral to other available victim services, including, but not limited to, legal aid, community-based organizations, behavioral health, crime victim compensation, forensic evidentiary exams, trauma recovery centers, family justice centers, and law enforcement to patients who are suspected to have suffered any non-accidental injury.

5) Defines "warm handoff" as including but not being limited to, the health practitioner establishing direct and live connection through a call with survivor advocate, in-person on site survivor advocate, in-person on-call survivor advocate, or some other form of teleadvocacy.

6) Provides the patient may decline the "warm hand-off."

7) Provides that a "referral" may include, but is not limited to, the health practitioner sharing information about how a patient can get in touch with a local or national survivor advocacy organization, information about how the organization could be helpful for the patient, what the patient could expect when contacting the survivor organization, the survivor advocacy organizations contact information.

8) Provides that nothing limits or overrides the ability of a health care practitioner to alert law enforcement to an imminent or serious threat to health or safety of an individual or the public, pursuant to the privacy rules of the federal Health Insurance Portability and

Accountability Act of 1996 (HIPPA).

9) Allows reporting of assaultive or abusive conduct when a patient requests.

10) Gives health care practitioners immunity from criminal or civil liability arising from any required or authorized report.

11) Contains legislative findings and declarations.

12) Makes conforming cross-references.

EXISTING LAW:

1) Requires a health practitioner, as defined, to make a report to law enforcement when they suspect a patient has suffered physical injury that is either self-inflicted, caused by a firearm, or caused by assaultive or abusive conduct, as specified. (Pen. Code, § 11160.)

2) Punishes the failure of a health care practitioner to submit a mandated report by imprisonment in a county jail not exceeding six months, or by a fine not exceeding $1,000, or by both. (Pen. Code, § 11162.)

3) Provides that a health practitioner who makes a report in accordance with these duties shall not incur civil or criminal liability as a result of any report. (Pen. Code, § 11161.9, subd. (a).)

4) States that neither the physician-patient privilege nor the psychotherapist patient privilege apply in any court or administrative proceeding with regards to the information required to be reported. (Pen. Code, § 11163.2)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1028 will ensure survivors can access healthcare services by creating a survivor-centered, trauma-informed approach and limit non-consensual and potentially dangerous referrals to law enforcement. In addition, if a health provider knows or suspects a patient is experiencing any kind of domestic and sexual violence, not just physical, they will be required to offer a referral to a local domestic violence and sexual violence advocacy program or the National Domestic Violence hotline. This change will increase access to healthcare and ensure that survivors are provided the agency and information they need to be safe and healthy."

2) **Duty of Health Care Practitioners to Report Injuries**: Penal Code section 11160 requires a health care practitioner who treats a person brought in to a health care facility or clinic who is suffering from specified injuries to report that fact immediately, by telephone and in writing, to the local law enforcement authorities. The duty to report extends to physicians and surgeons, psychiatrists, psychologists, dentists, medical residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, marriage and family therapists, clinical social workers, professional clinical counselors, emergency medical technicians, paramedics, and others. The duty to report is triggered when a health practitioner knows or

reasonably suspects that the patient is suffering from a wound or other physical injury that is the result of assaultive or abusive conduct caused by another person, or when there is a gunshot wound or injury regardless of whether it is self-inflicted or one caused by another person. Health practitioners are required to report if these triggering conditions are met, regardless of patient consent. Failure to make the required report is a misdemeanor.

This bill would eliminate the duty of a health care practitioner to report known or suspected assaultive or abusive conduct. However, this bill specifies that nothing in its provisions limits or overrides the ability of a health care provider to report assaultive or abusive conduct at the patient's request, or to alert law enforcement to an imminent and serious threat to health or safety of an individual pursuant to HIPPA.

A report by Futures Without Violence, a co-sponsor of this bill, notes with regards to mandated reporting laws:

> Most U.S. states have enacted mandatory reporting laws, which require the reporting of specified injuries and wounds, and very few have mandated reporting laws specific to suspected abuse or domestic violence for individuals being treated by a health care professional. Mandatory reporting laws are distinct from elder abuse or vulnerable adult abuse and child abuse reporting laws, in that the individuals to be protected are not limited to a specific group, but pertain to all individuals to whom specific health care professionals provide treatment or medical care, or those who come before the health care facility. The laws vary from state-to-state, but generally fall into four categories: states that require reporting of injuries caused by weapons; states that mandate reporting for injuries caused in violation of criminal laws, as a result of violence, or through non-accidental means; states that specifically address reporting in domestic violence cases; and states that have no general mandatory reporting laws.

(*Compendium of State and U.S. Territory Statutes and Policies on Domestic Violence and Health Care*, Fourth Ed. 2019 at pp.2-3, available https://www.futureswithoutviolence.org/wp-content/uploads/Compendium-4th-Edition-2019-Final.pdf.)

A survey of state laws on reporting nationwide shows:

> [O]nly two states have laws that specifically require mandated reporting of DV specifically (not just injuries) to law enforcement and that five states have exceptions for reporting injuries due to domestic violence. New Hampshire's statute excuses a person from reporting if the victim is over 18, has been the victim of a sexual assault offense or abuse (defined in RSA 173-B:1), and objects to the release of any information to law enforcement. However, this exception does not apply if the victim of sexual assault or abuse is also being treated for a gunshot wound or other serious bodily injury. Oklahoma's statute does not require reporting domestic abuse if the victim is over age 18 and is not incapacitated, unless the victim requests that the report be made orally or in writing. In all cases what is reported to be domestic abuse shall clearly and legibly be documented by the health care provider and any treatment provided. Pennsylvania's statute states that failure to report such injuries when the act caused bodily injury (defined in §

2301) is not an offense if the victim is an adult; the injury was inflicted by an individual who is the current or former spouse or sexual or intimate partner; has been living as a spouse or who shares biological parenthood; the victim has been informed of the physician's duty to report and that report cannot be made without the victim's consent; the victim does not consent to the report; and the victim has been provided with a referral to the appropriate victim service agency. Tennessee's statute excuses health care practitioners from reporting if the person is 18 years of age or older; objects to the release of any identifying information to law enforcement officials; and is a victim of a sexual assault offense or domestic abuse (defined in § 36-3-601). The exception does not apply and the injuries shall be reported if the injuries incurred by the sexual assault or domestic abuse victim are considered by the treating healthcare professional to be life threatening, or the victim is being treated for injuries inflicted by strangulation, a knife, pistol, gun, or other deadly weapon. Colorado's statute provides an exception for reporting if the injuries are resulting from domestic violence and if the victim is at least 18 and does not wish the injury to be reported. This exception does not apply if the injury is from a firearm, knife, ice pick, or other sharp object. Compendium of State and U.S. Territory Statutes and Policies on Domestic Violence and Health Care Futures Without Violence Kentucky, North Dakota, and Washington also require that victims of domestic violence be given educational information related to support services. Kentucky's statute states that professionals (including health professionals) must provide the victim with educational materials on domestic violence support services if the professional has cause to believe the patient has experienced domestic or dating violence. North Dakota's statute requires that health professionals provide victims with information on support services when a report on domestic or sexual violence has been made. Washington's statute requires that hospitals inform the patient of resources to ensure their safety if the patient has stated that their bullet, gunshot, or stab wound was the result of domestic violence. (*Compendium, supra,* at pp. 5-6.)

It should be noted that the duty to report known or suspected child abuse and neglect under the Child Abuse and Neglect Reporting Act, is separate from a health care practitioner's duty to report injuries generally. (See Pen. Code, § 11164 et. seq.) This bill does not eliminate the duty of health care practitioners under that Act. Similarly, the duty to report known or suspected abuse of an elder or a dependent adult is also separate from a health care provider's general duty to report injury. (See Welf. & Inst. Code, § 15360.) This bill also does not eliminate the duty of health care practitioners under those provisions of law.

3) **Argument in Support**: According to the *California Partnership to End Domestic Violence*, a co-sponsor of this bill, "California law currently mandates that health professionals, when treating patients for physical injuries known or suspected to have been a result of violence, including domestic and sexual violence, make an immediate report to law enforcement. Although a well-intentioned attempt to ensure health care providers take domestic violence seriously and address it with their patients, mandatory reporting to law enforcement by health providers has no evidence of positive outcomes for survivors.

"The evidence suggests, however, that medical mandated reporting puts survivors in more danger. In a survey done by the National Domestic Violence Hotline, among DV survivors who had experienced mandatory reporting, 83.3% of survivors stated that mandatory

reporting made their experience much worse, somewhat worse, or did nothing to improve the situation.

"Domestic and sexual violence can have long term negative health outcomes, so it is crucial that survivors are able to access health care. Mandatory reporting laws have been shown to keep survivors from seeking care, and when survivors do see a health provider, they often don't feel comfortable bringing up their experiences of violence. This results in unaddressed health issues and missed opportunities to connect survivors to crucial advocacy services.

"Fear of involving law enforcement is a main reason survivors decide not to tell their health provider about domestic violence, or even seek care in the first place. According to a survey by the National Domestic Violence Hotline that documented survivors' experiences with law enforcement, of survivors who chose to involve law enforcement by calling 911, only 20% said they felt safer - 80% said they had no change in safety or felt even less safe. There are many reasons why survivors don't want to involve police: fear of angering their partner and increasing severity of violence, not wanting their partner to be arrested, being arrested for defending themselves, exposing themselves and their families to involvement with child welfare systems, and more. Mandatory reporting laws also discourage immigrant survivors from seeking health care; research has shown that contact with law enforcement produces a chilling effect in asking for help or fear of reprisal from federal immigration authorities.

"While medical mandated reporting to law enforcement for firearm wounds is common in many states, California is one of only three states that still have such broad and harmful requirements to report explicitly for domestic and sexual violence-related injuries without patient consent. Health providers have an important role in addressing violence, yet some actively avoid discussing domestic and sexual violence out of fear of having to make a report to law enforcement.

"Extensive research has been done on what survivors of domestic and sexual violence want from health care professionals: self determination and autonomy, validation and compassion, confidentiality and trust, and informed providers who are able to offer resources and health promotion strategies.

"AB 1028 will ensure that survivors can seek health care without fear of non-consensual law enforcement involvement and with the assurance that their health provider will be able to prioritize their wellness, healing, safety, and self-determination. Health providers will be able to address domestic and sexual violence in a confidential and trusting manner, and ensure access to advocacy services. Survivors will be offered a warm connection to a trained, confidential advocate who will work with them to address their different safety needs such as emergency safety planning, housing, legal support, counseling, restraining orders, and safer access to the legal system."

4) **Argument in Opposition**: According to the *San Diego County District Attorney's Office*, "Mandated reporting laws for suspicious injuries including domestic violence have been in existence since the 1990s and have served their purpose well. These laws recognize the ugly truth about the dynamic of intimate partner violence, and that it is a crime of power and control, fear, and isolation. The escalation of a small push or slap can turn quickly into violent beatings and attacks with weapons, and even cause death. Fear, shame, embarrassment, loyalty, or exhaustion often prevents victims from calling for help or

reporting the abuse. Most victims don't even report the abuse when they have been seriously injured. Domestic violence is most often not an isolated event, but rather part of a larger experience of violence and control within an intimate partner relationship.

"The current mandated reporting law is a safety net for victims of domestic violence when their abuser is so controlling that they don't want to call for help themselves. The current laws establish a minimum standard of care for health care providers and recognize that without intervention, violence often escalates in both frequency and severity result in repeat visits to healthcare systems or death.

"Health care providers serve as gatekeepers to identify and report abuse where the family members and the abused themselves may not. These reporting laws ensure that a victim is protected, even if the abuser stands in the lobby of the hospital, demanding the victim lie about the abuse. A physician is duty bound to report suspicious injuries under the current law if they reasonably suspect the injuries were as a result of "abusive or assaultive conduct." This current language is broad enough, yet specific enough, and encompasses enough of the dangerous conduct that we as a society want "checked" on by a larger community response including law enforcement, advocacy services, and social services.

"California has long protected it's most vulnerable by legislating mandated reporting for domestic violence and child abuse, and more recently elder abuse. This bill eliminates physician-mandated reporting for any physical injury due to domestic violence other than the small percentage of domestic violence cases that result in injuries from firearms. This means that domestic violence victims who are bruised, attacked, stabbed, strangled, tortured, or maimed or are injured with weapons other than firearms, would not receive the current protection the law affords.

"Additionally, the bill doesn't follow California's trend of broadening the duty to report and protect our most vulnerable victims. We have mandated reporting for child abuse, mandated reporting for domestic violence, and mandated reporting for elder abuse. The elder abuse mandated reporting laws previously only required reports of report physical abuse, but they have expanded to financial and mental abuse, neglect, and isolation. This progression shows California is more protective of its vulnerable, not less. Why would we go backwards?

"An example of how this bill would drastically diminish the victim voice includes the following: imagine an attempted murder case where a domestic violence abuser strangled the victim to the point of unconsciousness and stabbed the victim repeatedly and brings the victim to the hospital, hovers over the victim, directs the victim what to do and say, not to report that it was abuse, either impliedly or expressly, and silences the victim even in the lobby of the emergency room. This bill would leave this victim with no protection by the health care provider who stands at the ready to help and report the suspicious injuries to law enforcement when that victim says, "I don't know who did this to me."

"My county is the second largest in the state, and the 4th largest District Attorney's office in the nation. We see roughly 17,000 domestic violence incidents per year, and a subset of those only come to our attention because of the good work of health care providers doing their duty to report suspicious injuries. Domestic violence is already one of the most under reported crimes because of the dynamics of power and control within an intimate partner relationship.

Why would we remove the very protection that helps give these victims a voice?"

5) **Related Legislation**: AB 391 (Jones-Sawyer), would require non-mandated reporters of suspected child abuse to provide their name and phone number before a child abuse allegation can be transmitted to a local child protective services agency for investigation. AB 391 is pending in the Assembly Appropriations Committee.

6) **Prior Legislation**: AB 2790 (Wicks), of the 2021-2022 Legislative session, was nearly identical to this bill. AB 2790 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Academy on Violence and Abuse
Alliance for Boys and Men of Color
American College of Obstetricians and Gynecologists District Ix
Asian Americans for Community Involvement
Bay Area Legal Aid
California Lgbtq Health and Human Services Network
California Pan - Ethnic Health Network
California Partnership to End Domestic Violence
Citizens for Choice
Communities United for Restorative Youth Justice (CURYJ)
Community Solutions for Children, Families, and Individuals
Culturally Responsive Domestic Violence Network (CRDVN)
Deafhope
Ella Baker Center for Human Rights
Family Violence Appellate Project
Family Violence Law Center
Freefrom
Futures Without Violence
Haven Women's Center of Stanislaus
Initiate Justice
Korean American Family Services, INC.
La Defensa
Los Angeles Dependency Lawyers, INC.
Los Angeles LGBT Center
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
Lumina Alliance
National Association of Social Workers, California Chapter
Ohio Domestic Violence Network
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Sheedy Consulting, LLC
The Collective Healing and Transformation Project
The Health Alliance for Violence Intervention
The W. Haywood Burns Institute
UC Irvine School of Law, Domestic Violence Clinic
Woman INC

Young Women's Freedom Center
Youth Leadership Institute

Opposition

Alliance for Hope International
California District Attorneys Association
California Sexual Assault Forensic Examiner Association
San Diegans Against Crime
San Diego County District Attorney's Office
San Diego Deputy District Attorneys Association
Yolo County District Attorney

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

ASSEMBLY BILL No. 1028

Introduced by Assembly Member McKinnor
(Coauthor: Assembly Member Wicks)

February 15, 2023

An act to amend, repeal, and add Sections 11160, 11161, 11163.2, and 11163.3 of the Penal Code, relating to reporting of crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1028, as introduced, McKinnor. Reporting of crimes: mandated reporters.

Existing law requires a health practitioner, as defined, to make a report to law enforcement when they suspect a patient has suffered physical injury that is either self-inflicted, caused by a firearm, or caused by assaultive or abusive conduct, including elder abuse, sexual assault, or torture. A violation of these provisions is punishable as a misdemeanor.

This bill would, on and after January 1, 2025, remove the requirement that a health practitioner make a report to law enforcement when they suspect a patient has suffered physical injury caused by assaultive or abusive conduct.

The bill would, on and after January 1, 2025, instead require a health practitioner who suspects that a patient has suffered physical injury that is caused by domestic violence, as defined, to provide brief counseling, education, or other support, and a warm handoff, as defined, or referral to local and national domestic violence or sexual violence advocacy services, as specified. The bill would, on and after January 1, 2025, specify that a health practitioner is not civilly or criminally liable for any report that is made in good faith and in compliance with these provisions.

This bill would make other conforming changes.

Because a violation of these requirements would be a crime, this bill would impose a state-mandated local program.

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

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

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Recognizing that abuse survivors often need to access health care and medical treatment apart from police reporting and criminal legal involvement, this bill replaces mandated police reporting by medical professionals with offering connection to survivor services.

(b) Health care providers play a critical role in prevention, identification, and response to violence. However, current law requiring health professionals in California to file reports to law enforcement when treating patients for all suspected violence-related injuries can have a chilling effect of preventing domestic and sexual violence survivors from seeking medical care, decreasing patient autonomy and trust, and resulting in health providers being reluctant to address domestic and sexual violence with their patients.

(c) Studies have shown that medical mandatory reporting of adult domestic and sexual violence may increase patient danger and insecurity, whereas being able to openly discuss abuse without fear of police reporting can produce greater health and safety outcomes.

(d) Because of the complexity of interpersonal violence and impact of social inequities on safety, people who have experienced violence should be provided survivor-centered support and health care that results in better outcomes for patient safety. Doing so can improve the health and safety of patients already in care, decrease potential barriers to care, and promote trust between survivors and health providers.

(e) Nothing in this act limits or overrides the ability of a health practitioner to make reports permitted by subdivisions (c) or (j) of Section 164.512 of Title 45 of the Code of Federal Regulations, or at the patient's request. Providers must still follow reporting requirements for child abuse, pursuant to Section 11165 of the Penal Code, and elder and vulnerable adult abuse, pursuant to Section 15600 of the Welfare and Institutions Code. It is the intent of the Legislature to promote partnership between health facilities and domestic and sexual violence advocacy organizations, legal aid, county forensic response teams, and other community-based organizations that address social determinants of health in order to better ensure the safety and wellness of their patients and provide training for health practitioners. Health practitioners may refer to their respective health facility policies developed pursuant to Section 1259.5 of the Health and Safety Code for guidance on identifying abuse, documentation of abuse, and health practitioner training on abuse.

SEC. 2. Section 11160 of the Penal Code is amended to read:

11160. (a) A health practitioner, as defined in subdivision (a) of Section 11162.5, employed by a health facility, clinic, physician's office, local or state public health department, local government agency, or a clinic or other type of facility operated by a local or state public health department who, in the health practitioner's professional capacity or within the scope of the health practitioner's employment, provides medical services for a physical condition to a patient whom the health practitioner knows or reasonably suspects is a person described as follows, shall immediately make a report in accordance with subdivision (b):

(1) A person suffering from a wound or other physical injury inflicted by the person's own act or inflicted by another where the injury is by means of a firearm.

(2) A person suffering from a wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct.

(b) A health practitioner, as defined in subdivision (a) of Section 11162.5, employed by a health facility, clinic, physician's office, local or state public health department, local government agency, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons

described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4), and adopted by the Office of Emergency Services, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound, other injury, or assaultive or abusive conduct has expired, regardless of whether or not the wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or abusive conduct was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound, other injury, or assaultive or abusive conduct upon the injured person.

(c) For the purposes of this section, "injury" does not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) For the purposes of this section, "assaultive or abusive conduct" includes any of the following offenses:

(1) Murder, in violation of Section 187.

(2) Manslaughter, in violation of Section 192 or 192.5.

(3) Mayhem, in violation of Section 203.

(4) Aggravated mayhem, in violation of Section 205.

(5) Torture, in violation of Section 206.

(6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220.

(7) Administering controlled substances or anesthetic to aid in commission of a felony, in violation of Section 222.

(8) Battery, in violation of Section 242.

(9) Sexual battery, in violation of Section 243.4.

(10) Incest, in violation of Section 285.

(11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or disfigure, in violation of Section 244.

(12) Assault with a stun gun or taser, in violation of Section 244.5.

(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means likely to produce great bodily injury, in violation of Section 245.

(14) Rape, in violation of Section 261 or former Section 262.

(15) Procuring a person to have sex with another person, in violation of Section 266, 266a, 266b, or 266c.

(16) Child abuse or endangerment, in violation of Section 273a or 273d.

(17) Abuse of spouse or cohabitant, in violation of Section 273.5.

(18) Sodomy, in violation of Section 286.

(19) Lewd and lascivious acts with a child, in violation of Section 288.

(20) Oral copulation, in violation of Section 287 or former Section 288a.

(21) Sexual penetration, in violation of Section 289.

(22) Elder abuse, in violation of Section 368.

(23) An attempt to commit any crime specified in paragraphs (1) to (22), inclusive.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(f) The reporting duties under this section are individual, except as provided in subdivision (e).

(g) A supervisor or administrator shall not impede or inhibit the reporting duties required under this section and a person making a report pursuant to this section shall not be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require an employee required to make a report under this article to disclose the employee's identity to the employer.

(h) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

(i) For purposes of this section only, "employed by a local government agency" includes an employee of an entity under contract with a local government agency to provide medical services.

(j) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 3. Section 11160 is added to the Penal Code, to read:

11160. (a) A health practitioner, as defined in subdivision (a) of Section 11162.5, employed by a health facility, clinic, physician's office, local or state public health department, local government agency, or a clinic or other type of facility operated by a local or state public health department who, in the health practitioner's professional capacity or within the scope of the health practitioner's employment, provides medical services for a physical condition to a patient whom the health practitioner knows or reasonably suspects is a person suffering from a wound or other physical injury inflicted by the person's own act or inflicted by another where the injury is by means of a firearm shall immediately make a report in accordance with subdivision (b).

(b) A health practitioner, as defined in subdivision (a) of Section 11162.5, employed by a health facility, clinic, physician's office, local or state public health department, local government agency, or a clinic or other type of facility operated by a local or state public health department shall make a report regarding persons described in subdivision (a) to a local law enforcement agency as follows:

(1) A report by telephone shall be made immediately or as soon as practically possible.

(2) A written report shall be prepared on the standard form developed in compliance with paragraph (4), and adopted by the Office of Emergency Services, or on a form developed and adopted by another state agency that otherwise fulfills the requirements of the standard form. The completed form shall be sent to a local law enforcement agency within two working days of receiving the information regarding the person.

(3) A local law enforcement agency shall be notified and a written report shall be prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound or other injury has expired, regardless of whether or not the wound or other injury was a factor contributing to the death, and even if the evidence of the conduct of the perpetrator of the wound or other injury was discovered during an autopsy.

(4) The report shall include, but shall not be limited to, the following:

(A) The name of the injured person, if known.

(B) The injured person's whereabouts.

(C) The character and extent of the person's injuries.

(D) The identity of any person the injured person alleges inflicted the wound or other injury upon the injured person.

(c) For the purposes of this section, "injury" does not include any psychological or physical condition brought about solely through the voluntary administration of a narcotic or restricted dangerous drug.

(d) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of violence that is required to be reported pursuant to this section, and when there is an agreement among these persons to report as a team, the team may select by mutual agreement a member of the team to make a report by telephone and a single written report, as required by subdivision (b). The written report shall be signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) The reporting duties under this section are individual, except as provided in subdivision (d).

(f) A supervisor or administrator shall not impede or inhibit the reporting duties required under this section and a person making a report pursuant to this section shall not be subject to any sanction

for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, except that these procedures shall not be inconsistent with this article. The internal procedures shall not require an employee required to make a report under this article to disclose the employee's identity to the employer.

(g) A health practitioner, as defined in subdivision (a) of Section 11162.5, employed by a health facility, clinic, physician's office, local or state public health department, local government agency, or a clinic or other type of facility operated by a local or state public health department who, in the health practitioner's professional capacity or within the scope of the health practitioner's employment, provides medical services to a patient whom the health practitioner knows or reasonably suspects is experiencing any form of domestic violence, as set forth in Section 124250 of the Health and Safety Code, or sexual violence, as set forth in Sections 243.4 and 261, shall, to the degree that it is medically possible for the individual patient, provide brief counseling, education, or other support, and offer a warm handoff or referral to local and national domestic violence or sexual violence advocacy services, as described in Sections 1035.2 and 1037.1 of the Evidence Code, before the end of the patient visit. The health practitioner shall have met the requirements of this subdivision when the brief counseling, education, or other support is provided and warm handoff or referral is offered by a member of the health care team at the health facility.

(h) A health practitioner may offer a warm handoff and referral to other available victim services, including, but not limited to, legal aid, community-based organizations, behavioral health, crime victim compensation, forensic evidentiary exams, trauma recovery centers, family justice centers, and law enforcement to patients who are suspected to have suffered any nonaccidental injury.

(i) Nothing in this section limits or overrides the ability of a health practitioner to alert law enforcement to an imminent and serious threat to health or safety of an individual or the public, pursuant to the privacy rules of the federal Health Insurance Portability and Accountability Act of 1996 in subdivisions (c) and (j) of Section 164.512 of Title 45 of the Code of Federal Regulations, or at the patient's request.

(j) For the purposes of this section, it is the Legislature's intent to avoid duplication of information.

(k) For purposes of this section only, "employed by a local government agency" includes an employee of an entity under contract with a local government agency to provide medical services.

(*l*) For purposes of this section, the following terms have the following meanings:

(1) "Warm handoff" may include, but is not limited to, the health practitioner establishing direct and live connection through a call with a survivor advocate, in-person onsite survivor advocate, in-person on-call survivor advocate, or some other form of teleadvocacy. The patient may decline the warm handoff.

(2) "Referral" may include, but is not limited to, the health practitioner sharing information about how a patient can get in touch with a local or national survivor advocacy organization, information about how the survivor advocacy organization could be helpful for the patient, what the patient could expect when contacting the survivor advocacy organization, or the survivor advocacy organization's contact information.

(m) A health practitioner shall not be civilly or criminally liable for any report that is made in good faith and in compliance with this section and all other applicable state and federal laws.

(n) This section shall become operative on January 1, 2025.

SEC. 4. Section 11161 of the Penal Code is amended to read:

11161. Notwithstanding Section 11160, the following shall apply to every physician ~~or~~ *and* surgeon who has under ~~his or her~~ *their* charge or care any person described in subdivision (a) of Section 11160:

(a) The physician ~~or~~ *and* surgeon shall make a report in accordance with subdivision (b) of Section 11160 to a local law enforcement agency.

(b) It is recommended that any medical records of a person about whom the physician ~~or~~ *and* surgeon is required to report pursuant to subdivision (a) include the following:

(1) Any comments by the injured person regarding past domestic violence, as defined in Section 13700, or regarding the name of any person suspected of inflicting the wound, other physical injury, or assaultive or abusive conduct upon the person.

(2) A map of the injured person's body showing and identifying injuries and bruises at the time of the health care.

(3) A copy of the law enforcement reporting form.

(c) It is recommended that the physician ~~or~~ *and* surgeon refer the person to local domestic violence services if the person is suffering or suspected of suffering from domestic violence, as defined in Section 13700.

(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 5. Section 11161 is added to the Penal Code, to read:

11161. Notwithstanding Section 11160, the following shall apply to every physician and surgeon who has under their charge or care any person described in subdivision (a) of Section 11160:

(a) The physician and surgeon shall make a report in accordance with subdivision (b) of Section 11160 to a local law enforcement agency.

(b) It is recommended that any medical records of a person about whom the physician and surgeon is required to report pursuant to subdivision (a) include the following:

(1) Any comments by the injured person regarding past domestic violence, as defined in Section 13700, or regarding the name of any person suspected of inflicting the wound or other physical injury upon the person.

(2) A map of the injured person's body showing and identifying injuries and bruises at the time of the health care.

(3) A copy of the law enforcement reporting form.

(c) The physician and surgeon shall offer a referral to local domestic violence services if the person is suffering or suspected of suffering from domestic violence, as defined in Section 13700.

(d) This section shall become operative on January 1, 2025.

SEC. 6. Section 11163.2 of the Penal Code is amended to read:

11163.2. (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist privilege applies to the information required to be reported pursuant to this article.

(b) The reports required by this article shall be kept confidential by the health facility, clinic, or physician's office that submitted the report, and by local law enforcement agencies, and shall only be disclosed by local law enforcement agencies to those involved in the investigation of the report or the enforcement of a criminal

law implicated by a report. In no case shall the person suspected or accused of inflicting the wound, other injury, or assaultive or abusive conduct upon the injured person or ~~his or her~~ *their* attorney be allowed access to the injured person's whereabouts. *Nothing in this subdivision is intended to conflict with Section 1054.1 or 1054.2.*

(c) For the purposes of this article, reports of suspected child abuse and information contained therein may be disclosed only to persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(d) The Board of Prison Terms may subpoena reports that are not unfounded and reports that concern only the current incidents upon which parole revocation proceedings are pending against a parolee.

(e) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 7. Section 11163.2 is added to the Penal Code, to read:

11163.2. (a) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the information required to be reported pursuant to this article.

(b) The reports required by this article shall be kept confidential by the health facility, clinic, or physician's office that submitted the report, and by local law enforcement agencies, and shall only be disclosed by local law enforcement agencies to those involved in the investigation of the report or the enforcement of a criminal law implicated by a report. In no case shall the person suspected or accused of inflicting the wound or other injury upon the injured person, or the attorney of the suspect or accused, be allowed access to the injured person's whereabouts. Nothing in this subdivision is intended to conflict with Section 1054.1 or 1054.2.

(c) For the purposes of this article, reports of suspected child abuse and information contained therein may be disclosed only to persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(d) The Board of Prison Terms may subpoena reports that are not unfounded and reports that concern only the current incidents

upon which parole revocation proceedings are pending against a parolee.

(e) This section shall become operative on January 1, 2025.

SEC. 8. Section 11163.3 of the Penal Code is amended to read:

11163.3. (a) A county may establish an interagency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence deaths and near deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases. Interagency domestic violence death review teams have been used successfully to ensure that incidents of domestic violence and abuse are recognized and that agency involvement is reviewed to develop recommendations for policies and protocols for community prevention and intervention initiatives to reduce and eradicate the incidence of domestic violence.

(b) (1) For purposes of this section, "abuse" has the meaning set forth in Section 6203 of the Family Code and "domestic violence" has the meaning set forth in Section 6211 of the Family Code.

(2) For purposes of this section, "near death" means the victim suffered a life-threatening injury, as determined by a licensed physician or licensed nurse, as a result of domestic violence.

(c) A county may develop a protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on domestic violence victims in the identification of domestic violence, in the determination of whether domestic violence contributed to death or whether domestic violence had occurred prior to death, but was not the actual cause of death, and in the proper written reporting procedures for domestic violence, including the designation of the cause and mode of death.

(d) County domestic violence death review teams shall be comprised of, but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Medical personnel with expertise in domestic violence abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys and city attorneys.

(6) Representatives of domestic violence victim service organizations, as defined in subdivision (b) of Section 1037.1 of the Evidence Code.

(7) Law enforcement personnel.

(8) Representatives of local agencies that are involved with domestic violence abuse reporting.

(9) County health department staff who deal with domestic violence victims' health issues.

(10) Representatives of local child abuse agencies.

(11) Local professional associations of persons described in paragraphs (1) to (10), inclusive.

(e) An oral or written communication or a document shared within or produced by a domestic violence death review team related to a domestic violence death review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic violence death review team, or between a third party and a domestic violence death review team, is confidential and not subject to disclosure or discoverable by a third party. This includes a statement provided by a survivor in a near-death case review. Notwithstanding the foregoing, recommendations of a domestic violence death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the domestic violence death review team.

(f) Each organization represented on a domestic violence death review team may share with other members of the team information in its possession concerning the victim who is the subject of the review or any person who was in contact with the victim and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential. This provision shall permit the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other statute.

(g) Written and oral information may be disclosed to a domestic violence death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (2) may rely on the request in determining whether information may be disclosed to the team.

(1) An individual or agency that has information governed by this subdivision shall not be required to disclose information. The

intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.

(2) The following information may be disclosed pursuant to this subdivision:

(A) Notwithstanding Section 56.10 of the Civil Code, medical information.

(B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental health information.

(C) Notwithstanding Section 15633.5 of the Welfare and Institutions Code, information from elder abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(D) Notwithstanding Section 11167.5 of the Penal Code, information from child abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(E) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in Sections 11075, 11105, and 13300 of the Penal Code.

(F) Notwithstanding Section 11163.2 of the Penal Code, information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct, and information relating to whether a physician referred the person to local domestic violence services as recommended by Section 11161 of the Penal Code.

(G) Notwithstanding Section 827 of the Welfare and Institutions Code, information in any juvenile court proceeding.

(H) Information maintained by the Family Court, including information relating to the Family Conciliation Court Law pursuant to Section 1818 of the Family Code, and Mediation of Custody and Visitation Issues pursuant to Section 3177 of the Family Code.

(I) Information provided to probation officers in the course of the performance of their duties, including, but not limited to, the duty to prepare reports pursuant to Section 1203.10 of the Penal Code, as well as the information on which these reports are based.

(J) Notwithstanding Section 10850 of the Welfare and Institutions Code, records of in-home supportive services, unless disclosure is prohibited by federal law.

(3) The disclosure of written and oral information authorized under this subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, or the lawyer-client privilege protected by Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the physician-patient privilege protected by Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, the psychotherapist-patient privilege protected by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the sexual assault counselor-victim privilege protected by Article 8.5 (commencing with Section 1035) of Chapter 4 of Division 8 of the Evidence Code, the domestic violence counselor-victim privilege protected by Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the Evidence Code, and the human trafficking caseworker-victim privilege protected by Article 8.8 (commencing with Section 1038) of Chapter 4 of Division 8 of the Evidence Code.

(4) In near-death cases, representatives of domestic violence victim service organizations, as defined in subdivision (b) of Section 1037.1 of the Evidence Code, shall obtain an individual's informed consent in accordance with all applicable state and federal confidentiality laws, before disclosing confidential information about that individual to another team member as specified in this section. In death review cases, representatives of domestic violence victim service organizations shall only provide client-specific information in accordance with both state and federal confidentiality requirements.

(5) Near-death case reviews shall only occur after any prosecution has concluded.

(6) Near-death survivors shall not be compelled to participate in death review team investigations; their participation is voluntary. In cases of death, the victim's family members may be invited to participate, however they shall not be compelled to do so; their participation is voluntary. Members of the death review teams shall be prepared to provide referrals for services to address the unmet needs of survivors and their families when appropriate.

(h) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 9. Section 11163.3 is added to the Penal Code, to read:

11163.3. (a) A county may establish an interagency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence deaths and near deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases. Interagency domestic violence death review teams have been used successfully to ensure that incidents of domestic violence and abuse are recognized and that agency involvement is reviewed to develop recommendations for policies and protocols for community prevention and intervention initiatives to reduce and eradicate the incidence of domestic violence.

(b) (1) For purposes of this section, "abuse" has the meaning set forth in Section 6203 of the Family Code and "domestic violence" has the meaning set forth in Section 6211 of the Family Code.

(2) For purposes of this section, "near death" means the victim suffered a life-threatening injury, as determined by a licensed physician or licensed nurse, as a result of domestic violence.

(c) A county may develop a protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on domestic violence victims in the identification of domestic violence, in the determination of whether domestic violence contributed to death or whether domestic violence had occurred prior to death, but was not the actual cause of death, and in the proper written reporting procedures for domestic violence, including the designation of the cause and mode of death.

(d) County domestic violence death review teams shall be comprised of, but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Medical personnel with expertise in domestic violence abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys and city attorneys.

(6) Representatives of domestic violence victim service organizations, as defined in subdivision (b) of Section 1037.1 of the Evidence Code.

(7) Law enforcement personnel.

(8) Representatives of local agencies that are involved with domestic violence abuse reporting.

(9) County health department staff who deal with domestic violence victims' health issues.

(10) Representatives of local child abuse agencies.

(11) Local professional associations of persons described in paragraphs (1) to (10), inclusive.

(e) An oral or written communication or a document shared within or produced by a domestic violence death review team related to a domestic violence death review is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic violence death review team, or between a third party and a domestic violence death review team, is confidential and not subject to disclosure or discoverable by a third party. This includes a statement provided by a survivor in a near-death case review. Notwithstanding the foregoing, recommendations of a domestic violence death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of the domestic violence death review team.

(f) Each organization represented on a domestic violence death review team may share with other members of the team information in its possession concerning the victim who is the subject of the review or any person who was in contact with the victim and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential. This provision shall permit the disclosure to members of the team of any information deemed confidential, privileged, or prohibited from disclosure by any other statute.

(g) Written and oral information may be disclosed to a domestic violence death review team established pursuant to this section. The team may make a request in writing for the information sought and any person with information of the kind described in paragraph (2) may rely on the request in determining whether information may be disclosed to the team.

(1) An individual or agency that has information governed by this subdivision shall not be required to disclose information. The intent of this subdivision is to allow the voluntary disclosure of information by the individual or agency that has the information.

(2) The following information may be disclosed pursuant to this subdivision:

(A) Notwithstanding Section 56.10 of the Civil Code, medical information.

(B) Notwithstanding Section 5328 of the Welfare and Institutions Code, mental health information.

(C) Notwithstanding Section 15633.5 of the Welfare and Institutions Code, information from elder abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(D) Notwithstanding Section 11167.5, information from child abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.

(E) State summary criminal history information, criminal offender record information, and local summary criminal history information, as defined in Sections 11075, 11105, and 13300.

(F) Notwithstanding Section 11163.2, information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or abuse, if reported, and information relating to whether a physician referred the person to local domestic violence services, as recommended by Section 11161.

(G) Notwithstanding Section 827 of the Welfare and Institutions Code, information in any juvenile court proceeding.

(H) Information maintained by the Family Court, including information relating to the Family Conciliation Court Law pursuant to Section 1818 of the Family Code, and Mediation of Custody and Visitation Issues pursuant to Section 3177 of the Family Code.

(I) Information provided to probation officers in the course of the performance of their duties, including, but not limited to, the duty to prepare reports pursuant to Section 1203.10, as well as the information on which these reports are based.

(J) Notwithstanding Section 10850 of the Welfare and Institutions Code, records of in-home supportive services, unless disclosure is prohibited by federal law.

(3) The disclosure of written and oral information authorized under this subdivision shall apply notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, or the lawyer-client privilege protected by Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, the physician-patient privilege protected by Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code,

the psychotherapist-patient privilege protected by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, the sexual assault counselor-victim privilege protected by Article 8.5 (commencing with Section 1035) of Chapter 4 of Division 8 of the Evidence Code, the domestic violence counselor-victim privilege protected by Article 8.7 (commencing with Section 1037) of Chapter 4 of Division 8 of the Evidence Code, and the human trafficking caseworker-victim privilege protected by Article 8.8 (commencing with Section 1038) of Chapter 4 of Division 8 of the Evidence Code.

(4) In near-death cases, representatives of domestic violence victim service organizations, as defined in subdivision (b) of Section 1037.1 of the Evidence Code, shall obtain an individual's informed consent in accordance with all applicable state and federal confidentiality laws, before disclosing confidential information about that individual to another team member as specified in this section. In death review cases, representatives of domestic violence victim service organizations shall only provide client-specific information in accordance with both state and federal confidentiality requirements.

(5) Near-death case reviews shall only occur after any prosecution has concluded.

(6) Near-death survivors shall not be compelled to participate in death review team investigations; their participation is voluntary. In cases of death, the victim's family members may be invited to participate, however they shall not be compelled to do so; their participation is voluntary. Members of the death review teams shall be prepared to provide referrals for services to address the unmet needs of survivors and their families when appropriate.

(h) This section shall become operative on January 1, 2025.

SEC. 10. 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.

REVISIONS:
Heading—Line 2.

O

B. AB 1570 (Low) Optometry: certification to perform advanced procedures

Status: Introduced 2-17-2023 / 2-year bill.

AUTHOR REASON FOR THE BILL:
According to the author's statement on AB 2236 (2022), which is substantially similar: "Today's optometrists are trained to do much more than they are permitted in California. Optometrists in other states are performing minor surgical procedures, including the use of lasers to treat glaucoma with no adverse events and little to no requirements on training. This bill provides additional training that will be more rigorous than any other state and will ensure that patients will have access to the care they need. In some counties, Medi-Cal patients must wait months to get in with an ophthalmologist. Optometrists already provide 81 percent of the eye care under Medi-Cal. Optometrists are located in almost every county in California. Optometrists are well situated to bridge the provider gap for these eye conditions that are becoming more common as our population ages."

DESCRIPTION OF CURRENT LEGISLATION:
This bill is a reintroduction of AB 2236 (Low, 2022). It would create a new certificate type to allow optometrists to perform advanced laser surgical procedures, excision or drainage of nonrecurrent lesions of the adnexa, injections for treatment of chalazia and to administer anesthesia, and corneal crosslinking procedures. Prior to certification, optometrists would be required to meet specified training, pass an examination, and complete education requirements to be developed by the Board. It would also require optometrists to report any adverse treatment outcomes to the Board and require the Board to review these reports in a timely manner. BACKGROUND: Existing law provides that the practice of optometry includes the prevention, diagnosis, treatment, and management of disorders and dysfunctions of the visual system, as well as the provision of habilitative or rehabilitative optometric services, and specifically authorizes an optometrist who is certified to use therapeutic pharmaceutical agents to diagnose and treat the human eye for various enumerated conditions. (BPC § 3041) Existing law also requires an optometrist seeking certification to use therapeutic pharmaceutical agents and diagnose and treat specified conditions to apply for a certificate from the CBO and meet additional education and training requirements. (BPC § 3041.3)

ANALYSIS:
This bill would expand the scope of optometry and enable most licensed optometrists to provide optometric services in California consistent with their education and training. Specifically, the bill would:

• Authorize an optometrist certified to treat glaucoma to obtain certification to perform specified advanced procedures if the optometrist meets certain education, training, examination, and other requirements.

• Require the board to set a fee for the issuance and renewal of the certificate authorizing the use of advanced procedures, which would be deposited in the Optometry Fund.

• Require an optometrist who performs advanced procedures pursuant to these provisions to report certain information to the board, including any adverse treatment outcomes that required a referral to or consultation with another health care provider.

• Require the board to compile a report summarizing the data collected and make the report available on the Board's internet website.

To qualify for the certification proposed by the bill, the Board is required to designate Board-approved courses designed to provide education on the advanced procedures required of an optometrist who wishes to qualify for the certification. An additional requirement under the bill is the completion of a Board-approved training program conducted in California.

The bill also requires optometrists to report to the Board, within three weeks, any adverse treatment outcome that required a referral to or consultation with another health care provider. The bill authorizes this to be reported on a form or via a portal. The bill requires the Board to review these adverse treatment outcome reports in a timely manner, and request additional information, if necessary, impose additional training, or to restrict or revoke a certification.

This bill would have the following impact to the Board:
• A process for reviewing and approving Board-approved courses of at least 32 hours. These courses must include a written examination requirement. It is unclear who must design and administer the exam. The Board would need to amend or create new regulations to approve these courses.

• The bill provides discretion to the Board to waive the requirement that an applicant for certification pass both sections of the Laser and Surgical Procedures Examination of the National Board of Examiners in Optometry. The Board would likely need to develop criteria in regulation for this process.

• Applicants must complete a Board-approved training program conducted in California. The bill specifies that the Board is responsible for determining the percentage of required procedures that must be performed. The Board will need to implement this requirement in regulation.

• The bill requires the performance of procedures completed by an applicant for certification be certified on a form approved by the Board. The Board will have to implement this requirement in regulation.

• The bill requires a second form also be submitted to the Board certifying the optometrist is competent to perform advanced procedure and requires the Board to develop the form. The Board will have to implement this requirement in regulation.

• The bill requires optometrists to monitor and report to the Board, on either a form or an internet-based portal, at the time of license renewal or upon Board request, the number of and types of procedures performed and the diagnosis of the patient at the time the procedure was performed.

- It is unclear whether the Board must review or audit the information submitted at time of license renewal. o The bill further requires within three (3) weeks of the event, any adverse treatment outcomes that required referral or consultation to another provider.

- The bill requires the Board to timely review these reports and make enforcement decisions to impose additional training or restrict or revoke the certification.

- Regulations and resources would be required to develop a process to receive and review these reports.

• The bill requires the Board to compile a report on adverse outcomes and publicly post the information on the website. It is unclear if this is a one-time report or an annual requirement.

• The bill requires the Board to develop in regulation the fees for the issuance and renewal of an advanced procedures certificate.

Significant resources and regulatory work would be required to implement the bill as written. It is likely that additional positions would be required to perform the work required by the bill, and a fee would be pursued that could be in the hundreds of dollars to support the workload requirements. The regulatory requirements would likely take at least two (2) years to complete, and it could be beyond 2026 when the first certificates are issued.

These costs and implementation items can likely be mitigated if less requirements are placed on the Board. For example, creating the application form and other forms in statute or including statutory language exempting the forms from the rulemaking process would help with implementation costs and resource requirements. Specifying or designating in law existing training programs that meet the requirements for advanced certification and any examination requirements, instead of requiring the Board to approve training courses, training programs, and determining the percentage of required procedures would reduce resource requirements and implementation timelines. Setting the fee in statute with a floor and including language that permissively allows it to be increased via regulation down the line, would implement the fee upon enactment and allow it to be adjusted in regulation.

FISCAL:
Significant resources would be needed to implement.

SUPPORT:
California Optometric Association

OPPOSITION:
None on File

LRC Committee Recommendation: Support if amended.
Member Morodomi made the motion, recommending a support if amended position on AB 1570 to the full Board, seconded by Member Garcia. The Committee voted 3-0 on this motion. Member Linden was absent.

ASSEMBLY BILL No. 1570

Introduced by Assembly Member Low

February 17, 2023

An act to amend Section 3041 of, and to add Section 3041.4 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1570, as introduced, Low. Optometry: certification to perform advanced procedures.

Existing law, the Optometry Practice Act, establishes the State Board of Optometry in the Department of Consumer Affairs for the licensure and regulation of the practice of optometry. Existing law makes a violation of the act a misdemeanor. Existing law excludes certain classes of agents from the practice of optometry unless they have an explicit United States Food and Drug Administration-approved indication, as specified.

This bill would add neuromuscular blockers to the list of excluded classes of agents. By expanding the scope of a crime, the bill would impose a state-mandated local program.

Existing law requires an optometrist who holds a therapeutic pharmaceutical agents certification and meets specified requirements to be certified to medically treat authorized glaucomas.

This bill would authorize an optometrist certified to treat glaucoma to obtain certification to perform specified advanced procedures if the optometrist meets certain education, training, examination, and other requirements, as specified. By requiring optometrists, qualified educators, and course administrators to certify or attest specified information relating to advanced procedure competency, thus expanding

the crime of perjury, the bill would impose a state-mandated local program. The bill would require the board to set a fee for the issuance and renewal of the certificate authorizing the use of advanced procedures, which would be deposited in the Optometry Fund. The bill would require an optometrist who performs advanced procedures pursuant to these provisions to report certain information to the board, including any adverse treatment outcomes that required a referral to or consultation with another health care provider. The bill would require the board to compile a report summarizing the data collected and make the report available on the board's internet website.

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

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

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

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

SECTION 1. Section 3041 of the Business and Professions Code is amended to read:

3041. (a) The practice of optometry includes the diagnosis, prevention, treatment, and management of disorders and dysfunctions of the visual system, as authorized by this chapter, as well as the provision of habilitative or rehabilitative optometric services, and is the doing of any or all of the following:

(1) The examination of the human eyes and their adnexa, including through the use of all topical and oral diagnostic pharmaceutical agents that are not controlled substances, and the analysis of the human vision system, either subjectively or objectively.

(2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eyes, including the scope of their functions and general condition.

(3) The prescribing, using, or directing the use of any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(4) The prescribing, fitting, or adaptation of contact and spectacle lenses to, the human eyes, including lenses that may be

classified as drugs or devices by any law of the United States or of this state, and diagnostic or therapeutic contact lenses that incorporate a medication or therapy the optometrist is certified to prescribe or provide.

(5) For an optometrist certified pursuant to Section 3041.3, diagnosing and preventing conditions and diseases of the human eyes and their adnexa, and treating nonmalignant conditions and diseases of the anterior segment of the human eyes and their adnexa, including ametropia and presbyopia:

(A) Using or prescribing, including for rational off-label purposes, topical and oral prescription and nonprescription therapeutic pharmaceutical agents that are not controlled substances and are not antiglaucoma agents or limited or excluded by subdivision (b). For purposes of this section, "controlled substance" has the same meaning as used in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.).

(B) Prescribing the oral analgesic controlled substance codeine with compounds, hydrocodone with compounds, and tramadol as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.), limited to three days, with referral to an ophthalmologist if the pain persists.

(C) If also certified under subdivision (c), using or prescribing topical and oral antiglaucoma agents for the medical treatment of all primary open-angle, exfoliation, pigmentary, and steroid-induced glaucomas in persons 18 years of age or over. In the case of steroid-induced glaucoma, the prescriber of the steroid medication shall be promptly notified if the prescriber did not refer the patient to the optometrist for treatment.

(D) If also certified under subdivision (d), independent initiation and administration of immunizations for influenza, herpes zoster virus, pneumococcus, and SARS-CoV-2 in compliance with individual Advisory Committee on Immunization Practices (ACIP) vaccine recommendations published by the federal Centers for Disease Control and Prevention (CDC) in persons 18 years of age or over.

(E) Utilizing the following techniques and instrumentation necessary for the diagnosis of conditions and diseases of the eye and adnexa:

(i) Laboratory tests or examinations ordered from an outside facility.

(ii) Laboratory tests or examinations performed in a laboratory with a certificate of waiver under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) *(Public Law 100-578)* (42 U.S.C. Sec. ~~263a; Public Law 100-578),~~ *263a),* which shall also be allowed for:

(I) Detecting indicators of possible systemic disease that manifests in the eye for the purpose of facilitating appropriate referral to or consultation with a physician and surgeon.

(II) Detecting the presence of SARS-CoV-2 virus.

(iii) Skin testing performed in an office to diagnose ocular allergies, limited to the superficial layer of the skin.

(iv) X-rays ordered from an outside facility.

(v) Other imaging studies ordered from an outside facility subject to prior consultation with an appropriate physician and surgeon.

(vi) Other imaging studies performed in an office, including those that utilize laser or ultrasound technology, but excluding those that utilize radiation.

(F) Performing the following procedures, which are excluded from restrictions imposed on the performance of surgery by paragraph (6) of subdivision (b), unless explicitly indicated:

(i) Corneal scraping with cultures.

(ii) Debridement of corneal epithelium not associated with band keratopathy.

(iii) Mechanical epilation.

(iv) Collection of blood by skin puncture or venipuncture for laboratory testing authorized by this subdivision.

(v) Suture removal subject to comanagement requirements in paragraph (7) of subdivision (b).

(vi) Treatment or removal of sebaceous cysts by expression.

(vii) Lacrimal punctal occlusion using plugs, or placement of a stent or similar device in a lacrimal canaliculus intended to deliver a medication the optometrist is certified to prescribe or provide.

(viii) Foreign body and staining removal from the cornea, eyelid, and conjunctiva with any appropriate instrument. Removal of corneal foreign bodies and any related stain shall, as relevant, be limited to that which is nonperforating, no deeper than the midstroma, and not reasonably anticipated to require surgical repair.

(ix) Lacrimal irrigation and dilation in patients 12 years of age or over, excluding probing of the nasolacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion of 10 procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.

(x) Administration of oral fluorescein for the purpose of ocular angiography.

(xi) Intravenous injection for the purpose of performing ocular angiography at the direction of an ophthalmologist as part of an active treatment plan in a setting where a physician and surgeon is immediately available.

(xii) Use of noninvasive devices delivering intense pulsed light therapy or low-level light therapy that do not rely on laser technology, limited to treatment of conditions and diseases of the adnexa.

(xiii) Use of an intranasal stimulator in conjunction with treatment of dry eye syndrome.

(G) Using additional noninvasive medical devices or technology that:

(i) Have received a United States Food and Drug ~~Administration approved~~ *Administration-approved* indication for the diagnosis or treatment of a condition or disease authorized by this chapter. A licensee shall successfully complete any clinical training imposed by a related manufacturer prior to using any of those noninvasive medical devices or technologies.

(ii) Have been approved by the board through regulation for the rational treatment of a condition or disease authorized by this chapter. Any regulation under this paragraph shall require a licensee to successfully complete an appropriate amount of clinical

training to qualify to use each noninvasive medical device or technology approved by the board pursuant to this paragraph.

(b) Exceptions or limitations to the provisions of subdivision (a) are as follows:

(1) Treatment of the following is excluded from the practice of optometry in a patient under 18 years of age, unless explicitly allowed otherwise:

(A) Anterior segment inflammation, which shall not exclude treatment of:

(i) The conjunctiva.

(ii) Nonmalignant ocular surface disease, including dry eye syndrome.

(iii) Contact lens-related inflammation of the cornea.

(iv) An infection of the cornea.

(B) Conditions or diseases of the sclera.

(2) Use of any oral prescription steroid anti-inflammatory medication for a patient under 18 years of age shall be done pursuant to a documented, timely consultation with an appropriate physician and surgeon.

(3) Use of any nonantibiotic oral prescription medication for a patient under five years of age shall be done pursuant to a documented, prior consultation with an appropriate physician and surgeon.

(4) The following classes of agents are excluded from the practice of optometry unless they have an explicit United States Food and Drug Administration-approved indication for treatment of a condition or disease authorized under this section:

(A) Antiamoebics.

(B) Antineoplastics.

(C) Coagulation modulators.

(D) Hormone modulators.

(E) Immunomodulators.

(F) Neuromuscular blockers.

(5) The following are excluded from authorization under subparagraph (G) of paragraph (5) of subdivision (a):

(A) A laboratory test or imaging study.

(B) Any noninvasive device or technology that constitutes surgery under paragraph (6).

(6) Performing surgery is excluded from the practice of optometry. “Surgery” means any act in which human tissue is cut,

altered, or otherwise infiltrated by any means. It does not mean an act that solely involves the administration or prescribing of a topical or oral therapeutic pharmaceutical.

(7) (A) Treatment with topical and oral medications authorized in subdivision (a) related to an ocular surgery shall be comanaged with the ophthalmologist that performed the surgery, or another ophthalmologist designated by that surgeon, during the customary preoperative and postoperative period for the procedure. For purposes of this subparagraph, this may involve treatment of ocular inflammation in a patient under 18 years of age.

(B) Where published, the postoperative period shall be the "global" period established by the federal Centers for Medicare and Medicaid Services, or, if not published, a reasonable period not to exceed 90 days.

(C) Such comanaged treatment may include addressing agreed-upon complications of the surgical procedure occurring in any ocular or adnexal structure with topical and oral medications authorized in subdivision (a). For patients under 18 years of age, this subparagraph shall not apply unless the patient's primary care provider agrees to allowing comanagement of complications.

(c) An optometrist certified pursuant to Section 3041.3 shall be certified to medically treat authorized glaucomas under this chapter after meeting the following requirements:

(1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.

(2) For licensees who were certified to treat glaucoma under this section before January 1, 2009, submission of proof of completion of that certification program.

(3) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board.

(4) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and who are not described in paragraph (2) or (3), submission of proof of satisfactory completion of the requirements for certification established by the board under Chapter 352 of the Statutes of 2008.

(d) An optometrist certified pursuant to Section 3041.3 shall be certified to administer authorized immunizations, as described in subparagraph (D) of paragraph (5) of subdivision (a), after the optometrist meets all of the following requirements:

(1) Completes an immunization training program endorsed by the federal Centers for Disease Control and Prevention (CDC) or the Accreditation Council for Pharmacy Education that, at a minimum, includes hands-on injection technique, clinical evaluation of indications and contraindications of vaccines, and the recognition and treatment of emergency reactions to vaccines, and maintains that training.

(2) Is certified in basic life support.

(3) Complies with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider and entering information in the appropriate immunization registry designated by the immunization branch of the State Department of Public Health.

(4) Applies for an immunization certificate in accordance with Section 3041.5.

(e) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

(f) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telehealth.

(g) For the purposes of this chapter, all of the following definitions shall apply:

(1) "Adnexa" means the eyelids and muscles within the eyelids, the lacrimal system, and the skin extending from the eyebrows inferiorly, bounded by the medial, lateral, and inferior orbital rims, excluding the intraorbital extraocular muscles and orbital contents.

(2) "Anterior segment" means the portion of the eye anterior to the vitreous humor, including its overlying soft tissue coats.

(3) "Ophthalmologist" means a physician and surgeon, licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, specializing in treating eye disease.

(4) "Physician and surgeon" means a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(5) “Prevention” means use or prescription of an agent or noninvasive device or technology for the purpose of inhibiting the development of an authorized condition or disease.

(6) “Treatment” means use of or prescription of an agent or noninvasive device or technology to alter the course of an authorized condition or disease once it is present.

(h) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

SEC. 2. Section 3041.4 is added to the Business and Professions Code, to read:

3041.4. (a) An optometrist certified to treat glaucoma pursuant to subdivision (c) of Section 3041 shall be certified to perform the following set of advanced procedures after meeting the requirements in subdivision (b) after graduating from an accredited school of optometry:

(1) Laser trabeculoplasty.

(2) Laser peripheral iridotomy for the prophylactic treatment of a clinically significant narrow drainage angle of the anterior chamber of the eye.

(3) Laser posterior capsulotomy after cataract surgery.

(4) Excision or drainage of nonrecurrent lesions of the adnexa evaluated consistent with the standard of care by the optometrist to be noncancerous, not involving the eyelid margin, lacrimal supply, or drainage systems, no deeper than the orbicularis muscle, excepting chalazia, and smaller than five millimeters in diameter. Tissue excised that is not fully necrotic shall be submitted for surgical pathological analysis.

(5) Closure of a wound resulting from a procedure described in paragraph (4).

(6) Injections for the treatment of chalazia and to administer local anesthesia required to perform procedures delineated in paragraph (4).

(7) Corneal crosslinking procedure, or the use of medication and ultraviolet light to make the tissues of the cornea stronger.

(b) An optometrist shall satisfy the requirements specified in paragraphs (1) and (2) to perform the advanced procedures specified in subdivision (a).

(1) Within two years prior to beginning the requirements in paragraph (2), an optometrist shall satisfy both of the following:

(A) Complete a California State Board of Optometry-approved course of at least 32 hours that is designed to provide education on the advanced procedures delineated in subdivision (a), including, but not limited to, medical decisionmaking that includes cases that would be poor surgical candidates, an overview and case presentations of known complications, practical experience performing the procedures, including a detailed assessment of the optometrist's technique, and a written examination for which the optometrist achieves a passing score.

(B) Pass both sections of the Laser and Surgical Procedures Examination of the National Board of Examiners in Optometry, or, in the event this examination is no longer offered, its equivalent, as determined by the California State Board of Optometry. At the California State Board of Optometry's discretion, the requirement to pass the Laser and Surgical Procedures Examination may be waived if an optometrist has successfully passed both sections of the examination previously.

(2) Within three years, complete a California State Board of Optometry-approved training program conducted in California, including the performance of all required procedures that shall involve sufficient direct experience with live human patients to permit certification of competency, by an accredited California school of optometry that shall contain the following:

(A) Hands-on instruction on no less than the following number of simulated eyes before performing the related procedure on live human patients:

(i) Five for each laser procedure set forth in clauses (i), (ii), and (iii) of subparagraph (B).

(ii) Five to learn the skills to perform excision and drainage procedures and injections authorized by this section.

(iii) Five to learn the skills related to corneal crosslinking.

(B) The performance of at least 43 complete surgical procedures on live human patients, as follows:

(i) Eight laser trabeculoplasties.

(ii) Eight laser posterior capsulotomies.

(iii) Five laser peripheral iridotomies.

(iv) Five chalazion excisions.

(v) Four chalazion intralesional injections.

(vi) Seven excisions of an authorized lesion of greater than or equal to two millimeters in size.

(vii) Five excisions or drainages of other authorized lesions.

(viii) One surgical corneal crosslinking involving removal of epithelium.

(C) (i) If necessary to certify the competence of the optometrist, the program shall require sufficient additional experience to that specified in subparagraph (B) performing complete procedures on live human patients.

(ii) One time per optometrist seeking initial certification under this section, a procedure required by clause (i) to (vii), inclusive, of subparagraph (B) may be substituted for a different procedure required by clause (i) to (vii), inclusive, of subparagraph (B) to achieve the total number of complete surgical procedures required by subparagraph (B) if the procedures impart similar skills. The course administrator shall determine if the procedures impart similar skills.

(D) The training required by this section shall include at least a certain percent of the required procedures in subparagraph (B) performed in a cohort model where, for each patient and under the direct in-person supervision of a qualified educator, each member of the cohort independently assesses the patient, develops a treatment plan, evaluates the clinical outcome posttreatment, develops a plan to address any adverse or unintended clinical outcomes, and discusses and defends medical decisionmaking. The California State Board of Optometry-approved training program shall be responsible for determining the percentage of the required procedures in subparagraph (B).

(E) Any procedures not completed under the terms of subparagraph (D) may be completed under a preceptorship model where, for each patient and under the direct in-person supervision of a qualified educator, the optometrist independently assesses the patient, develops a treatment plan, evaluates the clinical outcome posttreatment, develops a plan to address any adverse or unintended clinical outcomes, and discusses and defends medical decisionmaking.

(F) The qualified educator shall certify the competent performance of procedures completed pursuant to subparagraphs (D) and (E) on a form approved by the California State Board of Optometry.

(G) Upon the optometrist’s completion of all certification requirements, the course administrator, who shall be a qualified

educator for all the procedures authorized by subdivision (a), on behalf of the program and relying on the certifications of procedures by qualified educators during the program, shall certify that the optometrist is competent to perform advanced procedures using a form approved by the California State Board of Optometry.

(c) The optometrist shall make a timely referral of a patient and all related records to an ophthalmologist or, in an urgent or emergent situation and an ophthalmologist is unavailable, a qualified center to provide urgent or emergent care, after stabilizing the patient to the degree possible if either of the following occur:

(1) The optometrist makes an intraoperative determination that a procedure being performed does not meet a specified criterion required by this section.

(2) The optometrist receives a pathology report for a lesion indicating the possibility of malignancy.

(d) This section does not authorize performing blepharoplasty or any cosmetic surgery procedure, including injections, with the exception of removing acrochordons that meet other qualifying criteria.

(e) An optometrist shall monitor and report the following information to the California State Board of Optometry on a form provided by the California State Board of Optometry or using an internet-based portal:

(1) At the time of license renewal or in response to a request of the California State Board of Optometry, the number and types of procedures authorized by this section that the optometrist performed and the diagnosis of the patient at the time the procedure was performed.

(2) Within three weeks of the event, any adverse treatment outcomes that required a referral to or consultation with another health care provider.

(f) (1) With each subsequent license renewal after being certified to perform the advanced procedures delineated in subdivision (a), the optometrist shall attest that they have performed each of the delineated procedures in subparagraph (B) of paragraph (2) of subdivision (b) during the period of licensure preceding the renewal.

(2) If the optometrist fails to attest to performance of any of the advanced procedures specified in paragraph (1), the optometrist's advanced procedure certification shall no longer authorize the

optometrist to perform that procedure until, with regard to that procedure, the optometrist performs at least the number of the specific advanced procedures required to be performed in subparagraph (B) of paragraph (2) of subdivision (b), as applicable, under the supervision of a qualified educator through either the cohort or preceptorship model outlined in subparagraphs (D) and (E) of paragraph (2) of subdivision (b), subject to subparagraph (F) of paragraph (2) of subdivision (b), and the qualified educator certifies that the optometrist is competent to perform the specific advanced procedures. The qualified educator may require the optometrist to perform additional procedures if necessary to certify the competence of the optometrist. The optometrist shall provide the certification to the California State Board of Optometry.

(g) The California State Board of Optometry shall review adverse treatment outcome reports required under subdivision (e) in a timely manner, requesting additional information as necessary to make decisions regarding the need to impose additional training, or to restrict or revoke certifications based on its patient safety authority. The California State Board of Optometry shall compile a report summarizing the data collected pursuant to subdivision (e), including, but not limited to, percentage of adverse outcome distributions by unidentified licensee and California State Board of Optometry interventions, and shall make the report available on its internet website.

(h) The California State Board of Optometry may adopt regulations to implement this section.

(i) The California State Board of Optometry, by regulation, shall set the fee for issuance and renewal of a certificate authorizing the use of advanced procedures at an amount no higher than the reasonable cost of regulating optometrists certified to perform advanced procedures pursuant to this section.

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

(1) “Complete procedure” means all reasonably included steps to perform a surgical procedure, including, but not limited to, preoperative care, informed consent, all steps of the actual procedure, required reporting and review of any specimen submitted for pathologic review, and postoperative care. Multiple surgical procedures performed on a patient during a surgical session shall be considered a single surgical procedure.

(2) "Qualified educator" means a person nominated by an accredited California school of optometry as a person who is believed to be a suitable instructor, is subject to the regulatory authority of that person's licensing board in carrying out required responsibilities under this section, and is either of the following:

(A) A California-licensed optometrist in good standing certified to perform advanced procedures approved by the California State Board of Optometry who has been continuously certified for three years and has performed at least 10 of the specific advanced procedures for which they will serve as a qualified educator during the preceding two years.

(B) A California-licensed physician and surgeon who is board-certified in ophthalmology, in good standing with the Medical Board of California, and in active surgical practice an average of at least 10 hours per week.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

C. AB 1707 (Pacheco) Health professionals and facilities: Adverse actions based on another state's law.

Status: Amended 4-12-2023 / Assembly Committee on Appropriations

DESCRIPTION OF CURRENT LEGISLATION:
This bill would prohibit CSBO and all healing arts boards under the Department of Consumer Affairs from denying an application for a license or imposing discipline upon a licensee solely on the basis of a civil judgment, criminal conviction, or disciplinary action in another state that is based on the application of another state's law that interferes with a person's right to receive care that would be lawful in California. The bill would similarly prohibit a health facility from denying staff privileges to, removing from medical staff, or restricting the staff privileges of a licensed health professional solely on the basis of such a civil judgment, criminal conviction, or disciplinary action imposed by another state. The bill would exempt a civil judgment, criminal conviction, or disciplinary action imposed by another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of this state.

BACKGROUND:
Existing law requires all applicants for licensure as an optometrist or optician to be fingerprinted and successfully pass a criminal background check. General speaking, a criminal conviction or disciplinary action is not automatically disqualifying depending on the conviction or discipline and other factors. But past criminal history or disciplinary action could be prohibitive to receiving a license or may lead to conditions of licensure being imposed, depending on the circumstances. State actions around issues such as reproductive rights and gender affirming care have raised new threats for licensed healing arts practitioners and this bill would aim to protect those professionals from having their professional license, or application for professional license, at risk for performing actions that would be lawful if performed in California.

ANALYSIS:
Practicing healing arts professionals in some states have their professional licenses at risk due to changes in state law around issues of reproductive rights and gender affirming care. This bill could impact applicants for California licensure who held a license in another state that was subject to a disciplinary action based on activities in that state that would be legal if performed in California. This bill would prohibit those matters from being used for purposes of denying licensure or imposing discipline upon a licensee in California. However, the bill provides that this exemption does not apply to civil judgments, criminal convictions, or disciplinary actions imposed by another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of California. The impact of this bill is largely minimal to the practice of optometry given its distance from most of these issues. As part of the licensing process, any applicant for which a background check came back with criminal convictions would be subject to an enforcement review and determination as to whether licensure was suitable. The same would be true for licensees for whom the board receives DOJ subsequent arrest notifications for.

FISCAL:
None

SUPPORT:
Unknown

OPPOSITION:
None known.

LRC Committee Recommendation: Support.
Member Garcia made the motion, recommending a support position on AB 1707 to the full Board, seconded by Member Morodomi. The Committee voted 3-0 on this motion. Member Linden was absent.

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON JUDICIARY
Brian Maienschein, Chair
AB 1707 (Pacheco) – As Amended April 12, 2023

SUBJECT: HEALTH PROFESSIONALS AND FACILITIES: ADVERSE ACTIONS BASED ON ANOTHER STATE'S LAW

KEY ISSUE: IN THE EVENT A MEDICAL PROFESSIONAL OR HEALTH CARE FACILITY FACES AN ADVERSE ACTION FROM AN OUT-OF-STATE REGULATORY AGENCY OR COURT, SHOULD THE PROFESSIONAL OR FACILITY BE PROVIDED WITH LIMITED PROTECTION FROM ADVERSE ACTIONS BY CALIFORNIA REGULATORS IF THE UNDERLYING CONDUCT IS LEGAL IN CALIFORNIA AND THE CARE PROVIDED THEY PROVIDED MET ALL APPLICABLE STANDARDS OF CARE?

SYNOPSIS

Following the United States Supreme Court's decision to abolish the right to an abortion in 2022, over a dozen states have moved to ban the procedure and impose criminal or licensing sanctions against medical providers who provide this critical care. Even more troubling many of these states have adopted laws targeting doctors who provide care to their residents outside the jurisdiction. In order to protect California health care providers who provide critical abortion services to women from outside of the state, this bill seeks to ensure that no adverse licensing actions can be taken against a California medical professional or health care facility as a result of an adverse action taken out of state. This bill limits this protection from adverse actions to the provision of care that is both legal in California and performed in accordance with the standard of care demanded by this state's laws.

This measure is sponsored by Planned Parenthood Affiliates of California and is supported by a coalition of organizations representing medical providers. The support coalition highlight the need to protect California medical providers from adverse actions for simply providing care that is legal in this state. This measure has no formal opposition and was previously heard and approved by the Committee on Business and Professions by a vote of 14-2.

SUMMARY: Protects California-licensed health care professionals from adverse licensing actions or losing staff privileges in this state as a result of an adverse action taken in another jurisdiction as a result of a medical provider giving proper care that is otherwise legal in California. Specifically, **this bill**:

1) Prohibits a health facility licensed in California from denying staff privileges to, removing from medical staff, or restricting the staff privileges of, a person licensed by a healing arts board in this state on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state if that judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive sensitive services that would be lawful if provided in California.

2) Provides that an application for licensure as health professional or facility, as specified, is not to be denied, and no license is to be suspended, revoked, or otherwise limited, solely on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state

if that judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in this state.

3) Provides that the protections in 1) and 2) do not apply to a civil judgment, criminal conviction, or disciplinary action imposed in another state for which a similar claim, charge, or action would exist against the licensee under the laws of this state.

4) Defines sensitive services to have the same meaning as the existing definition found in Section 56.06 of the Civil Code.

EXISTING LAW:

1) Requires specified health arts boards within the Department of Consumer Affairs, including the Medical Board of California, to create a central file individual historical record for each licensee under a given board's jurisdiction with respect to the following information:

   a) Reports of any conviction of a crime in this or any other state that constitutes unprofessional conduct, as specified;

   b) Any judgment or settlement requiring the licensee or the licensee's insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error, or omission in practice, or by rendering unauthorized professional services, as specified;

   c) Public complaints, as specified;

   d) Disciplinary information reported, as specified, including any additional exculpatory or explanatory statements submitted by the licentiate; and

   e) Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients, as specified. (Business and Professions Code Section 800 (a).)

2) Requires, generally, a professional liability insurer to disclose to the Medical Board of California any award or settlement over $30,000 for damages for death or personal injury caused by the licensee's alleged negligence, error, or omission in practice, or by the licensee's rendering of unauthorized professional services. (Business and Professions Code Section 801.1 (a).)

3) Requires a physician and surgeon, osteopathic physician and surgeon, a doctor of podiatric medicine, and a physician assistant to report either of the following to the entity that issued their license:

   a) The bringing of an indictment or information charging a felony against the licensee; or

   b) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. (Business and Professions Code Section 802.1.)

4) Requires the clerk of the court that rendered a judgment holding a physician and surgeon, osteopathic physician and surgeon, doctor of podiatric medicine, or physician assistant liable

for any death or personal injury resulting in a judgment of any amount caused by the professional's negligence, error or omission in practice, or their rendering of unauthorized professional services to report that fact to the agency that issued the license. (Business and Professions Code Section 803 (b).)

5) Requires the Medical Board of California, the Osteopathic Medical Board to disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee, including a former licensee, by the board or by another state or jurisdiction, including all of the following:

   a) Temporary restraining orders issued;

   b) Interim suspension orders issued;

   c) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement;

   d) Public letters of reprimand issued; and

   e) Infractions, citations, or fines imposed. (Business and Professions Code Section 803.1(a).)

6) Defines "sensitive services" to mean all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes services described in specified provisions the Family Code and Health and Safety Code, obtained by a patient at or above the minimum age specified for consenting to the service. (Civil Code Section 56.06 (p).)

7) Prohibits, under the Reproductive Privacy Act, the state from denying or interfering with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman. (Health and Safety Code Section 123460 *et seq*.)

8) Provides that full faith and credit must be given in each state to the public acts, records, and judicial proceedings of every other state, and that the United States Congress may by general laws prescribe the manner in which such acts, records and proceedings must be proved, and the effect thereof. (U.S. Const. art. IV, sec. 1.)

9) Provides, pursuant to federal law, that records and judicial proceedings of any court of any such state, territory or possession, or copies thereof, must be proved or admitted in other courts within the United States and its territories and possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form, and that such acts, records and judicial proceedings or copies thereof, so authenticated, have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of such State, territory or possession from which they are taken. (28 U.S.C. Section 1738.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Following the United States Supreme Court's unprecedented decision to eliminate a previously held constitutional right and determine that no right to an abortion exists under the U.S. Constitution (*Dobbs v. Jackson Women's Health Org.* (2022) 141 S. Ct. 2619), access to abortion care is now being determined on a state-by-state basis. Some states, including California, have greatly expanded access to care and are taking steps to accommodate out-of-state patients who need safe and effective reproductive health care. Unfortunately, many states are dramatically restricting or eliminating a person's ability to seek an abortion and gender-affirming health care. As a result of telehealth and mail-order pharmaceuticals, in addition to the longstanding practice of doctors opting to be licensed in multiple jurisdictions, California doctors may face discipline from other state's medical regulators should that regulator believe the doctor conducted services in violation of that state's laws. Seeking to prevent California doctors from facing regulatory discipline in California should another state take action against them for safely and effectively providing care that is legal in this jurisdiction, this bill limits the ability of the healing arts boards within the Department of Consumer Affairs to discipline doctors in the above described circumstances. In support of this bill, the author writes:

> AB 1707 aims to protect California's reproductive health care providers by ensuring their ability to provide care is not at risk if they faced disciplinary action in another state related to reproductive health care services. California's health care providers are becoming increasingly essential for providing care to residents in other states and it is critical to ensure that providers in California, abiding by California laws, are protected from adverse actions based on another state's hostile law. To ensure that providers in California are protected from hostile laws in these other states – we must do everything we can to strengthen California law to protect provider licensure, facility licensure, and providers' ability to practice. The intent of this bill is to shore up protections so that care in California can remain consistent and ensure that California lives up to its declaration as a reproductive freedom state.

A series of draconian laws in other states seek to limit medical professional's ability to provide vital reproductive and gender-affirming healthcare. Since the ruling in the *Dobbs* case thirteen states have moved to effectively ban abortion, one state bans the procedure after six weeks, and another four ban the procedure between 15 and 20 weeks. (NY Times, *Tracking the States Where Abortion Is Now Banned,* (Apr. 2023.) available at: https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html.) Another eight states have abortion restrictions or bans currently being evaluated in state courts. Abortion is not the only legitimate form of health care being limited by some state legislatures. Thirteen states have recently enacted restrictions on gender affirming health care for minors. (Human Rights Campaign Foundation, *Map: Attacks on Gender Affirming Care by State,* (Apr. 2023) available at: https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map.) In several of these states it is not the person receiving care who "violates" the law but rather the medical professional providing the treatment.

Although California has become a safe haven for persons seeking medical treatment, the fact that medical professionals are targeted by other states can have implications in California. For example, should a California-based doctor have a license in a jurisdiction that now prohibits abortion, and a woman from that state travels to California and receives care from the doctor, the doctor may be subject to discipline from the out-of-state medical regulator for violating the other state's laws. Existing California law rightfully requires medical professionals to disclose to California regulators any out-of-state professional discipline or legal misconduct. Based on these disclosures, a medical professional can have their license revoked or suspended, their medical

facility permissions restricted, and face difficulty in finding employment. Given that the above described example ultimately started with a medical professional properly performing a procedure that is lawful under California law, it appears necessary to ensure that such a medical professional would not face potentially career-ending sanctions for simply doing their job in California.

This bill. In order to protect California-licensed medical professionals from adverse actions related to providing legal medical services that other states have now prohibited in a competent manner, this bill limits the ability for the healing arts boards to discipline a professional solely due to an out-of-state action related to a medical service that is legal in California. This bill also protects a medical professional's facility privileges and the licenses of facilities that permit medical professionals to continue working despite the adverse actions of another state for conduct that is legal in California. The bill provides that the protections apply to the provision of sensitive services only, which entails both abortion and gender affirming care. Finally, this bill provides that the protections conferred to medical professionals do not apply if the conduct would give rise to criminal, civil, or regulatory discipline under the laws of California.

Full faith and credit does not require one regulator to follow the lead of another regarding discipline. This bill is the latest in a series of bills seeking to address actions taken by other legislatures to limit a person's medical autonomy. Many of those bills implicated the Full Faith and Credit Clause of the United States Constitution, which dictates how other states are required to treat the records, proceedings, and legal decisions of other states. As it pertains to this bill, because the bill implicates out-of-state court and regulatory judgments, it may appear that the strict adherence to the judgment of an out-of-state tribunal should apply. (See *Mills v. Duryee* (1813) 7 Cranch 481.) However, this bill does not touch on the *direct enforcement* of those actions. While a California court may be required to uphold a *civil judgment*, nothing in the Full Faith and Credit Clause requires this state's government to follow the lead of an out-of-state regulator and abide by its *regulatory action*. Accordingly, this bill simply clarifies existing California law as it pertains to actions by medical regulatory bodies upon receipt of a notice about an out-of-state complaint. Given that the Supreme Court has held that the Full Faith and Credit Clause does not compel "a state to substitute the statutes of another state for its own statutes dealing with a subject matter concerning which it is competent to legislate" (*Baker v. General Motors Corp.* (1998) 522 U.S. 222, 232-33.), this bill seems wholly constitutional.

This bill will not limit legitimate legal action for malpractice or other medical injuries. The existing regulatory structure for medical professionals and health care facilities is designed to protect the public from negligent or improper medical practices. Accordingly, ensuring robust oversight by the various healing arts boards within the Department of Consumer Affairs is vital for public protection. Given that this bill would, in some instances, limit the ability to discipline professionals for "misconduct" alleged by an out-of-state regulator, a proper balance must be struck. Notably, especially in light of amendments taken in the Committee on Business and Professions, this bill appears to strike the proper balance. First, this measure is limited to the provision of sensitive services. These services include various mental health treatments, in addition to the types of care other states seek to limit including abortion and gender affirming care. Secondly, and most importantly, this bill is clearly limited to conduct that is already legal in California. The bill clearly provides that conduct that would give rise to criminal, civil, or disciplinary actions (i.e. medical malpractice) would not be protected.

***ARGUMENTS IN SUPPORT**:* This bill is sponsored by Planned Parenthood Affiliates of California and is supported by a coalition of organizations representing medical providers. In support of the bill, Planned Parenthood notes:

> The fall of Roe not only put patients at risk, but it threatened providers with being criminalized for providing reproductive health care, including abortion. Some health care providers and entities are at risk of being unable to obtain a license in California, to have their existing California license suspended or revoked, or being unable to obtain hospital privileges as the result of another state taking action against them based on that state's law banning the provision care that is lawful to provide in California. California's health care providers are increasingly providing care to residents in other states and it is critical to ensure that providers in California, abiding by California laws, are protected from adverse actions based on another state's hostile law.
>
> AB 1707 builds on existing protections for health care providers who face disciplinary or legal actions in another state based on another state's law restricting services within comprehensive sexual and reproductive health care. Specifically, this bill ensures healing arts licensees, as well as clinics and hospitals are not faced with denial, suspension, or revocation of their license in California as the result of disciplinary action in another state related to providing care that is lawful here, and that health care providers are not faced with denial, suspension, or revocation of their hospital privileges as the result of disciplinary action in another state related to providing care that is lawful in California. This bill is critical to ensuring that states with hostile laws cannot attack providers for what is legal and permissible in California.

REGISTERED SUPPORT / OPPOSITION:

Support

Planned Parenthood Affiliates of California (sponsor)
California Chapter of the American College of Emergency Physicians
California Legislative Women's Caucus
California Nurse Midwives Association
NARAL Pro-choice California

Opposition

None on file

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334

AMENDED IN ASSEMBLY APRIL 12, 2023

AMENDED IN ASSEMBLY MARCH 16, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL No. 1707

Introduced by Assembly Member Pacheco

February 17, 2023

An act to add Sections 805.9 and 850.1 to the Business and Professions Code, and to add Sections 1220.1 and 1265.11 to the Health and Safety Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1707, as amended, Pacheco. Health professionals and facilities: adverse actions based on another state's law.

Existing law establishes various boards within the Department of Consumer Affairs to license and regulate various health professionals. Existing law prohibits the Medical Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, and the Physician Assistant Board from denying an application for licensure or suspending, revoking, or otherwise imposing discipline upon a licensee because the person was disciplined in another state in which they are licensed solely for performing an abortion in that state or because the person was convicted in another state for an offense related solely to performing an abortion in that state.

Existing law provides for the licensure of clinics and health facilities by the Licensing and Certification Division of the State Department of Public Health. Existing law makes a violation of these provisions punishable as a misdemeanor, except as specified.

This bill would prohibit a healing arts board under the Department of Consumer Affairs from denying an application for a license or imposing discipline upon a licensee ~~solely~~ on the basis of a civil judgment, criminal conviction, or disciplinary action in another state that is based on the application of another state's law that interferes with a person's right to receive ~~care~~ *sensitive services, as defined,* that would be lawful in this state. The bill would similarly prohibit a health facility from denying staff privileges to, removing from medical staff, or restricting the staff privileges of a licensed health professional ~~solely~~ on the basis of such a civil judgment, criminal conviction, or disciplinary action imposed by another state. The bill also would also prohibit the denial, suspension, revocation, or limitation of a clinic or health facility license ~~solely~~ on the basis of those types of civil judgments, criminal convictions, or disciplinary actions imposed by another state. The bill would exempt from the above-specified provisions a civil judgment, criminal conviction, or disciplinary action imposed by another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of this state. By imposing new prohibitions under the provisions related to clinics and health facilities, the violation of which is a crime, this bill would impose a state-mandated local program.

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

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

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

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

SECTION 1. Section 805.9 is added to the Business and Professions Code, to read:

805.9. (a) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code shall not deny staff privileges to, remove from medical staff, or restrict the staff privileges ~~of,~~ *of* a person licensed by a healing arts board in this state ~~solely~~ on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state if that judgment, conviction, or disciplinary action

is based solely on the application of another state's law that interferes with a person's right to receive ~~care~~ *sensitive services* that would be lawful if provided in this state.

(b) This section does not apply to a civil judgment, criminal conviction, or disciplinary action imposed in another state for which a similar claim, charge, or action would exist against the licensee under the laws of this state.

(c) For purposes of this ~~section, "healing~~ *section:*

(1) "*Healing* arts board" means any board, division, or examining committee in the Department of Consumer Affairs that licenses or certifies health professionals.

(2) "Sensitive services" has the same meaning as in Section 56.05 of the Civil Code.

SEC. 2. Section 850.1 is added to the Business and Professions Code, to read:

850.1. (a) A healing arts board shall not deny an application for licensure or suspend, revoke, or otherwise impose discipline upon a licensee ~~solely~~ on the basis of a civil judgment, criminal conviction, or disciplinary action in another state if that judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive care that would be lawful if provided in this state.

(b) This section does not apply to a civil judgment, criminal conviction, or disciplinary action imposed in another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of this state.

(c) For purposes of this ~~section, "healing~~ *section:*

(1) "*Healing* arts board" means any board, division, or examining committee in the Department of Consumer Affairs that licenses or certifies health professionals.

(2) "Sensitive services" has the same meaning as in Section 56.05 of the Civil Code.

SEC. 3. Section 1220.1 is added to the Health and Safety Code, to read:

1220.1. (a) An application for licensure made pursuant to this chapter shall not be denied, nor shall any license issued pursuant to this chapter be suspended, revoked, or otherwise limited, ~~solely~~ on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state if that judgment, conviction, or disciplinary action is based solely on the application of another

state's law that interferes with a person's right to receive ~~care~~ *sensitive services* that would be lawful if provided in this state.

(b) This section does not apply to a civil judgment, criminal conviction, or disciplinary action imposed by another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of this state.

(c) For purposes of this section, "sensitive services" has the same meaning as in Section 56.05 of the Civil Code.

SEC. 4. Section 1265.11 is added to the Health and Safety Code, to read:

1265.11. (a) An application for licensure made pursuant to this chapter shall not be denied, nor shall any license issued pursuant to this chapter be suspended, revoked, or otherwise limited, ~~solely~~ on the basis of a civil judgment, criminal conviction, or disciplinary action imposed by another state if that judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive ~~care~~ *sensitive services* that would be lawful if provided in this state.

(b) This section does not apply to a civil judgment, criminal conviction, or disciplinary action imposed by another state for which a similar claim, charge, or action would exist against the applicant or licensee under the laws of this state.

(c) For purposes of this section, "sensitive services" has the same meaning as in Section 56.05 of the Civil Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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D. SB 340 (Eggman) Medi-Cal: eyeglasses: Prison Industry Authority

Status: Introduced 2-07-2023 / Set for hearing 5-8-2023 in Committee on Appropriations

AUTHOR REASON FOR THE BILL:
According to the author: "current DHCS policy requires that eyeglasses for the Medi-Cal program be obtained through CalPIA. Unfortunately, the delivery system is fraught with long delays and quality control issues. Medi-Cal beneficiaries often wait one to two months to receive their eyeglasses and thousands are suffering because they cannot see well enough to perform necessary life functions. School-age children experiencing lengthy delays for their glasses are visually handicapped in their classroom causing them to struggle academically. Recreational and other extra-curricular activities are also negatively impacted. Over 13 million Californians rely on the Medi-Cal program for health coverage including over 40% of the state's children, nearly 5.2 million kids. Because two thirds of Medi-Cal patients are people of color, the lack of timely access to eyeglasses in Medi-Cal is an equity concern. This bill, the Better Access to Better Vision Act, addresses the ongoing concerns with delays and quality of products by optometrists participating in the Medi-Cal program by authorizing the option of using a private entity when ordering eyeglasses. Expanding the source options for eyewear allows providers to better meet their patients' needs."

DESCRIPTION OF CURRENT LEGISLATION:
This bill, for purposes of Medi-Cal reimbursement for covered optometric services, would authorize a provider to obtain eyeglasses from a private entity, as an alternative to a purchase of eyeglasses from the Prison Industry Authority (PIA). The bill would condition implementation of this provision on the availability of federal financial participation.

BACKGROUND:
This bill is substantially similar to SB 1089 (Wilk,2022) which was sponsored by the California Optometric Association. The Board considered that bill in 2022 and took a support position on it. That bill was ultimately gut and amended into an entirely different topic and the language the Board had considered was not enacted.

ANALYSIS:
Optometry and eyeglasses for children are a mandatory benefit of the Medicaid program that states must provide if they participate in Medicaid. Optometry and eyeglasses for adults are an optional state benefit. The adult benefit has been cut in the past during times of budget distress. This last occurred during 2009-2020, with the adult benefit resuming in 2020, subject to an annual appropriation. For both adults and children, routine eye exam and eyeglasses are covered every 24 months.

For more than 30 years, California has required that glasses for Medi-Cal beneficiaries be exclusively made by incarcerated persons within the state's

prisons. According to an August 18, 2022, article "California Prison Optometry Labs Under Pressure to Do Better," there were "295 prisoners in optical programs in three prisons, and the number will rise to 420 when the newest women's optometric program is fully underway in late summer 2022."

A July 8, 2022, article "Medi-Cal's Reliance on Prisoners to Make Cheaper Eyeglasses Proves Shortsighted" noted that between 2019 and 2021, orders for glasses from MediCal to the Prison Industry Authority nearly doubled, from 490,000 to 880,000; presumably most of this increase is due to the adult benefit resuming in 2020. According to the article, PIA contracts with nine private labs to help fulfill orders, five of these are not located in California, and in 2021, 54% of the 880,000 orders were sent to these contracted private labs.

The COVID-19 pandemic caused PIA service delivery issues leading to average wait times approaching 1.5 months. This compared to historical averages of approximately 1 week. According to recent PIA data, current wait times are averaging 5.5 days; however the March 27, 2023 Senate Health Committee analysis stated "according to a recent public records request shared with the Committee, in the last six months of 2022, nearly 40% of the glasses with a five-day turnaround were late and nearly 50% of the glasses with a ten-day turnaround were late."

According to the PIA, Medi-Cal pays $19.60 for every pair of glasses made. It is likely that glasses made by private parties will cost more; last year the Department of Health Care Services (DHCS) estimated that "based on fee-for-service rates, cost increase for reimbursement is estimated at a 141 percent increase per claim."

FISCAL:
None

SUPPORT:
California Optometric Association
California State Society for Opticians
Children Now
National Vision Inc

OPPOSITION:
None known.

LRC Committee Recommendation: Neutral
Member Morodomi made the motion, recommending a neutral position for SB 340 to the full Board, seconded by Member Yoo. The Committee voted 2-1 on this motion, with Member Garcia voting no. Member Linden was absent.

SENATE BILL No. 340

Introduced by Senator Eggman
(Principal coauthor: Senator Wilk)

February 7, 2023

An act to amend Section 2807 of the Penal Code, and to add Section 14131.08 to the Welfare and Institutions Code, relating to optometry.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as introduced, Eggman. Medi-Cal: eyeglasses: Prison Industry Authority.

Existing law establishes the Prison Industry Authority within the Department of Corrections and Rehabilitation and authorizes it to operate industrial, agricultural, and service enterprises that provide products and services needed by the state, or any political subdivision of the state, or by the federal government, or any department, agency, or corporation of the federal government, or for any other public use. Existing law requires state agencies to purchase these products and services at the prices fixed by the authority. Existing law also requires state agencies to make maximum utilization of these products and consult with the staff of the authority to develop new products and adapt existing products to meet their needs.

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income individuals receive health care services, including certain optometric services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions.

This bill, for purposes of Medi-Cal reimbursement for covered optometric services, would authorize a provider to obtain eyeglasses from a private entity, as an alternative to a purchase of eyeglasses from

the Prison Industry Authority. The bill would condition implementation of this provision on the availability of federal financial participation.

The bill, notwithstanding the above-described requirements, would authorize a provider participating in the Medi-Cal program to obtain eyeglasses from the authority or private entities, based on the optometrist's needs and assessment of quality and value.

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

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

SECTION 1. This act shall be known, and may be cited, as the Better Access to Better Vision Act.

SEC. 2. Section 2807 of the Penal Code is amended to read:

2807. (a) The authority is hereby authorized and empowered to operate industrial, agricultural, and service enterprises ~~which~~ *that* will provide products and services needed by the state, or any political subdivision thereof, or by the federal government, or any department, agency, or corporation thereof, or for any other public use. Products may be purchased by state agencies to be offered for sale to inmates of the department and to any other person under the care of the state who resides in state-operated institutional facilities. Fresh meat may be purchased by food service operations in state-owned facilities and sold for onsite consumption.

(b) All things authorized to be produced under subdivision (a) shall be purchased by the state, or any agency thereof, and may be purchased by any county, city, district, or political subdivision, or any agency thereof, or by any state agency to offer for sale to persons residing in state-operated institutions, at the prices fixed by the authority. State agencies shall make maximum utilization of these products, and shall consult with the staff of the authority to develop new products and adapt existing products to meet their needs.

(c) All products and services provided by the authority may be offered for sale to a nonprofit organization, provided that all of the following conditions are met:

(1) The nonprofit organization is located in California and is exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code.

(2) The nonprofit organization has entered into a memorandum of understanding with a local ~~educational~~ *education* agency. As used in this section, "local ~~educational~~ *education* agency" means a school district, county office of education, state special school, or charter school.

(3) The products and services are provided to public school students at no cost to the students or their families.

(d) Notwithstanding subdivision (b), the Department of Forestry and Fire Protection may purchase personal protective equipment from the authority or private entities, based on the Department of Forestry and Fire Protection's needs and assessment of quality and value.

(e) Notwithstanding subdivision (b), a provider participating in the Medi-Cal program may obtain eyeglasses from the authority or private entities, based on the provider's needs and assessment of quality and value.

SEC. 3. Section 14131.08 is added to the Welfare and Institutions Code, to read:

14131.08. For purposes of Medi-Cal reimbursement for covered optometric services pursuant to Section 14132 or 14131.10 or any other law, a provider may obtain eyeglasses from a private entity, as an alternative to a purchase of eyeglasses from the Prison Industry Authority pursuant to Section 2807 of the Penal Code. This section shall be implemented only to the extent that federal financial participation is available.

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SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	SB 340	**Hearing Date:**	April 25, 2023
Author:	Eggman		
Version:	February 7, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Medi-Cal: eyeglasses: Prison Industry Authority***

HISTORY

Source: California Optometric Association

Prior Legislation: SB 1089 (Wilk), amended in the Assembly into a different bill
AB 579 (Flora), Ch. 520, Stats. 2021
AB 133 (Comm. on Budget), Ch. 143, Stats. 2021
SB 78 (Comm. on Budget & Fiscal Rev.), Ch. 38, Stats. 2019
SB 97 (Comm. on Budget & Fiscal Rev.), Ch. 52, Stats. 2017
AB X3-5 (Evans), Ch. 20, Stats. 2009

Support: California Children's Vision Now Coalition; California Optometric Association; California State Society for Opticians; Hero Practice Services; National Vision; SLOLionsEye.org; Vision Center of Sana Maria; several individuals

Opposition: None known

PURPOSE

The purpose of this bill is to authorize a provider, for purposes of Medi-Cal reimbursement for covered optometric services, to obtain eyeglasses from a private entity, as an alternative to a purchase of eyeglasses from the California Prison Industry Authority (CalPIA).

Existing law establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which low-income individuals are eligible for medical coverage. (Welf. & Inst. Code, § 14000 et seq.)

Existing law includes eyeglasses as a covered benefit under the Medi-Cal program. (Welf. & Inst. Code, §§ 14131.10, subd. (g), § 14132.)

Existing law establishes CalPIA within the California Department of Corrections and Rehabilitation (CDCR). (Pen. Code, § 2800 et seq.)

Existing law authorizes CalPIA to operate industrial, agricultural, and service enterprises employing incarcerated individuals in CDCR facilities to provide products and services needed by the state or other public entity or public use, as specified. Provides that one of the purposes of CalPIA is to create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure incarcerated individuals employed by

CalPIA have the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills. (Pen. Code, § 2801.)

Existing law requires that all things authorized to be produced by CALPIA must be purchased by the state at the prices fixed by CALPIA. (Pen. Code, § 2807.)

This bill authorizes a provider participating in the Medi-Cal program to obtain eyeglasses from CalPIA or private entities, based on the provider's needs and assessment of quality and value.

This bill provides that for purposes of Medi-Cal reimbursement for covered optometric services, a provider may obtain eyeglasses from a private entity, as an alternative to a purchase of eyeglasses from CalPIA. Provides that the provisions of this bill only be implemented to the extent that federal financial participation is available.

COMMENTS

1. Need For This Bill

According to the author:

> Current Department of Health Care Services (DHCS) policy requires that eyeglasses for the Medi-Cal program be obtained through the California Prison Industry Authority (PIA). Unfortunately, the delivery system is fraught with long delays and quality control issues. Medi-Cal beneficiaries often wait 1-2 months to receive their eyeglasses and thousands are suffering because they cannot see well enough to perform necessary life functions. School age children experiencing lengthy delays for their glasses are visually handicapped in their classroom causing them to struggle academically. Recreational and other extra-curricular activities are also negatively impacted. This is unacceptable. Over 13 million Californians rely on the Medi-Cal program for health coverage including over 40% of the state's children, nearly 5.2 million kids. With two thirds of Medi-Cal patients' people of color, the lack of timely access to eyeglasses in Medi-Cal is an equity concern. SB 340, the Better Access to Better Vision Act, addresses the ongoing concerns with delays and quality of products by optometrists participating in the Medi-Cal program by authorizing the option of using a private entity when ordering eyeglasses. Expanding the source options for eyewear allows providers to better meet their patient's needs and regardless of income, Medi-Cal patients, including children, deserve to receive quality eyeglasses in a reasonable amount of time.

2. Medi-Cal Coverage of Eyeglasses

Optometric services and eyeglasses for children are a mandatory benefit of the Medicaid program that participating states must provide. Optometric services and eyeglasses for adults are an optional state benefit. In 2009, both optometric services and eyeglasses for adults were cut from California's Medicaid program, Medi-Cal. In 2017, optometric services and eyeglasses were scheduled to be reinstated as a covered benefit in 2020, subject to an annual appropriation. For both adults and children, routine eye exam and eyeglasses are covered every 24 months. Eyeglasses require prior authorization from DHCS, though the treatment authorization request process is deferred for beneficiaries enrolled in Medi-Cal managed care plans.

Multiple studies identify a link between lack of access to vision screening and eyeglasses and academic performance in children. Research indicates that more than 20% of all school-aged children in the U.S. have vision problems, and low-income children and children of color are disproportionately likely to have unmet vision care needs. A 2015 UCLA study of low-income Black and Latino children who received free screening and eyeglasses through the Vision to Learn program found that prior to receiving eyeglasses their math scores were declining, and both their math and reading scores improved after receiving eyeglasses. A 2021 Johns Hopkins study on a similar program in Baltimore found significant increases in reading and math scores.

3. Production of Medi-Cal Eyeglasses by CalPIA

CalPIA is a self-supporting state entity that provides jobs to nearly 7,000 incarcerated individuals within CDCR institutions. (https://www.calpia.ca.gov/about/) CalPIA manages over 100 manufacturing, service, and consumable operations in all of the state's prisons, and all of CalPIA's goods and services are sold to government agencies. In addition to work assignments, CalPIA offers certifications and apprenticeships to incarcerated individuals. Incarcerated individuals can earn up to 12 weeks of Milestone Completion Credits for every Correctional Industry and Career Technical Education (CTE) job assignment. CalPIA reports that during the 2019-2020 fiscal year, there were 2,510 incarcerated individuals registered into the state apprenticeship program with 1,035 incarcerated individuals completing an apprenticeship program.

DHCS has contracted with CalPIA since 1988 to make eyeglasses for Medi-Cal recipients. CalPIA operates optical laboratories located at three of the state's prisons where lenses are made and then fitted into the patients' frames. Providers participating in the Medi-Cal program must order lenses from CalPIA unless the lens required cannot be accommodated by CalPIA.

CalPIA reports that there are currently 420 positions in its Optical program. The CalPIA Optical program partners with the American Board of Opticianry in order to provide certifications to graduates. CalPIA reports that the Optical program has led to the employment of several formerly incarcerated persons in the optical industry although it has not provided the Committee with any aggregate data regarding the program's employment outcomes over the last several years. According to information provided by CalPIA, it completed 875,999 eyeglass orders in 2022 for Medi-Cal's 15 million beneficiaries.

This bill was introduced due to ongoing concerns regarding delays in CalPIA's fulfillment of orders for eyeglasses as well as quality control issues. According to CalPIA, it has a current turnaround time of 4.4 business days for fulfilling orders. CalPIA has acknowledged that there were delays in the fulfillment of orders at the onset of the COVID-19 pandemic as well as during times when there were peaks in cases which impacted staffing of the optical labs. Providers contend that the delays in receiving completed eyeglasses occurred even prior to the pandemic and have continued. With respect to quality control issues, CalPIA shared with the Committee that its "re-do" rate for eyeglasses is less than 1% which is better than the industry standard. The sponsor of the bill, however, shared with the Committee that its members have had ongoing issues with respect to receiving damaged or defective glasses.

4. Argument in Support

The California Optometric Association:

> The PIA has been plagued with problems for years as the eyeglasses are often late, incorrect, or of poor quality. The pandemic has made a bad situation much worse. Some patients have had to wait for more than six months for their eyeglasses. The Dept of Health Care Services claims that the backlog resulting from prison closures has been cleared up, but that is not what our members tell us. In a January 2023 survey, 41% of optometrists report an average PIA eyeglasses turn-around time of 1-2 months. An additional 18% of respondents say eyeglasses take over 2 months. This is unacceptable, especially for kids in school….
>
> Thousands of people are suffering throughout our state because they cannot see well enough to perform necessary life functions. Each day we are hearing tragic stories from our patients about how their lives are affected by this - children who are already disadvantaged cannot participate in the classroom and are falling behind; parents cannot work to provide for their families. Some patients are getting traffic tickets because they cannot see clearly. Others are having to live with severe headaches and other symptoms caused by uncorrected vision problems. With two-thirds of Medi-Cal patients [being] people of color, the lack of timely access to eyeglasses in Medi-Cal is an equity concern.
>
> Each day our member optometrists are having to deal with understandably frustrated patients who get aggressive, verbally abusive, and make threats because they are desperate for their glasses. Most of our Medi-Cal patients cannot afford to purchase eyewear out of pocket and so they are forced to put their lives on hold for months until the PIA lab returns their glasses.
>
> The vision care crisis caused by the COVID-19 epidemic has brought to the spotlight the failure of the single supplier policy. Our members tell us that the requirement to fabricate glasses through the PIA has reduced the number of providers willing to accept Medi-Cal. With over 40% of the state's children covered by Medi-Cal, the consequences to our youthful patients cannot be understated.

-- END --

E. SB 457 (Menjivar) Vision care: consent by a minor

Status: Amended 3-20-2023 / In Assembly.

AUTHOR REASON FOR THE BILL:
According to the author: “For minors affected by homelessness, accessing vision care can be a challenge. Existing law clearly states when an unaccompanied minor can consent to certain medical, dental, reproductive, and sexual health treatments, but it is ambiguous on an unaccompanied minor’s ability to consent to vision care. A child’s ability to see and access to regular eye exams are foundational needs that are vital to a child’s learning and reading comprehension. This bill will allow unaccompanied minors who are on their own to be able get their basic vision care needs met.”

DESCRIPTION OF CURRENT LEGISLATION:
This bill would authorize minors not living with their parents or guardians to consent to their own vision care and would authorize an optometrist to advise the parent or guardian under the same conditions applicable to the provision of medical and dental care. The bill also defines “vision care.”

BACKGROUND:
Under existing law, minors may consent to various medical services without the authorization of their parents or guardians. Minors 15 years or older, not living with their parent or guardian, and who manage their own financial affairs, are able to consent to medical and dental care. Because the law does not explicitly authorize these minors to consent to “vision care,” some independent minors are denied care unless parental consent is provided.

ANALYSIS:
This bill would define “vision care” to mean the “diagnosis, prevention, treatment, and management of disorders, diseases, and dysfunctions of the visual system and the provision of habilitative or rehabilitative optometric services by an optometrist licensed” in California. This definition is consistent with the language in Business and Professions Code section 3041, which states “The practice of optometry includes the diagnosis, prevention, treatment, and management of disorders and dysfunctions of the visual system, as authorized by this chapter, as well as the provision of habilitative or rehabilitative optometric services…” There is no definition of medical care or dental care provided in or otherwise cited by the bill.

FISCAL:
None.

SUPPORT:
California Coalition for Youth
Alliance for Children’s Rights
California Optometric Association

OPPOSITION:
None known

LRC Committee Recommendation: Support.
Member Garcia made the motion, recommending a support position for SB 457 to the full Board, seconded by Member Morodomi. The Committee voted 3-0 on this motion. Member Linden was absent.

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THIRD READING

Bill No: SB 457
Author: Menjivar (D) and Ashby (D)
Amended: 3/20/23
Vote: 21

SENATE JUDICIARY COMMITTEE: 10-0, 3/28/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Niello, Wiener
NO VOTE RECORDED: Stern

SUBJECT: Vision care: consent by a minor

SOURCE: California Coalition for Youth

DIGEST: This bill allows minors aged 15 and older and living separate and apart from their parents or guardians to consent to vision care without obtaining the consent of their parent or guardian.

ANALYSIS:

Existing law:

1) Defines "minor" as an individual under 18 years of age. (Fam. Code, § 6500.)

2) Provides a minor who is 15 years of age or older may consent to medical and dental care without the consent of a parent or guardian[1] provided that both conditions are met:

   a) The minor living separate and apart from their parents, with or without the parents' consent and regardless of the duration of the separate residence.

   b) The minor manages their own financial affairs, regardless of the source of the minor's income. (Fam. Code, § 6922(a).)

[1] Going forward, this analysis uses the term "parent" to include "guardian."

3) Provides that the parent of a minor who receives medical or dental care pursuant to 2) is not liable for the cost of the care.

4) Provides that a physician, surgeon, or dentist providing care pursuant to 2) may, with or without consent of the minor patient, inform the minor's parent of the care provided or the care needed if the physician, surgeon, or dentist has reason to know the parent's whereabouts on the basis of information provided by the minor.

This bill:

1) Defines "vision care" as the diagnosis, prevention, treatment, and management of disorders, diseases, and dysfunctions of the visual system and the provision of habilitative or rehabilitative optometric services by a licensed optometrist licensed pursuant to Article 1 of Chapter 7 of Division 2 of the Business and Professions Code.

2) Authorizes a minor aged 15 or older, who lives separate and apart from their parent(s), to obtain vision care without parental consent.

3) Provides that a parent is not liable for vision care provided to the minor pursuant to 2).

4) Provides that an optometrist may, with or without the consent of the minor, inform the minor's parent of the treatment provided if the optometrist has reason to know the whereabouts of the parent on the basis of information provided by the minor.

Comments

Author's comment. According to the author, for minors affected by homelessness, accessing vision care can be a challenge. Existing law clearly states when an unaccompanied minor can consent to certain medical, dental, reproductive, and sexual health treatments, but it is ambiguous on an unaccompanied minor's ability to consent to vision care. A child's ability to see and access to regular eye exams are foundational needs that are vital to a child's learning and reading comprehension. This bill will allow unaccompanied minors who are on their own to be able get their basic vision care needs met.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 3/30/23)

California Coalition for Youth (source)
Alliance for Children's Rights
California Optometric Association

OPPOSITION: (Verified 3/30/23)

One individual

ARGUMENTS IN SUPPORT: According to this bill's sponsor, the California Coalition for Youth:

> While schools provide the ideal place to receive vision screening, current law does not allow an unaccompanied minor to correct the eye problem should one be detected. The American Optometric Association states that regular comprehensive eye examinations conducted by a doctor of optometry both annually and at key developmental milestones in a child's life can improve detection, diagnosis, and early prevention or treatment of eye problems. They found that school screenings provide less than 4 percent of the eye tests needed and miss up to 75 percent of children with vision problems. Further research shows that about a quarter of all school-aged children have a significant vision problem.
>
> Our agency members have indicated that a major barrier to providing services to youth is the need for parental consent. While we recognize that this is important to obtain, we know that some youth do not have the advantages of supportive and engaged families. Homeless youth are not homeless by choice; their family environments have ben unhealthy and either they have been kicked out or feel forced out. This bill allows youth who are on their own to be able to receive an eye examination and receive corrective lenses as needed so they can safely see the world around them.

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
4/6/23 10:59:33

****** END ******

AMENDED IN SENATE MARCH 20, 2023

SENATE BILL No. 457

Introduced by Senators Menjivar and Ashby

February 13, 2023

An act to amend Section 6922 ~~of~~ *of, and to add Section 6904 to,* the Family Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 457, as amended, Menjivar. Vision care: consent by a minor.

Existing law authorizes a minor 15 years of age or older to consent to the minor's medical care or dental care, if the minor is living separate and apart from the minor's parents or guardian and the minor is managing their own financial affairs, as specified. Existing law authorizes a physician and surgeon or dentist, with or without the minor's consent, to advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon has reason to know the parent's or guardian's whereabouts, based on information given by the minor. Under existing law, a parent or guardian is not liable for care provided according to these provisions.

This bill additionally would authorize minors to consent to their own vision care, and would authorize an optometrist to advise a minor's parent or guardian of the care given or needed, under the same conditions applicable to the provision of medical care and dental care. *The bill would define "vision care" as the diagnosis, prevention, treatment, and management of disorders, diseases, and dysfunctions of the visual system and the provision of habilitative or rehabilitative optometric services by a licensed optometrist, as specified.*

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

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

SECTION 1. Section 6904 is added to the Family Code, to read:

6904. "Vision care" means the diagnosis, prevention, treatment, and management of disorders, diseases, and dysfunctions of the visual system and the provision of habilitative or rehabilitative optometric services by an optometrist licensed pursuant to Article 1 (commencing with Section 3000) of Chapter 7 of Division 2 of the Business and Professions Code.

~~SECTION 1.~~

SEC. 2. Section 6922 of the Family Code is amended to read:

6922. (a) A minor may consent to the minor's medical care, vision care, or dental care if all of the following conditions are satisfied:

(1) The minor is 15 years of age or older.

(2) The minor is living separate and apart from the minor's parents or guardian, whether with or without the parent's or guardian's consent and regardless of the duration of the separate residence.

(3) The minor is managing the minor's own financial affairs, regardless of the source of the minor's income.

(b) The parents or guardian are not liable for medical care, vision care, or dental care provided pursuant to this section.

(c) A physician and surgeon, optometrist, or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and surgeon, optometrist, or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian.

O

F. SB 544 (Laird) Bagley-Keene: Open Meeting Act: teleconferencing

Status: Amended 4-27-2023 / Set for hearing 5-8-2023 in Committee on Appropriations

AUTHOR REASON FOR THE BILL:
According to the author: "In response to the COVID-19 pandemic and the widespread shutdown, the Governor signed an executive order to provide flexibility so state boards and commissions could continue to serve Californians remotely and safely. Although meant to be temporary, we saw significant benefits of remote meetings such as increased participation and reduced operating costs to the state. Senate Bill 544 codifies the Governor's Executive Order allowing state boards and commissions the opportunity to continue holding virtual meetings without being required to list the private address of each remote member, or providing public access to private locations. The additional flexibility and safeguards may also help attract and retain appointees, who provide invaluable perspective. This bill will promote equity and public participation by removing barriers to Californians that experience challenges attending physical meetings, such as people with disabilities, caretakers, seniors, low-income individuals, and those living in rural or different areas of the state."

DESCRIPTION OF CURRENT LEGISLATION:
This bill would amend portions of the Bagley-Keene Open Meeting Act (Act) that will remain operative after July 1, 2023, to remove indefinitely the teleconference requirements that a state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, and that each teleconference location be accessible to the public. The bill would require a state body to provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for at least one site, including, if available, access equivalent to the access for a member of the state body participating remotely. The bill would require a member or staff to be physically present at the location specified in the notice of the meeting.

ANALYSIS:
The Act regulates meetings held by state bodies and it guarantees the public the right to access these meetings subject to specific exceptions. To ensure this right, the public is entitled to attend, monitor, and participate in state agencies' meetings where actions and deliberations are being conducted unless there is a specific reason to exclude the public. Promoting public participation in the form of open meetings is in both the governments and the public's best interest and provides transparency in government functions. This bill incorporates the use of modern technology in the Act, making it easier for all Californians and people from all over the world to not only view but actively participate in public meetings.

NOTE: There is no urgency clause in the bill, thus it would take effect on 1-1-2024.

FISCAL:
Significant costs due to planning and logistics for physical board and committee meetings.

SUPPORT:
None known.

OPPOSITION:
None known.

LRC Committee Recommendation: Support.
Member Garcia made the motion, recommending a support position for SB 544 to the full Board, seconded by Member Morodomi. The Committee voted 3-0 on this motion. Member Linden was absent.

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 544 (Laird)
Version: March 20, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Bagley-Keene Open Meeting Act: teleconferencing

DIGEST

This bill removes, indefinitely, requirements that a state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, and that each teleconference location be accessible to the public. The bill requires state bodies to provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting, as specified, and requires the agenda to provide an opportunity for the public to address the state body directly. The bill provides that one staff or member needs to be physically present at the physical location specified in the meeting, as opposed to existing law which requires a member to be present.

EXECUTIVE SUMMARY

The Bagley-Keene Open Meeting Act (Bagley-Keene) protects public access to meetings of state bodies. During the COVID-19 pandemic, the need for social distancing made the usual practices for public meetings under Bagley-Keene—in particular, having people group together in indoor spaces—impossible to continue. Governor Gavin Newsom, as part of a slew of emergency orders issued in response to the pandemic, suspended many of the requirements under Bagley-Keene for teleconferenced meetings. This bill seeks to indefinitely remove certain requirements under Bagley-Keene related to teleconference meetings that were waived under the Governor's Executive Order.

The bill is sponsored by the California Commission on Aging. It is supported by various state entities. It is opposed by a coalition comprised of civil rights and community organizations and the California News Publishers Association. The bill passed the Senate Governmental Organization Committee on a vote of 13 to 1.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
    a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
    b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)

2) Establishes the Bagley-Keene Act, which requires state bodies to conduct their business in open public meetings, except as provided by the Act, and establishes requirements and procedures for such meetings. (Gov. Code § 11120 et seq.)[1]
    a) "State bodies" covered by the Bagley-Keene Act include every state board, commission or body created by statute or required by law to conduct official meetings, every commission created by executive order, any board or body exercising the authority of a state body by delegation, any advisory body created by formal action of a state body, any state body that is supported by public funds and which a member of a state body serves in their official capacity, and the State Bar of California. (§ 11121.)
    b) "State bodies" do not include specified legislative agencies, agencies subject to the Brown Act, and certain educational and health-related agencies. (§ 11121.1.)

3) Authorizes state bodies subject to the Bagley-Keene Act to provide a teleconferencing option—which may be via audio or audiovisual means—for its meetings for the benefit of the public, subject to certain requirements including that:
    a) The meeting must be audible to the public at the location specified in the notice of the meeting.
    b) The agenda must provide an opportunity for members of the public to address the legislative body at each teleconference location.
    c) All votes must be taken via rollcall.
    d) At least one member of the state body must be physically present at the location specified in the notice of the meeting. (§ 11123.)

4) Requires, on and after July 1, 2030, in addition to the above requirements in 3) that:
    a) The legislative body must post agendas at all teleconference locations.

[1] All further references are to the Government Code unless specified otherwise.

   b) Each teleconference location must be identified in the notice and agenda of the meeting or proceeding.
   c) Each teleconference location must be accessible to the public.

5) Authorizes state advisory boards and similar advisory bodies to hold a meeting via teleconference, without posting a member's remote location on the agenda or having the location that the member is participating from accessible by the public, if it complies with the following requirements:
   a) A member participating remotely must be listed in the minutes of the meeting.
   b) The state body must provide public notice at least 24 hours before the meeting that identifies the member(s) participating remotely and the primary physical meeting location; the body need not disclose the remote locations.
   c) The state body must designate a primary physical location and a quorum of the members must be in attendance at the primary physical meeting location; the remote members do not count towards establishing a quorum.
   d) The state body must provide a means by which the public may remotely hear audio of, or observe, the meeting, with access equal to the members of the state body participating remotely. Instructions for remote access must be included in the 24-hour meeting notice.
   e) Upon discovering that a provided means of remote access has failed, the body must end or adjourn the meeting and provide notice regarding when the state body will reconvene. (§ 11123.5.)

This bill:

1) Removes, indefinitely, the following existing requirements of a state body when they choose to hold a meeting via teleconference:
   a) that that a state body post agendas at all teleconference locations;
   b) that each teleconference location be identified in the notice and agenda of the meeting or proceeding; and
   c) that each teleconference location be accessible to the public.

2) Requires a state body, if conducting a meeting via teleconference, to:
   a) Provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for at least one site, including, if available, access equivalent to the access for a member of the state body participating remotely.
   b) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C.

Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

3) Defines "participate remotely" as participation in a meeting at a location other than the physical location designated in the agenda of the meeting.

4) States findings and declarations of the Legislature regarding the imposition of a limitation on the public's right of access to the meetings of public bodies or the writings of public officials.

COMMENTS

1. Stated need for the bill

The author writes:

> In response to the COVID-19 pandemic and the widespread shutdown, the Governor signed an executive order to provide flexibility so state boards and commissions so they could continue to serve Californians remotely and safely.
>
> Although meant to be temporary, we saw significant benefits of remote meetings, such as increased participation and reduced operating costs to the state.
>
> Senate Bill 544 codifies the Governor's Executive Order allowing state boards and commissions the opportunity to continue holding virtual meetings without being required to list the private addresses of each remote member or provide public access to private locations. The additional flexibility and safeguards may also help attract and retain appointees, who provide invaluable perspective. This bill will promote equity and public participation by removing barriers to Californians that experience challenges attending physical meetings, such as people with disabilities, caretakers, seniors, low-income individuals, and those living in rural or different areas of the state. SB 544 will empower California voices across the state.

2. Bagley-Keene guarantees public access to the open and public meetings of state bodies

Bagley-Keene generally requires state bodies to conduct their meetings openly and make them accessible to the public. A state body includes boards, commissions, committees, councils, and any other public agency created by state statute or executive order, with some exceptions, and the State Bar. (§ 11121.) The law does not apply to individual officials, advisory committees with no decision-making authority, or the California State Legislature.

The law also requires state bodies to provide advance notice of their meetings and agendas and to allow public comments on matters under consideration. (Gov. Code § 11125.) The act includes certain exceptions, such as closed sessions for discussing personnel issues or pending litigation, to protect the privacy and legal interests of individuals and the state. (§ 11126.)

State bodies must provide at least ten days' notice before a meeting, specifying the time and location, and post an agenda containing a brief description of each item to be discussed or acted upon. (§ 11125.) The agenda must be made available to the public, and state bodies cannot discuss or take action on items not listed on the agenda, with limited exceptions for emergency situations. (§ 11125.) State bodies must conduct their meetings openly, ensuring that members of the public can attend and participate without any restrictions based on race, gender, disability, or other discriminatory factors. (§ 11123.) The act also requires state bodies to provide reasonable accommodations for individuals with disabilities, ensuring accessibility to meetings and materials. (§ 11123.1.) The public has the right to address state bodies on any agenda item before or during the meeting. (§ 11125.7.) State bodies must provide opportunities for public comment and cannot prohibit criticism of their policies, procedures, or actions. (*Id.)* They may, however, impose reasonable time limits on public comments to maintain order and facilitate the conduct of business. (*Id*. at subd. (b).)

3. Changes to how a state body can conduct meetings via teleconference

In response to the COVID-19 pandemic, Governor Newsom issued an executive order in March 2020 permitting state bodies to hold meetings virtually without requiring a physical location or the posting of the addresses of the teleconference location of all those attending – as is generally required under Bagley-Keene. The waiver of these requirements was extended through July 1, 2023 in SB 189 (Senate Committee on Budget, Ch. 48, Stats. 2022). At the expiration of this waiver, state bodies desiring to utilize virtual meetings will again be required to post the physical location of all members attending via teleconference and provide public access to that location. The author and sponsor of the bill argue that these existing requirements potentially put members of state bodies at risk by exposing their private addresses to the public and requiring public access the member's private residence or hotel.

To address this concern the bill would indefinitely remove the following requirements under Bagley-Keene when a state body elects to hold a meeting via teleconference:

- that each teleconference location be identified in the notice and agenda of the meeting or proceeding;
- that that a state body post agendas at all teleconference locations; and
- that each teleconference location be accessible to the public.

The bill would require a state body to provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for at least one site. The access should be equivalent to the access for a member of the state body participating remotely, if available. The applicable teleconference telephone number, internet website or other online platform, and physical address indicating how the public can access the meeting remotely and in person must be specified in any notice required under Bagley-Keene. The bill defines "participate remotely" as participation in a meeting at a location other than the physical location designated in the agenda of the meeting. The bill also changes the existing requirement that at least one member of the state body be physically present at a location specified in the agenda where the public can attend to allow for only a staff person of the state body to be present at the physical location.

The bill would require that if a state body holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body must implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.). The state body must resolve any doubt whatsoever in favor of accessibility, and advertise these procedures each time notice is given of the means by which members of the public may observe the meeting and offer public comment.

4. Limitation on access to public meetings

The bill's provisions would limit the public's access to public meetings of state bodies by allowing a state body to hold a teleconference meeting without allowing the public to access the locations of where members are participating from, providing notice of where they are participating from, and also not requiring any member of the state body to be present at the one physical location required to be provided to the public. The author and sponsor argue that the Governor's Executive order, which waived certain requirements related to teleconference meetings, was productive, increased public participation by all members of the public regardless of their location and ability to travel to physical meeting locations, increased the pool of people who are able to serve on these bodies, protected the health and safety of civil servants and the public, and reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings. They also argue that conducting audio and video teleconference meetings enhances public participation and the public's right of access to meetings of the public bodies by improving access for individuals that often face barriers to physical attendance.

The bill is opposed unless amended by a coalition comprised of civil rights organizations, community organizations, and the California News Publishers Association. They are deeply concerned with the fact that a state body would be able to hold a meeting and there would be no way for the public to physically address any member of the body. They write:

> Officials who are in the same room as their constituents can't just turn off their cameras or turn down the volume on criticism. SB 544 jeopardizes this public access by permitting public officials to "phone it in" and meet entirely telephonically if they so choose. This forces the public to try to follow along with zero visual cues, guessing at speakers' voices and addressing public officials by audio only.
>
> For journalists who do the important work of informing their communities, SB 544 makes newsgathering even more challenging. A primary newsgathering tool is being able to approach officials, see how decision-makers engage with the public, and observe how officials interact with one another on the dais. By allowing bodies to meet remotely indefinitely, SB 544 significantly hampers the ability of reporters and photographers to provide valuable information to their readers, leaving Californians less informed.

The opposition coalition is seeking an amendment to require a physical quorum of members in one location, which would be open to the public, with other members of the body being able to join remotely. They point to the provisions in AB 2449 (Rubio, Ch. 285, Stats. 2022) as an example of this being done in the context of open meetings requirements for legislative bodies of local governments. This is also the requirement under Bagley-Keene as it relates to advisory boards and similar advisory bodies under Section 11123.5. They also seek several other guardrails around technology disruptions, public comment, and a requirement that the state body provide the public with both call-in and video access. Many of the guardrails they are requesting were included in SB 1733 (Quirk, 2022), which was never set for a hearing in the Assembly Committee on Governmental Organization, and AB 2449.

5. Potential Amendments

To address some, but not all, of the concerns raised by the opposition the author may wish to amend the bill to:

- Make it clear that members of the public are entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments prior to the meeting or in writing.
- That upon discovering that a means of remote participation required by the bill has failed during a meeting and cannot be restored, the state body must end or adjourn the meeting.

- Define "remote location" to mean a location from which a member of a state body participates in a meeting other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.
- Requiring a member participating remotely to disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.
- Clarifying that an agenda is to be posted pursuant to other requirements under Bagley-Keene.

The specific amendments are:[2]

Amendment 1

Members of the public shall be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments prior to the meeting or in writing.

Amendment 2

Upon discovering that a means of remote participation required by this section has failed during a meeting and cannot be restored, the state body shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on the state body's internet website and by email to any person who has requested notice of meetings of the state body by email under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, internet website, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

Amendment 3

This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting in accordance with the applicable notice requirements of this article, including Section 11125, requiring the state body post an agenda of a meeting at least 10 days in advance of the meeting, Section 11125.4, applicable to special meetings, and Sections 11125.5 and 11125.6, applicable to emergency meetings. The state body shall post the agenda on its internet website and, on the day of the meeting,

[2] The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

at any physical meeting location designated in the notice of the meeting. The notice and agenda shall not disclose information regarding any remote location from which a member is participating.

Amendment 4

"Remote location" means a location from which a member of a state body participates in a meeting other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

Amendment 5

If a member of a state body attends a meeting by teleconference from a remote location, the member shall disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

6. Statements in support

The sponsor of the bill, the California Commission on Aging, writes:

> SB 544 will increase transparency and promote public participation in State government by expanding the pool of candidates interested in serving. Older adults and individuals with disabilities are no longer barred from attending meetings or participating in State government simply because they are limited from attending physically. SB 544 will also remove impediments for low-income, rural California residents, and caregivers who cannot or find it challenging to travel to one physical location. […]
>
> With the flexibilities allowed under the Governor's Executive Order, the California Commission on Aging has realized increased member participation, more public comments, more stakeholder attendance, a decrease in travel costs, and improved organizational efficiency. Other State boards and commissions have also reported similar benefits and better outcomes. […]
>
> Senate Bill 544 modernizes the teleconferencing stipulations in the Bagley-Keene Open Meeting Act, promoting equity and participation of the public through virtual meetings while safeguarding the private residences of participating members of state bodies.

7. Statements in opposition

The opposition coalition writes they are opposed unless amended stating:

SB 544, unless it is amended, as it would make drastic and permanent changes to California's landmark Bagley-Keene Open Meeting Act, significantly reducing the transparency, accountability, and democratic nature of California's state bodies. SB 544 would permit government officials doing consequential work on state boards and commissions to conduct public business virtually, without ever again being present at a physical location where the public and press can directly engage them.

While we understand that virtual meetings and temporary measures amid emergencies may be necessary to protect health and safety, public officials serving on public bodies without ever having to convene in person results in a reduction of public access. And while we enthusiastically support increased options for remote participation for members of the public, we oppose this bill because it would forever remove the longstanding requirement that public meetings be held in public places where the public can petition their leaders and other government officials face to face.

SUPPORT

California Acupuncture Board
California Association of Area Agencies on Aging
California Senior Legislature
Health Officers Association of California
Little Hoover Commission

OPPOSITION

ACLU California Action
Cal Aware
California Broadcasters Association
California News Publishers Association
First Amendment Coalition
Howard Jarvis Taxpayers Association

RELATED LEGISLATION

Pending Legislation:

SB 411 (Portantino, 2023) among other things, authorizes a legislative body of a local agency to use alternate teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency, as specified. This bill is currently pending in this Committee.

SB 537 (Becker, 2023) among other things, authorizes certain legislative bodies of local agencies to use alternate teleconferencing provisions similar to the emergency

provisions indefinitely and without regard to a state of emergency, as specified. This bill is currently pending in this Committee.

AB 817 (Pacheco, 2023) among other things, authorizes a subsidiary state bodies to use alternative teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency, as specified. This bill is pending in the Assembly Local Government Committee.

AB 1275 (Arambula, 2023) authorizes the recognized statewide community college student organization and other student-run community college organizations to use teleconferencing for their meetings without having to post agendas at all locations, identify each location in the agenda, make each location accessible to the public, and require that a quorum of the student organization's members participate from a singular physical location. This bill is pending in the Assembly Local Government Committee.

Prior Legislation:

SB 189 (Committee on Budget and Fiscal Review, Ch. 48, Stats. 2022) among other things, provided a temporary statutory extension for state bodies in California to hold public meetings through teleconferencing, such as phone or video calls, instead of in-person gatherings, as specified.

AB 1733 (Quirk, 2022) would have updated Bagley-Keene to accommodate teleconferenced meetings as a standard practice, as provided. This bill was never set for a hearing in the Assembly Governmental Organization Committee.

AB 2449 (Rubio, Ch. 285, Stats. 2022) allows, until January 1, 2026, members of a legislative body of a local agency to use teleconferencing without noticing their teleconference locations and making them publicly accessible under certain conditions.

PRIOR VOTES:

Senate Governmental Organization Committee (Ayes 13, Noes 1)

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AMENDED IN SENATE APRIL 27, 2023

AMENDED IN SENATE MARCH 20, 2023

SENATE BILL No. 544

Introduced by Senator Laird

February 15, 2023

An act to amend Section 11123 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 544, as amended, Laird. Bagley-Keene Open Meeting Act: teleconferencing.

Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act authorizes meetings through teleconference subject to specified requirements, including, among others, that the state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, that each teleconference location be accessible to the public, that the agenda provide an opportunity for members of the public to address the state body directly at each teleconference location, and that at least one member of the state body be physically present at the location specified in the notice of the meeting.

Existing law, until July 1, 2023, authorizes, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and suspends certain requirements of the act, including the above-described teleconference requirements.

This bill would amend existing law that will remain operative after July 1, 2023, to remove indefinitely the teleconference requirements

that a state body post agendas at all teleconference locations, that each teleconference location be identified in the notice and agenda of the meeting or proceeding, and that each teleconference location be accessible to the public. The bill would require a state body to provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for at least one site, including, if available, access equivalent to the access for a member of the state body participating remotely. The bill would require any notice required by the act to specify the applicable teleconference telephone number, internet website or other online platform, and physical address indicating how the public can access the meeting remotely and in person. The bill would revise existing law to no longer require that members of the public have the opportunity to address the state body directly at each teleconference location, but would continue to require that the agenda provide an opportunity for members of the public to address the state body directly. The bill would require a member or staff to be physically present at the location specified in the notice of the meeting.

This bill would provide that it does not affect prescribed existing notice and agenda requirements and would require the state body to post an agenda on its internet website and, on the day of the meeting, at any physical meeting location designated in the notice of the meeting. The bill would prohibit the notice and agenda from disclosing information regarding any remote location from which a member is participating and define "remote location" for this purpose. The bill would provide that members of the public shall be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments prior to the meeting or in writing.

This bill would require a state body, upon discovering that a means of remote participation required by the bill has failed during a meeting and cannot be restored, to end or adjourn the meeting in accordance with prescribed adjournment and notice provisions, including information about reconvening.

This bill would require a state body that holds a meeting through teleconferencing pursuant to the bill and allows members of the public to observe and address the meeting telephonically or otherwise electronically to implement and advertise, as prescribed, a procedure

for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990.

This bill would require a member of a state body who attends a meeting by teleconference from a remote location to disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member's relationship with any such individuals.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

SECTION 1. Section 11123 of the Government Code is amended to read:

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. The state body shall provide a means by which the public may remotely hear audio of the meeting,

remotely observe the meeting, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for at least one site, including, if available, access equivalent to the access for a member of the state body participating remotely. The applicable teleconference telephone number, internet website or other online platform, and physical address indicating how the public can access the meeting remotely and in person shall be specified in any notice required by this article.

(D) The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7.

(E) All votes taken during a teleconferenced meeting shall be by rollcall.

(F) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(G) At least one member or staff of the state body shall be physically present at the location specified in the notice of the meeting.

(H) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting in accordance with the applicable notice requirements of this article, including Section 11125, requiring the state body to post an agenda of a meeting at least 10 days in advance of the meeting, Section 11125.4, applicable to special meetings, and Sections 11125.5 and 11125.6, applicable to emergency meetings. The state body shall post the agenda on its internet website and, on the day of the meeting, at any physical meeting location designated in the notice of the meeting. The notice and agenda shall not disclose information regarding any remote location from which a member is participating.

(I) Members of the public shall be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments prior to the meeting or in writing.

(J) Upon discovering that a means of remote participation required by this section has failed during a meeting and cannot be restored, the state body shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other

requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on the state body's internet website and by email to any person who has requested notice of meetings of the state body by email under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, internet website, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

(2) For the purposes of this subdivision, ~~"teleconference"~~ *both of the following definitions shall apply:*

(A) "Teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(B) "Remote location" means a location from which a member of a state body participates in a meeting other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(c) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment.

(d) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(e) If a member of a state body attends a meeting by teleconference from a remote location, the member shall disclose

whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

~~(e)~~

(f) For purposes of this section, "participate remotely" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 11123 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(a) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

(b) During the COVID-19 public health emergency, audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and those public meetings have been productive, increased public participation by all members of the public regardless of their location and ability to travel to physical meeting locations, increased the pool of people who are able to serve on these bodies, protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(c) Conducting audio and video teleconference meetings enhances public participation and the public's right of access to meetings of the public bodies by improving access for individuals that often face barriers to physical attendance.

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